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AN ACT

RELATING TO THE ABUSE AND NEGLECT ACT; PROVIDING A RIGHT OF IMMEDIATE APPEAL FROM THE CHILDREN'S COURT FOR CERTAIN ORDERS.

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

SECTION 1. Section 32A-4-18 NMSA 1978 (being Laws 1993, Chapter 77, Section 112, as amended) is amended to read:

"32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--PROBABLE CAUSE.--

A. When a child alleged to be neglected or abused has been placed in the legal custody of the department or the department has petitioned the court for temporary custody, a custody hearing shall be held within ten days from the date the petition is filed to determine if the child should remain in or be placed in the department's custody pending adjudication. Upon written request of the respondent, the hearing may be held earlier, but in no event shall the hearing be held sooner than two days after the date the petition was filed.

B. The parent, guardian or custodian of the child alleged to be abused or neglected shall be given reasonable notice of the time and place of the custody hearing.

C. At the custody hearing, the court shall return legal custody of the child to the child's parent, guardian or custodian unless probable cause exists to believe that:

(1) the child is suffering from an illness or injury, and the parent, guardian or custodian is not providing adequate care for the child;

(2) the child is in immediate danger from

1 the child's surroundings, and removal from those surroundings
2 is necessary for the child's safety or well-being;

3 (3) the child will be subject to injury by
4 others if not placed in the custody of the department;

5 (4) there has been an abandonment of the
6 child by the child's parent, guardian or custodian; or

7 (5) the parent, guardian or custodian is not
8 able or willing to provide adequate supervision and care for
9 the child.

10 D. At the conclusion of the custody hearing, if
11 the court determines that probable cause exists pursuant to
12 Subsection C of this section, the court may:

13 (1) return legal custody of the child to the
14 child's parent, guardian or custodian upon such conditions as
15 will reasonably ensure the safety and well-being of the
16 child, including protective supervision by the department; or

17 (2) award legal custody of the child to the
18 department.

19 E. Reasonable efforts shall be made to preserve
20 and reunify the family, with the paramount concern being the
21 child's health and safety.

22 F. At the conclusion of the custody hearing, if
23 the court determines that probable cause does not exist
24 pursuant to Subsection C of this section, the court shall:

25 (1) retain jurisdiction and, unless the
court permits otherwise, order that the respondent and child
remain in the jurisdiction of the court pending the
adjudication;

(2) return legal custody of the child to
the child's parent, guardian or custodian with conditions to

1 provide for the safety and well-being of the child; and

2 (3) order that the child's parent, guardian
3 or custodian allow the child necessary contact with the
4 child's guardian ad litem or attorney.

5 G. At the conclusion of the custody hearing, the
6 court may order the respondent or the child alleged to be
7 neglected or abused, or both, to undergo appropriate
8 diagnostic examinations or evaluations. If the court
9 determines that probable cause does not exist, the court may
10 order the respondent or the child alleged to be neglected or
11 abused, or both, to undergo appropriate diagnostic
12 examinations or evaluations as necessary to protect the
13 child's best interests, based upon the allegations in the
14 petition and the evidence presented at the custody hearing.
15 Copies of any diagnostic or evaluation reports ordered by the
16 court shall be provided to the parties at least five days
17 before the adjudicatory hearing is scheduled. The reports
18 shall not be sent to the court.

19 H. The Rules of Evidence shall not apply to
20 custody hearings.

21 I. Notwithstanding any other provision of law, a
22 party aggrieved by an order entered pursuant to this section
23 shall be permitted to file an immediate appeal as a matter of
24 right. If the order appealed from grants the legal custody
25 of the child to or withholds it from one or more of the
parties to the appeal, the appeal shall be expedited and
shall be heard at the earliest practicable time. While an
appeal pursuant to this section is pending, the court shall
have jurisdiction to take further action in the case pursuant
to Subsection B of Section 32A-1-17 NMSA 1978.

1 J. Nothing in this section shall be construed to
2 abridge the rights of Indian children pursuant to the federal
3 Indian Child Welfare Act of 1978."

4 SECTION 2. Section 32A-4-20 NMSA 1978 (being
5 Laws 1993, Chapter 77, Section 114, as amended) is amended to
6 read:

7 "32A-4-20. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--
8 DISPOSITIONAL MATTERS--PENALTY.--

9 A. The proceedings shall be recorded by
10 stenographic notes or by electronic, mechanical or other
11 appropriate means.

12 B. All abuse and neglect hearings shall be closed
13 to the general public.

14 C. Only the parties, their counsel, witnesses and
15 other persons approved by the court may be present at a
16 closed hearing. The foster parent, preadoptive parent or
17 relative providing care for the child shall be given notice
18 and an opportunity to be heard at the dispositional phase.
19 Those other persons the court finds to have a proper interest
20 in the case or in the work of the court may be admitted by
21 the court to closed hearings on the condition that they
22 refrain from divulging any information that would identify
23 the child or family involved in the proceedings.

24 D. Accredited representatives of the news media
25 shall be allowed to be present at closed hearings, subject to
the condition that they refrain from divulging information
that would identify any child involved in the proceedings or
the parent, guardian or custodian of that child and subject
to enabling regulations as the court finds necessary for the
maintenance of order and decorum and for the furtherance of

1 the purposes of the Children's Code. A child who is the
2 subject of an abuse and neglect proceeding and is present at
3 a hearing may object to the presence of the media. The court
4 may exclude the media if it finds that the presence of the
5 media is contrary to the best interests of the child.

6 E. If the court finds that it is in the best
7 interest of a child under fourteen years of age, the child
8 may be excluded from a hearing under the Abuse and Neglect
9 Act. A child fourteen years of age or older may be excluded
10 from a hearing only if the court makes a finding that there
11 is a compelling reason to exclude the child and states the
12 factual basis for the finding.

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

16 G. The court shall determine if the allegations
17 of the petition are admitted or denied. If the allegations
18 are denied, the court shall proceed to hear evidence on the
19 petition. The court, after hearing all of the evidence
20 bearing on the allegations of neglect or abuse, shall make
21 and record its findings on whether the child is a neglected
22 child, an abused child or both. If the petition alleges that
23 the parent, guardian or custodian has subjected the child to
24 aggravated circumstances, then the court shall also make and
25 record its findings on whether the aggravated circumstances
have been proven.

H. If the court finds on the basis of a valid
admission of the allegations of the petition or on the basis
of clear and convincing evidence, competent, material and
relevant in nature, that the child is neglected or abused,

