

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 1161

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

EARLENE ROBERTS

AN ACT

RELATING TO CHILDREN; CLARIFYING DUTIES TO REPORT ABUSE OR
NEGLECT OF A CHILD; CHANGING PROCEDURES AND TIME FRAMES FOR
HEARINGS HELD PURSUANT TO THE ABUSE AND NEGLECT ACT; CLARIFYING
ADOPTION PROCEDURES; AMENDING, REPEALING AND ENACTING SECTIONS
OF THE CHILDREN'S CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-4-1 NMSA 1978 (being Laws 1993,
Chapter 77, Section 95) is amended to read:

"32A-4-1. SHORT TITLE. -- Chapter ~~[32]~~ 32A, Article 4 NMSA
1978 may be cited as the "Abuse and Neglect Act". "

Section 2. Section 32A-4-2 NMSA 1978 (being Laws 1993,
Chapter 77, Section 96) is amended to read:

"32A-4-2. DEFINITIONS. -- As used in the Abuse and Neglect
Act:

Underscored material = new
[bracketed material] = delete

1 A. "abandonment" includes, but is not limited to,
2 instances when the parent, without justifiable cause:

3 (1) left the child without provision for the
4 child's identification for a period of fourteen days; or

5 (2) left the child with others, including the
6 other parent or an agency, without provision for support and
7 without communication for a period of:

8 (a) three months if the child was under
9 six years of age at the commencement of the three-month period;
10 or

11 (b) six months if the child was over six
12 years of age at the commencement of the six-month period;

13 B. "abused child" means a child who has suffered
14 serious harm or who is at risk of suffering serious harm:

15 (1) who has suffered physical abuse, emotional
16 abuse or psychological abuse inflicted by the child's parent,
17 guardian or custodian;

18 (2) who has suffered sexual abuse or sexual
19 exploitation inflicted by the child's parent, guardian or
20 custodian;

21 (3) whose parent, guardian or custodian has
22 knowingly, intentionally or negligently placed the child in a
23 situation that may endanger the child's life or health; or

24 (4) whose parent, guardian or custodian has
25 knowingly or intentionally tortured, cruelly confined or cruelly

1 punished the child;

2 C. "neglected child" means a child who has suffered
3 serious harm or who is at risk of suffering serious harm:

4 (1) who has been abandoned by the child's
5 parent, guardian or custodian;

6 (2) who is without proper parental care and
7 control or subsistence, education, medical or other care or
8 control necessary for the child's well-being because of the
9 faults or habits of the child's parent, guardian or custodian or
10 the neglect or refusal of the parent, guardian or custodian,
11 when able to do so, to provide them;

12 (3) who has been physically or sexually abused,
13 when the child's parent, guardian or custodian knew or should
14 have known of the abuse and failed to take reasonable steps to
15 protect the child from further harm;

16 (4) whose parent, guardian or custodian is
17 unable to discharge his responsibilities to and for the child
18 because of incarceration, hospitalization or other physical or
19 mental disorder or incapacity; or

20 (5) who has been placed for care or adoption in
21 violation of the law; provided that nothing in the Children's
22 Code shall be construed to imply that a child who is being
23 provided with treatment by spiritual means alone through prayer,
24 in accordance with the tenets and practices of a recognized
25 church or religious denomination, by a duly accredited

1 practitioner thereof is for that reason alone a neglected child
2 within the meaning of the Children's Code; and further provided
3 that no child shall be denied the protection afforded to all
4 children under the Children's Code;

5 D. "physical abuse" includes, but is not limited to,
6 any case in which the child exhibits evidence of skin bruising,
7 bleeding, malnutrition, failure to thrive, burns, fracture of
8 any bone, subdural hematoma, soft tissue swelling or death and:

9 (1) there is not a justifiable explanation for
10 the condition or death;

11 (2) the explanation given for the condition is
12 at variance with the degree or nature of the condition;

13 (3) the explanation given for the death is at
14 variance with the nature of the death; or

15 (4) circumstances indicate that the condition
16 or death may not be the product of an accidental occurrence;

17 E. "sexual abuse" includes, but is not limited to,
18 criminal sexual contact, incest or criminal sexual penetration,
19 as those acts are defined by state law; and

20 F. "sexual exploitation" includes, but is not
21 limited to:

22 (1) allowing, permitting or encouraging a child
23 to engage in prostitution;

24 (2) allowing, permitting, encouraging or
25 engaging a child in obscene or pornographic photographing; or

Underscored material = new
[bracketed material] = delete

1 (3) filming or depicting a child for obscene or
2 pornographic commercial purposes, as those acts are defined by
3 state law. "

4 Section 3. Section 32A-4-3 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 97) is amended to read:

6 "32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD NEGLECT--
7 RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR NEGLECT-- PENALTY. --

8 A. Every person, including but not limited to a
9 licensed physician, a resident or an intern examining, attending
10 or treating a child, a law enforcement officer, a judge
11 presiding during any proceeding, a registered nurse, a visiting
12 nurse, a schoolteacher or a school official or social worker
13 acting in an official capacity who knows or has a reasonable
14 suspicion that a child is an abused or a neglected child shall
15 report the matter immediately to:

- 16 (1) a local law enforcement agency;
17 (2) the department office in the county where
18 the child resides; or
19 (3) tribal law enforcement or social services
20 agencies for any Indian child residing in Indian country.

21 B. Any law enforcement agency receiving the report
22 shall immediately transmit the facts of the report and the name,
23 address and phone number of the reporter by telephone to the
24 department office in the county where the child resides and
25 shall transmit the same information in writing within

. 116747. 2GJ

Underscored material = new
[bracketed material] = delete

1 forty-eight hours. Any office of the department receiving a
2 report shall immediately transmit the facts of the report and
3 the name, address and phone number of the reporter by telephone
4 to a local law enforcement agency and shall transmit the same
5 information in writing within forty-eight hours. The written
6 report shall contain the names and addresses of the child and
7 the child's parents, guardian or custodian, the child's age, the
8 nature and extent of the child's injuries, including any
9 evidence of previous injuries, and other information that the
10 maker of the report believes might be helpful in establishing
11 the cause of the injuries and the identity of the person [~~or~~
12 ~~persons~~] responsible for the injuries. The written report shall
13 be submitted upon a standardized form agreed to by the law
14 enforcement agency and the department.

15 C. If an alleged perpetrator of abuse or neglect of
16 a child is not a parent, guardian or custodian of the child or a
17 member of the child's family, a local law enforcement agency is
18 responsible for investigating the case of alleged abuse or
19 neglect.

20 D. If an alleged perpetrator of abuse or neglect of
21 a child is a parent, guardian or custodian of the child or a
22 member of the child's family, the department is responsible for
23 investigating the case of alleged abuse or neglect.

24 [~~C.~~] E. The recipient of the report under Subsection
25 A of this section shall take immediate steps to ensure prompt

Underscored material = new
[bracketed material] = delete

1 investigation of the report. The investigation shall ensure
2 that immediate steps are taken to protect the health or welfare
3 of the alleged abused or neglected child, as well as that of any
4 other child under the same care who may be in danger of abuse or
5 neglect. A local law enforcement agency is responsible for
6 investigating reports of alleged child abuse or neglect at
7 schools, day care facilities or child care facilities.

8 ~~[D. Upon a determination by the department that any~~
9 ~~child may have suffered or is in imminent danger of suffering~~
10 ~~abuse or neglect while in the care or control of or in a child~~
11 ~~care facility or family day-care home, the department shall~~
12 ~~immediately notify the parents of the child and the agency~~
13 ~~responsible for licensing the child care facility or family~~
14 ~~day-care home. No determination shall be made prior to~~
15 ~~consultation with the facility.~~

16 ~~E.]~~ F. If the child alleged to be abused or
17 neglected is in the care or control of or in a facility
18 administratively connected to the department, the report shall
19 be investigated ~~[through the office of the district attorney]~~ by
20 local law enforcement. The investigation shall ensure that
21 immediate steps are taken to protect the health or welfare of
22 the alleged abused or neglected child, as well as that of any
23 other child under the same care who may be in danger of abuse or
24 neglect.

25 ~~[F.]~~ G. A law enforcement agency or the department

Underscored material = new
[bracketed material] = delete

1 shall have access to any of the records pertaining to a child
2 abuse or neglect case maintained by any of the persons
3 enumerated in Subsection A of this section, except as otherwise
4 provided in the Abuse and Neglect Act.

5 [G-] H. Any person who violates the provisions of
6 Subsection A of this section is guilty of a misdemeanor and
7 shall be sentenced pursuant to the provisions of Section 31-19-1
8 NMSA 1978. "

9 Section 4. Section 32A-4-19 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 113) is amended to read:

11 "32A-4-19. ADJUDICATORY HEARINGS--TIME LIMITATIONS. --

12 A. The adjudicatory hearing in a neglect or abuse
13 proceeding shall be commenced within [~~ninety~~] sixty days after
14 the latest of the following dates:

15 (1) the date that the petition is served on the
16 respondent;

17 (2) if the trial court orders a mistrial or a
18 new trial, the date that the order is filed; or

19 (3) in the event of an appeal, the date that
20 the ~~mandate~~ or order is filed in the district court disposing of
21 the appeal.

22 B. Prior to the adjudicatory hearing, all parties to
23 the hearing shall attend a mandatory meeting and attempt to
24 settle issues attendant to the adjudicatory hearing and develop
25 a proposed treatment plan that serves the child's best interest.

Underscored material = new
[bracketed material] = delete

1 ~~[B-]~~ C. The children's court attorney shall
2 represent the state at the adjudicatory hearing.

3 ~~[C-]~~ D. When the adjudicatory hearing on any
4 petition is not begun within the time period specified in
5 Subsection A of this section or within the period of any
6 extension granted, the petition shall be dismissed with
7 prejudice. "

8 Section 5. Section 32A-4-20 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 114) is amended to read:

10 "32A-4-20. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--
11 DISPOSITIONAL MATTERS--PENALTY.--

12 A. The proceedings shall be recorded by stenographic
13 notes or by electronic, mechanical or other appropriate means.

14 B. All abuse and neglect hearings shall be closed to
15 the general public.

16 C. Only the parties, their counsel, witnesses and
17 other persons approved by the court may be present at a closed
18 hearing. Those other persons the court finds to have a proper
19 interest in the case or in the work of the court may be admitted
20 by the court to closed hearings on the condition that they
21 refrain from divulging any information that would identify the
22 child or family involved in the proceedings.

23 D. Accredited representatives of the news media
24 shall be allowed to be present at closed hearings, subject to
25 the condition that they refrain from divulging information that

1 would identify any child involved in the proceedings or the
2 parent, guardian or custodian of that child and subject to
3 enabling regulations as the court finds necessary for the
4 maintenance of order and decorum and for the furtherance of the
5 purposes of the Children's Code.

6 E. If the court finds that it is in the best
7 interest of the child, the child may be excluded from a neglect
8 or an abuse hearing. Under the same conditions, a child may be
9 excluded by the court during a hearing on dispositional issues.

10 F. Those persons or parties granted admission to a
11 closed hearing who intentionally divulge information in
12 violation of this section are guilty of a petty misdemeanor.

13 G. The court shall determine if the allegations of
14 the petition are admitted or denied. If the allegations are
15 denied, the court shall proceed to hear evidence on the
16 petition. The court after hearing all of the evidence bearing
17 on the allegations of neglect or abuse shall make and record its
18 findings on whether the child is a neglected child, an abused
19 child or both.

20 H. If the court finds on the basis of a valid
21 admission of the allegations of the petition or on the basis of
22 clear and convincing evidence, competent, material and relevant
23 in nature, that the child is neglected or abused, the court may
24 proceed immediately or at a postponed hearing to make
25 disposition of the case. If the court does not find that the

Underscored material = new
[bracketed material] = delete

1 child is neglected or abused, the court shall dismiss the
2 petition and may refer the family to the department for
3 appropriate services.

4 I. In that part of the hearings held under the
5 Children's Code on dispositional issues, all relevant and
6 material evidence helpful in determining the questions
7 presented, including oral and written reports, may be received
8 by the court and may be relied upon to the extent of its
9 probative value even though not competent had it been offered
10 during the part of the hearings on adjudicatory issues.

11 J. On the court's motion or that of a party, the
12 court may continue the hearing on the petition for a [~~reasonable~~
13 ~~time~~] period not to exceed thirty days to receive reports and
14 other evidence in connection with disposition. The court shall
15 continue the hearing pending the receipt of the predisposition
16 study and report if that document has not been prepared and
17 received. During any continuances under this subsection, the
18 court shall make an appropriate order for legal custody."

19 Section 6. Section 32A-4-21 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 115) is amended to read:

21 "32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,
22 REPORTS AND EXAMINATIONS. --

23 A. Prior to holding a dispositional hearing, the
24 court shall direct that a predisposition study and report be
25 [~~made~~] submitted in writing to the court by the department.

Underscored material = new
[bracketed material] = delete

1 B. The predisposition study required pursuant to
2 Subsection A of this section shall contain the following
3 information:

4 (1) a statement of the specific [~~harm to the~~
5 ~~child that intervention is designed to alleviate~~] reasons for
6 intervention by the department or for placing the child in the
7 department's custody and a statement of the parent's ability to
8 care for the child in the parent's home without causing harm to
9 the child;

10 ~~[(2) if removal from or continued residence~~
11 ~~outside the home is recommended, a statement of the likely harm~~
12 ~~the child will suffer as a result of removal, including~~
13 ~~emotional harm resulting from separation from the child's~~
14 ~~parents; and~~

15 ~~(3) a treatment plan consisting of:~~
16 ~~(a) a description of the specific~~
17 ~~progress needed to be made by both the parent and the child in~~
18 ~~order to prevent further harm to the child, the reasons why the~~
19 ~~program is likely to be useful, the availability of any proposed~~
20 ~~services and the department's overall plan for ensuring that the~~
21 ~~services will be delivered;~~

22 ~~(b) if removal from the home or continued~~
23 ~~residence outside the home is recommended, a description of any~~
24 ~~previous efforts to work with the parent and the child in the~~
25 ~~home and the in-home treatment programs that have been~~

1 ~~considered and rejected;~~

2 ~~(c) a description of the steps that will~~
3 ~~be taken to minimize any harm to the child that may result if~~
4 ~~separation from the child's parent occurs or continues;~~

5 ~~(d) a description of the behavior that~~
6 ~~will be expected before a determination is made that supervision~~
7 ~~of the family or placement is no longer necessary; and~~

8 ~~(e) if removal from or continued~~
9 ~~residence outside the home is recommended and the child is~~
10 ~~sixteen years of age or older, a description of the specific~~
11 ~~skills the child requires for successful transition into~~
12 ~~independent living as an adult, what program, educational or~~
13 ~~otherwise, will provide the skills, the reasons why the program~~
14 ~~is likely to be useful, the availability of any proposed~~
15 ~~programs and the department's overall plan for ensuring that the~~
16 ~~child will be adequately prepared for adulthood]~~

17 (2) a statement of how an intervention plan is
18 designed to achieve placement of the child in the least
19 restrictive setting available, consistent with the best
20 interests and special needs of the child, including a statement
21 of the likely harm the child may suffer as a result of being
22 removed from the parent's home, including emotional harm that
23 may result due to separation from the child's parents, and a
24 statement of how the intervention plan is designed to place the
25 child in close proximity to the parent's home without causing

1 harm to the child due to separation from his parents, siblings
2 or any other person who may significantly affect the child's
3 best interest;

4 (3) the wishes of the child as to his
5 custodian;

6 (4) whether the child has a family member who,
7 subsequent to study by the department, is determined to be
8 qualified to care for the child;

9 (5) a description of services offered to the
10 child, his family and his foster care family and a summary of
11 reasonable efforts made to prevent removal of the child from his
12 family or reasonable efforts made to reunite the child with his
13 family;

14 (6) a description of the home or facility in
15 which the child is placed and the appropriateness of the child's
16 placement;

17 (7) the results of any diagnostic examination
18 or evaluation ordered at the custody hearing;

19 (8) a statement of the child's medical and
20 educational background;

21 (9) if the child is an Indian child, whether
22 the placement preferences set forth in the federal Indian Child
23 Welfare Act of 1978 or the placement preferences of the child's
24 Indian tribe were followed and whether the child's treatment
25 plan provides for maintaining the child's cultural ties;

Underscored material = new
[bracketed material] = delete

1 (10) a treatment plan that sets forth steps to
2 ensure that the child's physical, medical, psychological and
3 educational needs are met and that sets forth services to be
4 provided to the child and his parents to facilitate permanent
5 placement of the child in the parent's home; and

6 (11) for children sixteen years of age and
7 older, a plan for developing the specific skills the child
8 requires for successful transition into independent living as an
9 adult, regardless of whether the child is returned to his
10 parent's home.

11 C. A copy of the predisposition report shall be
12 provided by the department to counsel for all parties five days
13 before the dispositional hearing.

14 D. If the child is an adjudicated abused child, any
15 temporary custody orders shall remain in effect until the court
16 has received and considered the predispositional study at the
17 dispositional hearing. "

18 Section 7. Section 32A-4-22 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 116) is amended to read:

20 "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED
21 CHILD. --

22 A. If not held in conjunction with the adjudicatory
23 hearing, the dispositional hearing shall be commenced within
24 thirty days after the conclusion of the adjudicatory hearing.

25 At the conclusion of the dispositional hearing, the court shall

1 make and include in the dispositional judgment its findings on
2 the following:

3 (1) the interaction and interrelationship of
4 the child with his parent, siblings and any other person who may
5 significantly affect the child's best interest;

6 (2) the child's adjustment to his home, school
7 and community;

8 (3) the mental and physical health of all
9 individuals involved;

10 (4) the wishes of the child as to his
11 custodian;

12 (5) the wishes of the child's parent, guardian
13 or custodian as to the child's custody;

14 (6) whether there exists a relative of the
15 child or other individual who, after study by the department, is
16 found to be qualified to receive and care for the child;

17 (7) the availability of services recommended in
18 the treatment plan prepared as a part of the predisposition
19 study in accordance with the provisions of Section [~~32-4-19~~]
20 32A-4-21 NMSA 1978;

21 (8) the ability of the parent to care for the
22 child in the home so that no harm will result to the child;

23 (9) whether reasonable efforts were [~~utilized~~]
24 used by the department to prevent removal of the child from the
25 home prior to placement in substitute care and whether

1 reasonable efforts were [~~utilized~~] used to attempt reunification
2 of the child with the natural parent; and

3 (10) if the child is an Indian child, whether
4 the placement preferences set forth in the federal Indian Child
5 Welfare Act of 1978 or the placement preferences of the child's
6 Indian tribe have been followed and whether the Indian child's
7 treatment plan provides for maintaining the Indian child's
8 cultural ties. When placement preferences have not been
9 followed, good cause for noncompliance shall be clearly stated
10 and supported.

11 B. If a child is found to be neglected or abused,
12 the court may enter its judgment making any of the following
13 dispositions to protect the welfare of the child:

14 (1) permit the child to remain with his parent,
15 guardian or custodian, subject to those conditions and
16 limitations the court may prescribe;

17 (2) place the child under protective
18 supervision of the department; or

19 (3) transfer legal custody of the child to any
20 of the following:

21 (a) [~~to~~] the noncustodial parent, if it
22 is found to be in the child's best interest;

23 (b) an agency responsible for the care of
24 neglected or abused children; or

25 (c) a child-placement agency willing and

1 able to assume responsibility for the education, care and
2 maintenance of the child and licensed or otherwise authorized by
3 law to receive and provide care for the child.

4 C. If a child is found to be neglected or abused, in
5 its dispositional judgment the court shall also order the
6 department to implement and the child's parent, guardian or
7 custodian to cooperate with any treatment plan approved by the
8 court.

9 D. Any parent, guardian or custodian of a child who
10 is placed in the legal custody of the department or other person
11 pursuant to Subsection B of this section shall have reasonable
12 rights of visitation with the child as determined by the court,
13 unless the court finds that the best interests of the child
14 preclude any visitation.

15 E. The court may order reasonable visitation between
16 a child placed in the custody of the department and the child's
17 siblings or any other person who may significantly affect the
18 child's best interest, if the court finds the visitation to be
19 in the child's best interest.

20 F. Unless a child found to be neglected or abused is
21 also found to be delinquent, the child shall not be confined in
22 an institution established for the long-term care and
23 rehabilitation of delinquent children.

24 G. When the court vests legal custody in an agency,
25 institution or department, the court shall transmit with the

Underscored material = new
[bracketed material] = delete

1 dispositional judgment copies of the clinical reports, the
2 predisposition study and report and any other information it has
3 pertinent to the care and treatment of the child.

4 H. Prior to any child being placed in the custody or
5 protective supervision of the department, the department shall
6 be provided with reasonable oral or written notification and an
7 opportunity to be heard. At any hearing held pursuant to this
8 subsection, the department may appear as a party.

9 I. When a child is placed in the custody of the
10 department, the department shall investigate whether the child
11 is eligible for enrollment as a member of an Indian tribe and,
12 if so, the department shall pursue the enrollment on the child's
13 behalf. "

14 Section 8. Section 32A-4-25 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 119, as amended) is amended to read:

16 "32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS. --

17 A. ~~[Within six months of any original dispositional~~
18 ~~order and within six months of any subsequent continuation of~~
19 ~~the order, the department shall petition the court for a review~~
20 ~~of the disposition of an adjudicated neglected or abused child.]~~
21 The initial judicial review shall be held within sixty days of
22 the disposition. At the initial review, the parties shall
23 demonstrate to the court efforts made to implement the treatment
24 plan approved by the court in its dispositional order. The
25 court shall determine the extent to which the treatment plan has

. 116747. 2GJ

Underscored material = new
[bracketed material] = delete

1 been implemented and make supplemental orders as necessary to
2 assure compliance with the treatment plan and the safety of the
3 child. Prior to the initial judicial review, the department
4 shall submit a copy of the adjudicatory order, the dispositional
5 order and notice of the initial judicial review to the local
6 substitute care review board for that judicial district created
7 under the Citizen Substitute Care Review Act. A representative
8 of the local substitute care review board shall be permitted to
9 attend and comment to the court.

10 B. Subsequent periodic reviews of dispositional
11 orders shall be held within six months of the conclusion of the
12 permanency hearing or, if a motion has been filed for
13 termination of parental rights or permanent guardianship, within
14 six months of the decision on that motion and every six months
15 thereafter. Prior to the review, the department shall submit a
16 progress report to the local substitute care review board for
17 that judicial district created under the Citizen Substitute Care
18 Review Act. Prior to any judicial review by the court pursuant
19 to this section, the local substitute care review board may
20 review the dispositional order or the continuation of the order
21 and the department's progress report and report its findings and
22 recommendations to the court. The review may be carried out by
23 either of the following:

24 (1) a judicial review hearing conducted by the
25 court; or

Underscored material = new
[bracketed material] = delete

1 (2) a judicial review hearing conducted by a
2 special master appointed by the court; provided, however, that
3 the court approve any findings made by the special master.

4 [~~B-~~] C. The children's court attorney shall give
5 notice to all parties, the child's guardian ad litem, the
6 child's CASA, a contractor administering the local substitute
7 care review board and the child's foster parent or substitute
8 care provider of the time, place and purpose of any judicial
9 review hearing held pursuant to Subsection [~~A~~] B of this
10 section.

11 [~~C-~~] D. At any judicial review hearing held pursuant
12 to Subsection [~~A~~] B of this section, the department, the child's
13 guardian ad litem and all parties given notice under Subsection
14 [~~B~~] C of this section shall have the opportunity to present
15 evidence and to cross-examine witnesses. At the hearing, the
16 department shall show that it has made reasonable effort to
17 implement any treatment plan approved by the court in its
18 dispositional order and shall present a treatment plan
19 consistent with the purposes of the Children's Code for any
20 period of extension of the dispositional order. The respondent
21 shall demonstrate to the court that efforts to comply with the
22 treatment plan approved by the court in its dispositional order
23 and efforts to maintain contact with the child were diligent and
24 made in good faith. The court shall determine the extent of
25 compliance with the treatment plan and whether progress is being

1 made toward establishing a stable and permanent placement for
2 the child.

3 ~~[D-]~~ E. The Rules of Evidence shall not apply to
4 hearings held pursuant to this section. The court may admit
5 testimony by any person given notice of the hearing who has
6 information about the status of the child or the status of the
7 treatment plan.

8 ~~[E-]~~ F. At the conclusion of any hearing held
9 pursuant to this section, the court shall make findings of fact
10 and conclusions of law.

11 ~~[F-]~~ G. When the child is an Indian child, the court
12 shall determine during review of a dispositional order whether
13 the placement preferences set forth in the federal Indian Child
14 Welfare Act of 1978 or the placement preferences of the child's
15 Indian tribe were followed and whether the child's treatment
16 plan provides for maintaining the child's cultural ties. When
17 placement preferences have not been followed, good cause for
18 noncompliance shall be clearly stated and supported.

19 ~~[G-]~~ H. Based on its findings at a judicial review
20 hearing held pursuant to Subsection B of this section, the court
21 shall order one of the following dispositions:

22 (1) dismiss the action and return the child to
23 his parent without supervision if the court finds that
24 conditions in the home that led to abuse have been corrected and
25 it is now safe for the return of the abused child;

1 (2) permit the child to remain with his parent,
2 guardian or custodian subject to those conditions and
3 limitations the court may prescribe, including protective
4 supervision of the child by the department;

5 (3) return the child to his parent and place
6 the child under the protective supervision of the department;

7 (4) transfer or continue legal custody of the
8 child to:

9 (a) the noncustodial parent, if that is
10 found to be in the child's best interests;

11 (b) a relative or other individual who,
12 after study by the department or other agency designated by the
13 court, is found by the court to be qualified to receive and care
14 for the child and is appointed as a permanent guardian of the
15 child; or

16 (c) the department, subject to the
17 provisions of Paragraph (6) of this subsection;

18 (5) continue the child in the legal custody of
19 the department with or without any required parental involvement
20 in a treatment plan;

21 (6) make additional orders regarding the
22 treatment plan or placement of the child to protect the child's
23 best interests if the court determines the department has failed
24 in implementing any material provision of the treatment plan or
25 abused its discretion in the placement or proposed placement of

1 the child; or

2 (7) if during a judicial review the court finds
3 that the child's parent, guardian or custodian has not complied
4 with the court-ordered treatment plan, the court may order:

5 (a) the child's parent, guardian or
6 custodian to show cause why he should not be held in contempt of
7 court; or

8 (b) a hearing on the merits of
9 terminating parental rights.

10 [~~H.~~] I. Dispositional orders entered pursuant to
11 this section shall remain in force for a period of six months,
12 except for orders that provide for transfer of the child to the
13 child's noncustodial parent or to a permanent guardian.

14 [~~I.~~] J. The report of the local substitute care
15 review board submitted to the court pursuant to Subsection [A] B
16 of this section shall become a part of the child's permanent
17 court record. "

18 Section 9. A new section of the Abuse and Neglect Act is
19 enacted to read as follows:

20 " [NEW MATERIAL] PERMANENCY HEARINGS--REBUTTABLE
21 PRESUMPTIONS. --

22 A. A permanency hearing shall be commenced within
23 six months of the initial judicial review of the child's
24 dispositional order. Prior to the permanency hearing, all
25 parties to the hearing shall attend a mandatory meeting and

1 attempt to settle issues attendant to the permanency hearing and
2 develop a proposed treatment plan that serves the child's best
3 interest. Prior to the permanency hearing, the department shall
4 submit a progress report regarding the child to the local
5 substitute care review board for that judicial district. The
6 local substitute care review board may review the child's
7 dispositional order, any continuation of that order and the
8 department's progress report and report its findings and
9 recommendations to the court.

10 B. During a permanency hearing, there shall be a
11 rebuttable presumption that the child's best interest will be
12 served by returning the child to his parent, guardian or
13 custodian. At the hearing, all parties shall have the
14 opportunity to present evidence and to cross-examine witnesses.
15 At the conclusion of the permanency hearing, the court shall
16 determine if sufficient evidence was presented to rebut the
17 presumption.

18 C. If insufficient evidence is presented to rebut,
19 by a preponderance of the evidence, the presumption set forth in
20 Subsection B of this section, the court shall order one of the
21 following dispositions:

22 (1) dismiss the case and return the child to
23 his parent, guardian or custodian; or

24 (2) return the child to his parent, guardian or
25 custodian, subject to those conditions and limitations the court

1 may prescribe, including protective supervision of the child by
2 the department and continuation of the treatment plan for not
3 more than six months.

4 D. If sufficient evidence is presented to rebut, by
5 a preponderance of the evidence, the presumption set forth in
6 Subsection B of this section, the court shall order that the
7 child remain in the legal custody of the department and make
8 additional orders regarding the treatment plan. Within three
9 months of a permanency hearing order issued pursuant to this
10 subsection, if a motion to terminate parental rights or appoint
11 a permanent guardian has not been filed or if the child's
12 permanency plan has not been formally changed to provide for
13 emancipation of the child, a subsequent permanency hearing shall
14 be commenced.

15 E. During a subsequent permanency hearing, there
16 shall be a rebuttable presumption that the child's best interest
17 will be served by changing the child's permanency plan to
18 provide for adoption of the child, emancipation of the child,
19 permanent guardianship for the child or long-term foster care
20 for the child. At the hearing, all parties shall have the
21 opportunity to present evidence and cross-examine witnesses. At
22 the conclusion of the hearing, the court shall determine if
23 sufficient evidence was presented to rebut the presumption.

24 F. If insufficient evidence is presented to rebut,
25 by a preponderance of the evidence, the presumption set forth in

1 Subsection E of this section, the court shall order:

2 (1) the department to change the child's
3 permanency plan to provide for adoption of the child,
4 emancipation of the child, permanent guardianship for the child
5 or long-term foster care for the child; and

6 (2) that additional efforts to reunite the
7 child and his parent shall not be attempted.

8 G. If sufficient evidence is presented to rebut, by
9 a preponderance of the evidence, the presumption set forth in
10 Subsection E of this section, the court shall order one of the
11 following dispositions:

12 (1) dismiss the case and return the child to
13 his parent, guardian or custodian; or

14 (2) return the child to his parent, guardian or
15 custodian, subject to those conditions and limitations the court
16 may prescribe, including protective supervision of the child by
17 the department and continuation of the treatment plan for not
18 more than six months.

19 H. The children's court attorney shall give notice
20 to all parties, the child's guardian ad litem, the child's CASA,
21 a contractor administering the local substitute care review
22 board and the child's foster parent or substitute care provider
23 of the time, place and purpose of any permanency hearing held
24 pursuant to this section.

25 I. The Rules of Evidence shall not apply to

1 permanency hearings. The court may admit testimony by any
2 person given notice of the permanency hearing who has
3 information about the status of the child or the status of the
4 treatment plan. All testimony shall be subject to cross-
5 examination. "

6 Section 10. Section 32A-4-28 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 122, as amended) is amended to read:

8 "32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION
9 DECREE. --

10 A. In proceedings to terminate parental rights, the
11 court shall give primary consideration to the physical, mental
12 and emotional welfare and needs of the child, including the
13 likelihood of the child being adopted if parental rights are
14 terminated.

15 B. The court shall terminate parental rights with
16 respect to a child when:

17 (1) there has been an abandonment of the child
18 by his parents;

19 (2) the child has been a neglected or abused
20 child as defined in the Abuse and Neglect Act and the court
21 finds that the conditions and causes of the neglect and abuse
22 are unlikely to change in the foreseeable future despite
23 reasonable efforts by the department or other appropriate agency
24 to assist the parent in adjusting the conditions that render the
25 parent unable to properly care for the child. [~~provided~~] The

1 court may find in some cases that efforts by the department or
2 another agency [~~would be~~] are unnecessary, when there is a clear
3 showing that the efforts would be futile or when a parent has
4 caused great bodily harm or death to the child or the child's
5 sibling; or

6 (3) the child has been placed in the care of
7 others, including care by other relatives, either by a court
8 order or otherwise and the following conditions exist:

9 (a) the child has lived in the home of
10 others for an extended period of time;

11 (b) the parent-child relationship has
12 disintegrated;

13 (c) a psychological parent-child
14 relationship has developed between the substitute family and the
15 child;

16 (d) if the court deems the child of
17 sufficient capacity to express a preference, the child no longer
18 prefers to live with the natural parent;

19 (e) the substitute family desires to
20 adopt the child; and

21 (f) a presumption of abandonment created
22 by the conditions described in Subparagraphs (a) through (e) of
23 this paragraph has not been rebutted.

24 C. A finding by the court that all of the conditions
25 set forth in Subparagraphs (a) through [~~(e)~~] (f) of Paragraph

Underscored material = new
[bracketed material] = delete

1 (3) of Subsection B of this section exist shall create a
2 rebuttable presumption of abandonment.

3 D. The termination of parental rights involving a
4 child subject to the federal Indian Child Welfare Act of 1978
5 shall comply with the requirements of that act.

6 E. [~~When~~] If the court finds that parental rights
7 should be terminated; that the requirements for the adoption of
8 a child have been satisfied; that the prospective adoptive
9 parent is a party to the action; and that [~~the~~] good cause
10 exists to waive the filing of a separate petition for adoption,
11 the court may proceed to grant adoption of the child, absent an
12 appeal of the termination of parental rights. The court shall
13 not waive any time requirements set forth in the Adoption Act,
14 unless the termination of parental rights occurred pursuant to
15 the provisions of Paragraph (3) of Subsection B of this section.
16 The court may enter a decree of adoption only after finding that
17 the party seeking to adopt the child has satisfied all of the
18 requirements set forth in the Adoption Act. Unless otherwise
19 stipulated by all parties, an adoption decree shall take effect
20 sixty days after the termination of parental rights, to allow
21 the department sufficient time to provide counseling for the
22 child and otherwise prepare the child for the adoption. The
23 adoption decree shall conform to the requirements of the
24 Adoption Act and shall have the same force and effect as other
25 adoption decrees entered pursuant to that act. The court clerk

1 shall assign an adoption case number to the adoption decree. "

2 Section 11. Section 32A-4-29 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 123) is amended to read:

4 "32A-4-29. TERMINATION PROCEDURE. --

5 A. A motion to terminate parental rights may be
6 filed at any stage of the abuse or neglect proceeding. The
7 proceeding may be initiated by any of the following:

- 8 (1) the department;
- 9 (2) a licensed child placement agency; or
- 10 (3) any other person having a legitimate
11 interest in the matter, including the child's guardian ad litem,
12 a petitioner for adoption, a foster parent or a relative of the
13 child.

14 B. The motion for termination of parental rights
15 shall be signed, verified by the moving party and filed with the
16 court. The motion shall set forth:

- 17 (1) the date, place of birth and marital status
18 of the child, if known;
- 19 (2) the grounds for termination and the facts
20 and circumstances supporting the grounds for termination;
- 21 (3) the names and addresses of the persons or
22 authorized agency or agency officer to whom custody might be
23 transferred;
- 24 (4) whether the child resides or has resided
25 with a foster parent who desires to adopt this child;

1 (5) whether the motion is in contemplation of
2 adoption;

3 (6) the relationship or legitimate interest of
4 the moving party to the child; and

5 (7) whether the child is subject to the federal
6 Indian Child Welfare Act of 1978 and, if so:

7 (a) the tribal affiliations of the
8 child's parents;

9 (b) the specific actions taken by the
10 moving party to notify the parents' [~~tribe~~] tribes and the
11 results of the contacts, including the names, addresses, titles
12 and telephone numbers of the persons contacted. Copies of any
13 correspondence with the tribes shall be attached as exhibits to
14 the petition; and

15 (c) what specific efforts were made to
16 comply with the placement preferences set forth in the federal
17 Indian Child Welfare Act of 1978 or the placement preferences of
18 the appropriate Indian tribes.

19 C. A parent who has not previously been a party to
20 the proceeding shall be named in the motion and shall become a
21 party to the proceeding, unless the court determines that the
22 parent has not established a protected liberty interest in his
23 relationship with the child.

24 D. Notice of the filing of the motion, accompanied
25 by a copy of the motion, shall be served by the moving party on

Underscored material = new
[bracketed material] = delete

1 ~~[the parents of the child, any parent who has not previously~~
2 ~~been made a party to the proceeding]~~ all other parties.
3 including foster parents with whom the child is residing, foster
4 parents with whom the child has resided for six months within
5 the previous twelve months, the custodian of the child, ~~[the~~
6 ~~department]~~ any person appointed to represent any party
7 ~~[including the child's guardian ad litem]~~ and any other person
8 the court orders. Service shall be in accordance with the Rules
9 of Civil Procedure for the District Courts for the service of
10 ~~[process]~~ motions in a civil action in this state, except that
11 foster parents and attorneys of record in this proceeding ~~[may]~~
12 shall be served by certified mail. The notice shall state
13 specifically that the person served ~~[must]~~ shall file a written
14 response to the motion within twenty days if the person intends
15 to contest the termination. In any case involving a child
16 subject to the federal Indian Child Welfare Act of 1978, notice
17 shall also be ~~[served upon]~~ sent by certified mail to the tribes
18 of the child's parents and upon any "Indian custodian" as that
19 term is defined in 25 U. S. C. Section 1903(6). Further notice
20 shall not be required on a parent who has been provided notice
21 previously pursuant to Section 32A-2-17 NMSA 1978 and who failed
22 to make an appearance.

23 E. If the identity or whereabouts of a person
24 entitled to service are unknown, the moving party shall file a
25 motion for an order granting service by publication supported by

1 the affidavit of the moving party or his agent or attorney
2 detailing the efforts made to locate the person entitled to
3 service. Upon being satisfied that reasonable efforts to locate
4 the person entitled to service have been made and that
5 information as to the identity or whereabouts of the person is
6 still insufficient to effect service in accordance with the
7 Rules of Civil Procedure for the District Courts, the court
8 shall order service by publication pursuant to the Rules of
9 Civil Procedure for the District Courts.

10 F. After a motion for the termination of parental
11 rights is filed, the parent shall be advised of the right to
12 counsel, unless the parent is already represented by counsel.
13 Counsel shall be appointed, upon request, for any parent who is
14 unable to obtain counsel due to financial reasons or, if in the
15 court's discretion, the interests of justice require appointment
16 of counsel.

17 G. The court shall assure that a guardian ad litem
18 represents the child in all proceedings for the termination of
19 parental rights.

20 H. When a motion to terminate parental rights is
21 filed, the moving party shall request a hearing on the motion.
22 The hearing date shall be at least thirty days, but no more than
23 sixty days, after service is effected upon the parties entitled
24 to service under this section.

25 I. In any action for the termination of parental

1 rights brought by a party other than the department and
2 involving a child in the custody of the department, the
3 department may:

4 (1) litigate a motion for the termination of
5 parental rights that was initially filed by another party; or

6 (2) move that the motion for the termination of
7 parental rights be found premature and denied.

8 J. The grounds for any attempted termination shall
9 be proved by clear and convincing evidence. In any proceeding
10 involving a child subject to the federal Indian Child Welfare
11 Act of 1978, the grounds for any attempted termination shall be
12 proved beyond a reasonable doubt and shall meet the requirements
13 set forth in 25 U.S.C. Section 1912(f).

14 K. When the court terminates parental rights, it
15 shall appoint a custodian for the child and fix responsibility
16 for the child's support.

17 L. In any termination proceeding involving a child
18 subject to the federal Indian Child Welfare Act of 1978, the
19 court shall in any termination order make specific findings that
20 the requirements of that act have been met.

21 M. A judgment of the court terminating parental
22 rights divests the parent of all legal rights and privileges and
23 dispenses with both the necessity for the consent to or receipt
24 of notice of any subsequent adoption proceeding concerning the
25 child. A judgment of the court terminating parental rights

Underscored material = new
[bracketed material] = delete

1 shall not affect the child's rights of inheritance from and
2 through the child's biological parents. "

3 Section 12. Section 32A-4-33 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 127) is amended to read:

5 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY. --

6 A. All records concerning a party to a neglect or
7 abuse proceeding, including social records, diagnostic
8 evaluation, psychiatric or psychological reports, videotapes,
9 transcripts and audio recordings of a child's statement of abuse
10 or medical reports, that are in the possession of the court or
11 the department as the result of a neglect or abuse proceeding or
12 that were produced or obtained during an investigation in
13 anticipation of or incident to a neglect or abuse proceeding
14 shall be confidential and closed to the public.

15 B. The records described in Subsection A of this
16 section shall be open to inspection only by:

17 (1) court personnel;
18 (2) court appointed special advocates;
19 (3) the child's guardian ad litem;
20 (4) department personnel;
21 (5) any local substitute care review board or
22 any agency contracted to implement local substitute care review
23 boards;

24 (6) law enforcement officials, except when use
25 immunity is granted pursuant to Section [~~32-4-11~~] 32A-4-11 NMSA

. 116747. 2GJ

Underscored material = new
[bracketed material] = delete

1 1978;

2 (7) district attorneys, except when use
3 immunity is granted pursuant to Section [~~32-4-11~~] 32A-4-11 NMSA
4 1978;

5 (8) any state government social services agency
6 in any state;

7 (9) those persons or entities of an Indian
8 tribe specifically authorized to inspect the records pursuant to
9 the federal Indian Child Welfare Act of 1978 or any regulations
10 promulgated thereunder;

11 (10) a foster parent, if the records are those
12 of a child currently placed with that foster parent or of a
13 child being considered for placement with that foster parent and
14 the records concern the social, medical, psychological or
15 educational needs of the child;

16 (11) school personnel involved with the child
17 if the records concern the child's social or educational needs;

18 (12) health care or mental health professionals
19 involved in the evaluation or treatment of the child, the
20 child's parents, guardian, custodian or other family members;

21 (13) protection and advocacy representatives
22 pursuant to the federal Developmental Disabilities Assistance
23 and Bill of Rights Act and the federal Protection and Advocacy
24 for Mentally Ill Individuals Act of 1991;

25 (14) children's safehouse organizations

1 conducting investigatory interviews of children on behalf of a
2 law enforcement agency or the department; and

3 (15) any other person or entity, by order of
4 the court, having a legitimate interest in the case or the work
5 of the court.

6 C. A parent, guardian or legal custodian whose child
7 has been the subject of an investigation of abuse or neglect
8 where no petition has been filed shall have the right to inspect
9 any medical report, psychological evaluation, law enforcement
10 reports or other investigative or diagnostic evaluation;
11 provided that any identifying information related to the
12 reporting party or any other party providing information shall
13 be deleted. The parent, guardian or legal custodian shall also
14 have the right to the results of the investigation and the right
15 to petition the court for full access to all department records
16 and information except those records and information the
17 department finds would be likely to endanger the life or safety
18 of any person providing information to the department.

19 D. If a public official, in the course of his
20 official duties, publicly discloses information regarding an
21 investigation of alleged abuse or neglect of a child or the
22 provision of services to an allegedly abused or neglected child,
23 the secretary of children, youth and families may disclose
24 information to the public provided that the secretary's
25 disclosure of information is not adverse to the best interests

Underscored material = new
[bracketed material] = delete

1 of the allegedly abused or neglected child, his siblings or
2 other children in the child's home.

3 ~~[D.]~~ E. Whoever intentionally and unlawfully
4 releases any information or records closed to the public
5 pursuant to the Abuse and Neglect Act or releases or makes other
6 unlawful use of records in violation of that act is guilty of a
7 petty misdemeanor and shall be sentenced pursuant to the
8 provisions of Section 31-19-1 NMSA 1978.

9 ~~[E.]~~ F. When a child's death is allegedly caused by
10 abuse or neglect, the department may release information about
11 the case after consultation with and the consent of the district
12 attorney. "

13 Section 13. Section 32A-5-16 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 143) is amended to read:

15 "32A-5-16. TERMINATION PROCEDURES. --

16 A. A proceeding to terminate parental rights may be
17 initiated in connection with or prior to an adoption proceeding.
18 Venue shall be in the court for the county in which the child is
19 physically present or in the county from which the child was
20 placed. The proceeding may be initiated by any of the
21 following:

- 22 (1) the department;
23 (2) an agency; or
24 (3) any other person having a legitimate
25 interest in the matter, including a petitioner for adoption, the

1 child's guardian, the child's guardian ad litem in another
2 action, an agency, a foster parent, a relative of the child or
3 the child.

4 B. Any petition for termination of parental rights
5 shall be signed and verified by the petitioner, be filed with
6 the court and set forth:

7 (1) the date, place of birth and marital status
8 of the child, if known;

9 (2) the grounds for termination and the facts
10 and circumstances supporting the grounds for termination;

11 (3) the names and addresses of the person,
12 authorized agency or agency officer to whom custody might be
13 transferred;

14 (4) the basis for the court's jurisdiction;

15 (5) that the petition is in contemplation of
16 adoption;

17 (6) the relationship or legitimate interest of
18 the applicant to the child; and

19 (7) whether the child is an Indian child and,
20 if so:

21 (a) the tribal affiliations of the
22 child's parents;

23 (b) the specific actions taken by the
24 moving party to notify the parents' tribe and the results of the
25 contacts, including the names, addresses, titles and telephone

Underscored material = new
[bracketed material] = delete

1 numbers of the persons contacted. Copies of any correspondence
2 with the Indian tribe shall be attached as exhibits to the
3 petition; and

4 (c) what specific efforts were made to
5 comply with the placement preferences set forth in the federal
6 Indian Child Welfare Act of 1978 or the placement preferences of
7 the appropriate Indian tribes.

8 C. Notice of the filing of the petition, accompanied
9 by a copy of the petition, shall be served by the petitioner on
10 the parents of the child, the child's guardian, the legal
11 custodian of the child, the person with whom the child is
12 residing, any person with whom the child has resided within the
13 past six months and the department. Service shall be in
14 accordance with the Rules of Civil Procedure for the District
15 Courts for the service of process in a civil action in this
16 state, with the exception that the department may be served by
17 certified mail. The notice shall state specifically that the
18 person served [~~must~~] shall file a written response to the
19 petition within twenty days if the person intends to contest the
20 termination. In any case involving an Indian child, notice
21 shall also be served on the child's Indian tribe pursuant to the
22 federal Indian Child Welfare Act of 1978.

23 D. If the identification or whereabouts of a parent
24 is unknown, the petitioner shall file a motion for an order
25 granting service by publication or an order stating that service

Underscored material = new
[bracketed material] = delete

1 by publication is not required. A motion for an order granting
2 service by publication shall be supported by the affidavit of
3 the petitioner, the agency or the petitioner's attorney
4 detailing the efforts made to locate the parent. Upon being
5 satisfied that reasonable efforts to locate the parent have been
6 made and that information as to the identity or whereabouts of
7 the parent is still insufficient to effect service in accordance
8 with SCRA, Rule 1-004, the court shall order service by
9 publication or order that publication is not required because
10 the parent's consent is not required pursuant to the provisions
11 of Section 32A-5-19 NMSA 1978.

12 E. The court shall, upon request, appoint counsel
13 for any parent who is unable to obtain counsel for financial
14 reasons or if, in the court's discretion, appointment of counsel
15 is required in the interest of justice. Payment for the
16 appointed counsel shall be made by the petitioner.

17 F. The court shall appoint a guardian ad litem for
18 the child in all contested proceedings for termination of
19 parental rights.

20 G. Within thirty days after the filing of a petition
21 to terminate parental rights, the petitioner shall request a
22 hearing on the petition. The hearing date shall be at least
23 thirty days after service is effected upon the parent of the
24 child or completion of publication.

25 H. The grounds for any attempted termination shall

1 be proved by clear and convincing evidence. In any proceeding
2 involving an Indian child, the grounds for any attempted
3 termination shall be proved beyond a reasonable doubt and meet
4 the requirements set forth in the federal Indian Child Welfare
5 Act of 1978.

6 I. If the court terminates parental rights, it shall
7 appoint a custodian for the child. Upon entering an order
8 terminating the parental rights of a parent, the court may
9 commit the child to the custody of the department, the
10 petitioner or an agency willing to accept custody for the
11 purpose of placing the child for adoption. In any termination
12 proceeding involving an Indian child, the court shall, in any
13 termination order, make specific findings that the requirements
14 of the federal Indian Child Welfare Act of 1978 were met.

15 J. A judgment of the court terminating parental
16 rights divests the parent of all legal rights. Termination of
17 parental rights shall not affect the child's right of
18 inheritance through the former parent. "

19 Section 14. Section 32A-5-19 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 146) is amended to read:

21 "32A-5-19. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE
22 NOT REQUIRED.--The consent to adoption or relinquishment of
23 parental rights required pursuant to the provisions of the
24 Adoption Act shall not be required from:

25 A. a parent whose rights with reference to the

Underscored material = new
[bracketed material] = delete

1 adoptee have been terminated pursuant to law;

2 B. a parent who has relinquished the child to an
3 agency for an adoption;

4 C. a biological father of an adoptee conceived as a
5 result of rape or incest;

6 D. any person who has failed to respond when given
7 notice pursuant to the provisions of Section [~~32-5-27~~]

8 32A-5-27 NMSA 1978; [~~or~~]

9 E. any putative father who has failed to register
10 with the putative father registry within [~~90~~] ninety days of the
11 child's birth; or

12 F. any alleged father."

13 Section 15. Section 32A-5-40 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 167, as amended) is amended to read:

15 "32A-5-40. POST-DECREE OF ADOPTION ACCESS TO RECORDS. --

16 A. After the decree of adoption has been entered,
17 all court files containing records of judicial proceedings
18 conducted pursuant to the provisions of the Adoption Act and
19 records submitted to the court in the proceedings shall be kept
20 in separate locked files withheld from public inspection. Upon
21 application to the clerk of the court, the records shall be open
22 to inspection by [~~a former parent if the adoptee is eighteen~~
23 ~~years of age or older, by~~] an adoptee if the adoptee is eighteen
24 years of age or older at the time application is made for
25 inspection, by the adoptive parent if the adoptee is under

. 116747. 2GJ

1 eighteen years of age at the time application is made for
2 inspection, by the attorney of any party, by any agency that has
3 exercised guardianship over or legal custody of a child who was
4 the adoptee in the particular proceeding, [or] by the department
5 or by an adoptee's sibling; provided that the identity of the
6 former parents and of the adoptee shall be kept confidential
7 unless the former parents and the adoptee have consented to the
8 release of identity. In the absence of consent to release
9 identity, the inspection shall be limited to the following
10 nonidentifying information:

11 (1) the health and medical histories of the
12 adoptee's biological parents;

13 (2) the health and medical history of the
14 adoptee;

15 (3) the adoptee's general family background,
16 including ancestral information, without name references or
17 geographical designations;

18 (4) physical descriptions; and

19 (5) the length of time the adoptee was in the
20 care and custody of persons other than the petitioner.

21 B. After the entry of the decree of adoption, at any
22 time, a former parent may file with the court, with the placing
23 agency or with the department:

24 (1) a consent or refusal or an amended consent
25 or refusal to be contacted;

1 (2) a release of the former parent's identity
2 to the adoptee if the adoptee is eighteen years of age or older
3 or to the adoptive parent if the adoptee is under eighteen years
4 of age; or

5 (3) information regarding the former parent's
6 location or changes in background information.

7 C. The consent or refusal referred to in Subsection
8 B of this section shall be honored by the court, the placing
9 agency or the department, unless for good cause the court orders
10 to the contrary.

11 D. At any time, an adoptee who is eighteen years of
12 age or older may file with the court, a placing agency or the
13 department:

14 (1) information regarding the adoptee's
15 location; or

16 (2) a consent or refusal regarding opening of
17 the adoptee's adoption file to the adoptee's former parents.

18 E. If mutual authorizations for release of
19 identifying information by the parties are not available, an
20 adoptee who is eighteen years of age or older, the biological
21 parents if the adoptee is eighteen years of age or older or the
22 adoptive parents if the adoptee is under the age of eighteen
23 years may file a motion with the court to obtain the release of
24 identifying information for good cause shown. When hearing the
25 motion, the court shall give primary consideration to the best

1 interests of the adoptee, but shall also give due consideration
2 to the interests of the members of the adoptee's former and
3 adoptive families. In determining whether good cause exists for
4 the release of identifying information, the court shall
5 consider:

6 (1) the reason the information is sought;

7 (2) any procedure available for satisfying the
8 petitioner's request without disclosing the name or identity of
9 another individual, including appointment of a confidential
10 intermediary to contact the individual and request specific
11 information;

12 (3) whether the individual about whom
13 identifying information is sought is alive;

14 (4) the preference, to the extent known, of the
15 adoptee, the adoptive parents, the former parents and other
16 members of the adoptee's former and adoptive families and the
17 likely effect of disclosure on those individuals;

18 (5) the age, maturity and expressed needs of
19 the adoptee;

20 (6) the report or recommendation of any
21 individual appointed by the court to assess the request for
22 identifying information; and

23 (7) any other factor relevant to an assessment
24 of whether the benefit to the adoptee of releasing the
25 information sought will be greater than the benefit to any other

1 individual of not releasing the information.

2 F. An adoptee shall have the right, for the purpose
3 of enrolling in the adoptee's tribe of origin, to access
4 information kept by the department. Information needed by an
5 adoptee to enroll in his tribe of origin may be requested from
6 the department by the following persons:

7 (1) the adoptee, after he reaches eighteen
8 years of age;

9 (2) when the adoptee is a child, his adoptive
10 parent or guardian; or

11 (3) an adoptee's descendant or, if the
12 adoptee's descendant is a child, an adult representative for the
13 descendant.

14 G. When the department receives a request for
15 information regarding an adoptee's tribe of origin, the
16 department shall examine its records to determine if the adoptee
17 is of Indian descent. If the department establishes that an
18 adoptee is of Indian descent, the department shall:

19 (1) provide the requestor with the tribal
20 affiliation of the adoptee's biological parents;

21 (2) submit to the tribe information necessary
22 to establish tribal enrollment for the adoptee and to protect
23 any rights flowing from the adoptee's tribal relationship; and

24 (3) provide notice to the requestor of the
25 department's submission of information to the adoptee's tribe."

Underscored material = new
[bracketed material] = delete

1 Section 16. Section 32A-5-41 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 168, as amended) is amended to read:

3 "32A-5-41. APPOINTMENT OF CONFIDENTIAL INTERMEDIARY. --

4 A. The court may appoint a confidential intermediary
5 to ascertain whether an individual is willing to be contacted,
6 is willing to release his name or identity or is willing to meet
7 or otherwise communicate about any condition that may affect the
8 moving party's physical or mental health, upon petition to the
9 court by:

10 (1) an adoptee who is eighteen years of age or
11 older;

12 (2) an adoptive parent of an adoptee who is
13 less than eighteen years of age; [or]

14 (3) an adoptee's former parent, when the
15 adoptee is eighteen years of age or older; or

16 (4) an adoptee's sibling.

17 B. The confidential intermediary shall make a
18 reasonable effort to determine if the individual whose identity
19 is sought by the petitioner has filed a signed document
20 authorizing or refusing to authorize the release of the
21 individual's name or identity.

22 C. When the confidential intermediary finds a signed
23 authorization for a party to be contacted or for the release of
24 identifying information, the intermediary shall release that
25 information to the petitioner. Upon the petitioner's written

. 116747. 2GJ

Underscored material = new
[bracketed material] = delete

1 request, the intermediary may assist the petitioner in locating
2 the individual who authorized the release of identifying
3 information, in ascertaining whether the individual is willing
4 to meet or communicate with the petitioner and in facilitating a
5 meeting or other communication.

6 D. When the confidential intermediary finds a signed
7 refusal to authorize the release of identifying information, the
8 intermediary shall report this to the petitioner and the court
9 and shall not attempt to locate or contact the individual who
10 has refused to authorize contact or the release of identifying
11 information. The petitioner may then withdraw the petition or
12 request the release of identifying information for good cause
13 shown, pursuant to the provisions of Section 32A-5-40 NMSA 1978.

14 E. When the confidential intermediary does not find
15 any documents concerning the release of identifying information
16 or if the intermediary finds a document indicating that an
17 individual whose identity is sought by the petitioner is
18 undecided about whether to release identifying information, the
19 intermediary shall make a reasonable search for and discreetly
20 contact the individual to ascertain whether the individual is
21 willing to release information to the petitioner or willing to
22 meet or communicate with the petitioner, whom the intermediary
23 may describe to the individual only in general, nonidentifying
24 terms. When the individual consents in writing to the release
25 of information, the intermediary shall release the information

1 to the petitioner, and upon the mutual written request and
2 consent of the petitioner and the individual, the intermediary
3 shall facilitate a meeting or other communication between the
4 petitioner and the individual. If the individual refuses to
5 authorize the release of information sought by the petitioner,
6 the intermediary shall report this to the petitioner and the
7 court and the petitioner may withdraw the motion or file a
8 motion with the court for an order to release identifying
9 information for good cause shown, pursuant to provisions of
10 Section 32A-5-40 NMSA 1978.

11 F. When an individual sought by the confidential
12 intermediary is deceased, the intermediary shall report this to
13 the petitioner and the court and, upon the petitioner's request,
14 the court shall determine on the basis of the factors listed in
15 Section 32A-5-40 NMSA 1978 whether good cause exists to release
16 identifying information about the individual to the petitioner.

17 G. When an individual sought by the confidential
18 intermediary cannot be located within a year, the intermediary
19 shall report this to the petitioner and the court. The court
20 may authorize an additional search for a specified period of
21 time or determine on the basis of the factors listed in Section
22 32A-5-40 NMSA 1978 whether good cause exists to release
23 identifying information about the individual to the petitioner.

24 H. A confidential intermediary may charge the
25 petitioner for actual expenses incurred in providing a service

1 requested under this section. Upon motion by the intermediary,
2 the court may authorize a reasonable fee in addition to the
3 expenses.

4 I. A confidential intermediary shall complete
5 training provided by the department or any other entity approved
6 by the court and shall file an oath of confidentiality in every
7 court in which the intermediary expects to serve.

8 J. The confidential intermediary oath shall state:

9 "I, _____, signing under penalty of
10 perjury, affirm that I have completed the requisite training for
11 a confidential intermediary in this state.

12 I will not disclose to the petitioner, directly or
13 indirectly, any identifying information in sealed records except
14 under the conditions specified in this section.

15 I will conduct a reasonable search for an individual being
16 sought and make a discreet and confidential inquiry as to
17 whether the individual consents to the release of identifying or
18 medical information to the petitioner or to meeting or
19 communicating with the petitioner. I will report to the
20 petitioner or the court the results of my search and inquiry,
21 along with any signed request or consent I receive from the
22 individual.

23 If the individual and the petitioner request and consent in
24 writing to meet or communicate with each other, I will act in
25 accordance with the instructions of the petitioner or the court

Underscored material = new
[bracketed material] = delete

1 to facilitate any meeting or communication between them.

2 I will not charge or accept any fee for my services except
3 for reimbursement from the petitioner for actual expenses
4 incurred in performing my services or as authorized by the
5 court.

6 I recognize that unauthorized release of information is a
7 violation of the Adoption Act and subjects me to penalties
8 pursuant to the provisions of Section 32A-5-42 NMSA 1978 and may
9 subject me to being found in contempt of court with penalties,
10 dismissal by the court and civil liability."."

11 Section 17. Section 32A-6-11.1 NMSA 1978 (being Laws 1995,
12 Chapter 207, Section 13) is amended to read:

13 "32A-6-11.1. CONSENT TO PLACEMENT IN A RESIDENTIAL
14 TREATMENT OR HABILITATION PROGRAM - CHILDREN YOUNGER THAN
15 FOURTEEN YEARS OF AGE. --

16 A. A child younger than fourteen years of age shall
17 not receive residential treatment for mental disorders or
18 habilitation for developmental disabilities, except as provided
19 in this section or Section [15 of the Children's Mental Health
20 and Developmental Disabilities Act] 32A-6-13 NMSA 1978.

21 B. A child younger than fourteen years of age may be
22 admitted to a residential treatment or habilitation program with
23 the informed consent of the child's parent, guardian or legal
24 custodian for a period not to exceed sixty days, subject to the
25 requirements of this section.

. 116747. 2GJ

Underscored material = new
[bracketed material] = delete

1 C. In order to admit a child younger than fourteen
2 years of age to a residential treatment or habilitation program,
3 the child's parent, guardian or legal custodian shall knowingly
4 and voluntarily execute a consent to admission document prior to
5 the child's admission. The consent to admission document shall
6 be in a form designated by the supreme court. The consent to
7 admission document shall include a clear statement of the
8 parent's, guardian's or legal custodian's right to voluntarily
9 consent to or refuse the child's admission; the parent's,
10 guardian's or legal custodian's right to request the child's
11 immediate discharge from the residential treatment program at
12 any time; and the parent's, guardian's or legal custodian's
13 rights when the parent, guardian or legal custodian requests the
14 child's discharge and the child's physician, licensed
15 psychologist or the director of the residential treatment
16 facility determines that the child needs continued treatment.
17 The facility shall ensure that each statement is clearly
18 explained in the child's and parent's, guardian's or legal
19 custodian's primary language, if that is their language of
20 preference, and in a manner appropriate to the child's and
21 parent's, guardian's or legal custodian's developmental
22 abilities. Each statement shall be initialed by the child's
23 parent, guardian or legal custodian.

24 D. The parent's, guardian's or legal custodian's
25 executed consent to admission document shall be filed with the

Underscored material = new
[bracketed material] = delete

1 child's hospital records within twenty-four hours of the time of
2 admission.

3 ~~[E. Upon the filing of the parent's, guardian's or~~
4 ~~legal custodian's consent to admission document in the child's~~
5 ~~hospital records, the director of the residential treatment or~~
6 ~~habilitation program or the director's designee shall, on the~~
7 ~~next business day following the child's admission, notify the~~
8 ~~resource consultant of the admission and provide the resource~~
9 ~~consultant with the child's name, date of birth and the date and~~
10 ~~place of admission. The resource consultant shall make~~
11 ~~reasonable efforts to contact the child's parent, guardian or~~
12 ~~legal custodian within three days of being notified of the~~
13 ~~child's admission.~~

14 F.] E. Upon the filing of the parent's, guardian's
15 or legal custodian's consent to admission document in the
16 child's hospital records, the director of the residential
17 treatment or habilitation program or the director's designee
18 shall, on the next business day following the child's admission,
19 notify the district court or the special commissioner regarding
20 the admission and provide the child's name, date of birth and
21 the date and place of admission. The court or special
22 commissioner shall, upon receipt of notice regarding a child's
23 admission to a residential treatment or habilitation program,
24 establish a sequestered court file.

25 [G.] E. The director of a residential treatment or

Underscored material = new
[bracketed material] = delete

1 habilitation program or the director's designee shall, on the
2 next business day following the child's admission, petition the
3 court to appoint a guardian ad litem for the child. When the
4 court receives the petition, the court shall appoint a guardian
5 ad litem. The court may order the parent to reimburse the state
6 pursuant to the provisions of the Children's Code.

7 [H.] G. Within seven days of a child's admission to
8 a residential treatment or habilitation program, a guardian ad
9 litem, representing the child's best interests and in accordance
10 with the provisions of the Children's Mental Health and
11 Developmental Disabilities Act, shall meet with the child, the
12 child's parent, guardian or legal custodian and the child's
13 clinician. The guardian ad litem shall determine the following:

14 (1) whether the child's parent, guardian or
15 legal custodian understands and consents to the child's
16 admission to a residential treatment or habilitation program;

17 (2) whether the admission is in the child's
18 best interests; and

19 (3) whether the admission is appropriate for
20 the child and is consistent with the least drastic means
21 principle.

22 [H.] H. If a guardian ad litem determines that the
23 child's parent, guardian or legal custodian understands and
24 consents to the child's admission and that the admission is in
25 the child's best interests, is appropriate for the child and is

Underscored material = new
[bracketed material] = delete

1 consistent with the least drastic means principle, the guardian
2 ad litem shall so certify on a form designated by the supreme
3 court. The form, when completed by the guardian ad litem, shall
4 be filed in the child's patient record kept by the residential
5 treatment or habilitation program, and a copy shall be forwarded
6 to the court or special commissioner within seven days of the
7 child's admission. The guardian ad litem's statement shall not
8 identify the child by name.

9 [J.] I. Upon reaching the age of majority, a child
10 who was admitted to a residential treatment or habilitation
11 program pursuant to this section may petition the district court
12 for the records of the district court regarding all matters
13 pertinent to the child's admission to a residential treatment or
14 habilitation program. The district court, upon receipt of the
15 petition and upon a determination that the petitioner is in fact
16 a child who was admitted to a residential treatment or
17 habilitation program, shall provide all court records regarding
18 the admission to the petitioner, including all copies in the
19 court's possession.

20 [K.] J. Any parent, guardian or legal custodian who
21 consents to admission of his child to a residential treatment or
22 habilitation program has the right to request the child's
23 immediate discharge from the residential treatment or
24 habilitation program, subject to the provisions of this section.
25 If a child's parent, guardian or legal custodian informs the

Underscored material = new
[bracketed material] = delete

1 director, a physician or any other member of the residential
2 treatment or habilitation program staff that the parent,
3 guardian or legal custodian desires the child to be discharged
4 from the program, the director, physician or other staff shall
5 provide for the child's immediate discharge and remit the child
6 to the parent's, guardian's or legal custodian's care. The
7 residential treatment or habilitation program shall also notify
8 the child's guardian ad litem. A child whose parent, guardian
9 or legal custodian requests his immediate discharge shall be
10 discharged, except when the director of the residential
11 treatment program, a physician or a licensed psychologist
12 determines that the child requires continued treatment and that
13 the child meets the criteria for involuntary residential
14 treatment. In that event, the director, physician or licensed
15 psychologist shall, on the first business day following the
16 child's parent's, guardian's or legal custodian's request for
17 release of the child from the program, request that the
18 children's court attorney initiate involuntary residential
19 treatment proceedings. The children's court attorney may
20 petition the court for such proceedings. The child has a right
21 to a hearing regarding his continued treatment within seven days
22 of the request for release.

23 [L.] K. A child who is admitted to a residential
24 treatment or habilitation program pursuant to this section shall
25 have his admission reviewed at the end of the sixty-day period

Underscored material = new
[bracketed material] = delete

1 following the date of the child's initial admission to the
2 program. The child's physician or licensed psychologist shall
3 review the child's residential treatment or habilitation program
4 and determine whether it is in the best interests of the child
5 to continue the admission. If the child's physician or licensed
6 psychologist concludes that continuation of the residential
7 treatment or habilitation program is in the child's best
8 interests, the child's clinician shall so state in a form to be
9 filed in the child's patient records. The residential treatment
10 or habilitation program shall notify the guardian ad litem for
11 the child at least seven days prior to the date that the
12 sixty-day period is to end or, if necessary, request a guardian
13 ad litem pursuant to the provisions of the Children's Mental
14 Health and Developmental Disabilities Act. The guardian ad
15 litem shall then personally meet with the child, the child's
16 parent, guardian or legal custodian and the child's clinician
17 and ensure that the child's parent, guardian or legal custodian
18 understands and consents to the child's continued admission to
19 the residential treatment or habilitation program. If the
20 guardian ad litem determines that the child's parent, guardian
21 or legal custodian understands and consents to the child's
22 continued admission to the residential treatment or habilitation
23 program, that the continued admission is in the child's best
24 interest, that the placement continues to be appropriate for the
25 child and consistent with the least drastic means principle and

. 116747. 2GJ

Underscored material = new
[bracketed material] = delete

1 that the clinician has recommended the child's continued stay in
2 the program, the guardian ad litem shall so certify on a form
3 designated by the supreme court. The disposition of these forms
4 shall be as set forth in this section, with one copy going in
5 the child's patient record and the other being sent to the
6 district court in a manner that preserves the child's anonymity.
7 This procedure shall take place every sixty days following the
8 child's last admission or a guardian ad litem's certification,
9 whichever occurs first.

10 [M-] L. When a guardian ad litem determines that the
11 child's parent, guardian or legal custodian does not understand
12 or consent to the child's admission to a residential treatment
13 or habilitation program, that the admission is not in the
14 child's best interests, that the placement is inappropriate for
15 the child or is inconsistent with the least drastic means
16 principle or that the child's clinician has not recommended a
17 continued stay by the child in the residential treatment or
18 habilitation program, the child shall be released or involuntary
19 placement procedures shall be initiated.

20 [N-] M. If the child's parent, guardian or legal
21 custodian is unavailable to take custody of the child and
22 immediate discharge of the child would endanger the child, the
23 residential treatment or habilitation program may detain the
24 child until a safe and orderly discharge is possible. If the
25 child's family refuses to take physical custody of the child,

1 the residential treatment or habilitation program shall refer
2 the case to the department for an abuse and neglect or family in
3 need of court-ordered services investigation. The department
4 may take the child into protective custody pursuant to the
5 provisions of the Abuse and Neglect Act or the Family in Need of
6 Services Act. "

7 Section 18. Section 32A-6-12 NMSA 1978 (being Laws 1995,
8 Chapter 207, Section 14) is amended to read:

9 "32A-6-12. VOLUNTARY RESIDENTIAL TREATMENT OR
10 HABILITATION. --

11 A. A child fourteen years of age or older shall not
12 receive treatment for mental disorders or habilitation for
13 developmental disabilities on a voluntary residential basis,
14 except as provided in this section.

15 B. Any child fourteen years of age or older may
16 voluntarily admit himself to a residential treatment or
17 habilitation program, with the informed consent of his parent,
18 guardian or legal custodian, for a period not to exceed sixty
19 days, subject to the requirements of this section.

20 C. To have a child voluntarily admitted to a
21 residential treatment or habilitation program, the child and the
22 child's parent, guardian or legal custodian shall knowingly and
23 voluntarily execute, prior to admission, a child's voluntary
24 consent to admission document. The document shall include a
25 clear statement of the child's right to voluntarily consent or

Underscored material = new
[bracketed material] = delete

1 refuse to consent to his admission; the child's right to request
2 an immediate discharge from the residential treatment program at
3 any time; and the child's rights when he requests a discharge
4 and his physician, licensed psychologist or the director of the
5 residential treatment facility determines the child needs
6 continued treatment. The facility shall ensure that each
7 statement is clearly explained in the child's and parent's,
8 guardian's or legal custodian's primary language, if that is
9 their language of preference, and in a manner appropriate to the
10 child's and parent's, guardian's or legal custodian's
11 developmental abilities, and each statement shall be initialed
12 by the child and his parent, guardian or legal custodian.

13 D. The child's parent, guardian or legal custodian
14 shall obtain an independent attorney for the child and shall
15 notify the residential treatment facility of that attorney's
16 name within seventy-two hours of the child's voluntary
17 admission. Prior to admission, the residential treatment
18 facility shall inform the child's parent, guardian or legal
19 custodian of the duty to obtain an independent attorney for the
20 child within seventy-two hours. If the child's parent, guardian
21 or legal custodian is indigent, the parent, guardian or legal
22 custodian may petition the court to appoint an attorney for the
23 child.

24 E. The child's executed voluntary consent to
25 admission document shall be filed in the patient's hospital

Underscored material = new
[bracketed material] = delete

1 record within twenty-four hours of the time of admission.

2 ~~[F. Upon the filing of the child's consent to~~
3 ~~admission document in the child's hospital record, the director~~
4 ~~of the residential treatment or habilitation program or the~~
5 ~~director's designee shall, on the next business day following~~
6 ~~the child's admission, notify the resource consultant of the~~
7 ~~admission and provide the child's name, date of birth, the date~~
8 ~~and place of admission. The resource consultant shall meet with~~
9 ~~the child and make reasonable efforts to contact the child's~~
10 ~~parent, guardian or legal custodian within three days of being~~
11 ~~notified of the child's admission.~~

12 ~~G.]~~ F. Upon the filing of the child's voluntary
13 consent to admission document in the patient's hospital record,
14 the director of the residential treatment or habilitation
15 program or the director's designee shall, on the next business
16 day following the child's admission, notify the district court
17 or the special commissioner of the admission, giving the child's
18 name, date of birth and the date and place of admission. The
19 court or special commissioner shall, upon receipt of notice of a
20 child's voluntary admission to a residential treatment program,
21 establish a sequestered court file.

22 ~~[H.]~~ G. If within seventy-two hours of the child's
23 voluntary admission the child has not met with an independent
24 attorney and the child's parent, guardian or legal custodian has
25 not notified the residential treatment or habilitation program

1 of the name of the child's independent attorney, the residential
2 treatment or habilitation program shall, during the next
3 business day, petition the court to appoint an attorney. When
4 the court receives the petition, the court shall appoint an
5 attorney. The court may order the parent to reimburse the state
6 pursuant to the provisions of the Children's Code.

7 ~~[F.]~~ H. If within seventy-two hours of the child's
8 voluntary admission the child has met with an independent
9 attorney or the child's parent, guardian or legal custodian has
10 notified the residential treatment or habilitation program of
11 the name of the child's independent attorney, the residential
12 treatment or habilitation program shall, during the next
13 business day, notify the court or the special commissioner of
14 the name of the child's independent attorney.

15 ~~[G.]~~ I. Within seven days of the admission, an
16 attorney representing the child pursuant to the provisions of
17 the Children's Mental Health and Developmental Disabilities Act
18 shall meet with the child. At the meeting with the child, the
19 attorney shall explain to the child the following:

- 20 (1) the child's right to an attorney;
- 21 (2) the child's right to terminate his
22 voluntary admission and the procedures to effect termination;
- 23 (3) the effect of terminating the child's
24 voluntary admission and options of the physician and other
25 interested parties to the petition for an involuntary admission;

1 and

2 (4) the child's rights under the provisions of
3 the Children's Mental Health and Developmental Disabilities Act,
4 including the right to:

5 (a) legal representation;
6 (b) a presumption of competence;
7 (c) receive daily visitors of the child's
8 choice;

9 (d) receive and send uncensored mail;
10 (e) have access to telephones;
11 (f) follow or abstain from the practice
12 of religion;

13 (g) a humane and safe environment;
14 (h) physical exercise and outdoor
15 exercise;
16 (i) a nourishing, well-balanced, varied
17 and appetizing diet;

18 (j) medical treatment;
19 (k) educational services;
20 (l) freedom from unnecessary or excessive
21 medication;

22 (m) individualized treatment and
23 habilitation; and

24 (n) participation in the development of
25 the individualized treatment plan and access to that plan on

Underscored material = new
[bracketed material] = delete

1 request.

2 ~~[K-]~~ J. If the attorney determines that the child
3 understands his rights and that the child voluntarily and
4 knowingly desires to remain as a patient in a residential
5 treatment or habilitation program, the attorney shall so certify
6 on a form designated by the supreme court. The form, when
7 completed by the attorney, shall be filed in the child's patient
8 record at the residential treatment or habilitation program
9 facility, and a copy shall be forwarded to the court or special
10 commissioner within seven days of the child's admission. The
11 attorney's statement shall not identify the child by name.

12 ~~[L-]~~ K. Upon reaching the age of majority, a child
13 who was a voluntary admittee to a residential treatment or
14 habilitation program may petition the district court for the
15 records of the court regarding all matters pertinent to his
16 voluntary admission to a residential treatment or habilitation
17 program. The court, upon receipt of the petition and upon a
18 determination that the petitioner was in fact the child who was
19 a voluntary ~~[admitted]~~ admittee to a residential treatment or
20 habilitation program, shall give all court records regarding the
21 admission to the petitioner, including all copies in the court's
22 possession.

23 ~~[M-]~~ L. Any child voluntarily admitted to a
24 residential treatment or habilitation program has the right to
25 an immediate discharge from the residential treatment or

Underscored material = new
[bracketed material] = delete

1 habilitation program upon his request, except as provided in
2 this section. If a child informs the director, physician or any
3 other member of the residential treatment or habilitation
4 program staff that he desires to be discharged from the
5 voluntary program, the director, physician or other staff member
6 shall provide for the child's immediate discharge. The
7 residential treatment or habilitation program shall not require
8 that the child's request be in writing. Upon the request, the
9 residential treatment or habilitation program shall notify the
10 child's parent, guardian or legal custodian to take custody of
11 the child and remit the child to the parent's, guardian's or
12 legal custodian's care. The residential treatment or
13 habilitation program shall also notify the child's attorney. If
14 the child's parent, guardian or legal custodian is unavailable
15 to take custody of the child and immediate discharge of the
16 child would endanger the child, the residential treatment or
17 habilitation program may detain the child until a safe and
18 orderly discharge is possible. If the child's family refuses to
19 take physical custody of the child, the residential treatment or
20 habilitation program shall refer the case to the department for
21 an abuse and neglect or family in need of court-ordered services
22 investigation. The department may take the child into
23 protective custody pursuant to the provisions of the Abuse and
24 Neglect Act or the Family in Need of Services Act. A child
25 requesting immediate discharge shall be discharged, except in

. 116747. 2GJ

Underscored material = new
[bracketed material] = delete

1 those situations when the director of the residential treatment
2 or habilitation program, a physician or a licensed psychologist
3 determines that the child requires continued treatment and that
4 the child meets the criteria for involuntary residential
5 treatment as otherwise provided under the Children's Mental
6 Health and Developmental Disabilities Act. In that event, the
7 director, physician or licensed psychologist, after making the
8 determination, shall, on the first business day following the
9 child's request for release from the voluntary program, request
10 that the children's court attorney initiate involuntary
11 placement proceedings. The children's court attorney may
12 petition for such a placement. The child has a right to a
13 hearing on his continued treatment within seven days of his
14 request for release.

15 [N-] M A child who is a voluntary admittee to a
16 residential treatment or habilitation program shall have his
17 voluntary admission reviewed at the end of a sixty-day period
18 from the date of his initial admission to the program. The
19 review shall be accomplished by having the child's physician or
20 licensed psychologist review the child's treatment and determine
21 whether it would be in the best interests of the child to
22 continue the voluntary admission. If the child's physician or
23 licensed psychologist concludes that continuation of treatment
24 is in the child's best interests, the child's clinician shall so
25 state in a form to be filed in the child's patient record. The

Underscored material = new
[bracketed material] = delete

1 residential treatment or habilitation program shall notify the
2 attorney for the child at least seven days prior to the date
3 that the sixty-day period is to end or, if necessary, request an
4 attorney pursuant to the provisions of the Children's Mental
5 Health and Developmental Disabilities Act. The attorney shall
6 then personally meet with the child and ensure that the child
7 understands his rights as set forth in this section, that the
8 child understands the method for voluntary termination of his
9 admission and that the child knowingly and voluntarily consents
10 to his continued treatment. If the attorney determines that the
11 child understands these rights and that the child voluntarily
12 and knowingly desires to remain as a patient in the residential
13 treatment or habilitation program and that the clinician has
14 recommended the continued stay in the program, the attorney
15 shall so certify on a form designated by the supreme court. The
16 disposition of these forms shall be as set forth in this
17 section, with one copy going in the child's patient record and
18 the other being sent to the district court in a manner that
19 preserves the child's anonymity. This procedure shall take
20 place every sixty days from the last admission or attorney's
21 certification, whichever comes first.

22 [0.] N. If the attorney determines that the child
23 does not voluntarily desire to remain in the program or if the
24 clinician of the child has not recommended continued stay by the
25 child in the residential treatment or habilitation program, the

Underscored material = new
[bracketed material] = delete

1 child shall be released or the involuntary placement procedures
2 set forth in this section and the Children's Mental Health and
3 Developmental Disabilities Act shall be followed. "

4 Section 19. Section 32A-19-1 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 228) is amended to read:

6 "32A-19-1. QUALITY ASSURANCE OFFICE. --

7 A. [~~By August 1, 1993~~] The department shall
8 [~~establish~~] maintain a quality assurance office under the office
9 of the secretary.

10 B. The purpose of the quality assurance office shall
11 be to [~~assist~~] facilitate department efforts to efficiently
12 [~~achieve~~] implement the purposes of the Children's Code.

13 C. In order to measure the quality of services
14 provided, to facilitate satisfactory outcomes for children and
15 families that receive services and to provide a continuing
16 opportunity to [~~change and~~] improve service delivery, the
17 quality assurance office shall:

18 (1) [~~establish an accessible~~] monitor the
19 system for receiving and resolving complaints and grievances;

20 [~~(2) perform periodic investigations and~~
21 ~~evaluations to assure compliance with the Children's Code and~~
22 ~~other applicable state and federal laws and regulations;~~

23 (3) [~~monitor~~] (2) facilitate monitoring of
24 indicators of the department's performance [~~and~~] to determine
25 whether the department is:

. 116747. 2GJ

Underscored material = new
[bracketed material] = delete

1 (a) providing children and families with
2 individualized, needs-based service plans;

3 (b) providing services in a timely
4 manner; and

5 (c) in compliance with applicable state
6 and federal laws and regulations;

7 [~~(4)~~] (3) identify any deficiencies and
8 recommend corrective action to the secretary of the department;

9 [~~and~~

10 ~~(5)]~~ (4) have access to any records maintained
11 by the department, including confidential information; and

12 (5) promote continuous improvement of all
13 department processes serving children and families.

14 D. The quality assurance office shall [~~annually~~
15 ~~produce~~] contribute to and facilitate the publication of public
16 reports assessing the performance of the department. The
17 [~~report~~] reports shall not disclose the identity of any
18 individual mentioned in the report, including children or
19 families that receive or are eligible for services or any
20 department employee. "

21 Section 20. REPEAL. --Section 32A-6-10.1 NMSA 1978 (being
22 Laws 1995, Chapter 207, Section 11) is repealed.

23 Section 21. EFFECTIVE DATE. --The effective date of the
24 provisions of this act is July 1, 1997.