

AN ACT

RELATING TO CITIZEN SUBSTITUTE CARE REVIEW BOARDS; PROVIDING
FOR THE ADMINISTRATIVE OFFICE OF THE COURTS TO ADMINISTER THE
SUBSTITUTE CARE REVIEW BOARD SYSTEM; REVISING THE STATE
ADVISORY COMMITTEE COMPOSITION.

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

SECTION 1. Section 32A-8-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 205) is amended to read:

"32A-8-3. ADMINISTRATION--IMPLEMENTATION OF ACT.--The administrative office of the courts shall administer the substitute care review board system using the office's staff or through a contract with a nonprofit organization that has a demonstrated knowledge of the problem of children in substitute care and the issues in permanency planning to operate a statewide system of substitute care review boards."

SECTION 2. Section 32A-8-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 206) is amended to read:

"32A-8-4. STATE ADVISORY COMMITTEE--MEMBERS--
COMPENSATION--RESPONSIBILITIES.--

A. A state advisory committee shall be composed of eleven persons, including:

(1) the secretary of children, youth and families;

(2) the director of the protective services division of the department;

(3) the attorney general;

(4) the following members, whom the chief justice shall appoint:

- (a) a justice of the supreme court;
- (b) three children's court judges; and
- (c) two individuals who are between seventeen and thirty years of age and who formerly received foster care in the state; and

(5) two public members with expertise in the area of substitute care, whom the governor shall appoint.

B. On July 1, 2015, the chief justice of the supreme court and the governor shall appoint those state advisory committee members specified in Paragraphs (4) and (5) of Subsection A of this section, who shall serve terms of three years and who may be reappointed. In the event that a vacancy occurs among appointed members of the state advisory committee, the original appointing authority shall appoint another person to serve the unexpired portion of the term.

C. The chief justice of the supreme court shall select a chairperson, a vice chairperson and other officers as the chief justice deems necessary.

D. The state advisory committee shall meet no less than twice annually and more frequently upon the call of the chairperson. The state advisory committee shall review and study the purpose, structure, functions and oversight of the substitute care review boards. The state advisory committee is authorized to adopt rules relating to the functions and procedures of the substitute care review boards and the state

1 advisory committee in accordance with the duties of the
2 boards as provided in the Citizen Substitute Care Review Act.
3 The state advisory committee shall make a report with its
4 recommendations to the department, the courts and the
5 appropriate interim legislative committees, on or before
6 November 1 of each year, regarding statutes, policies and
7 procedures relating to substitute care. This report shall
8 include recommendations regarding any changes to the local
9 substitute care review boards.

10 E. The administrative office of the courts shall
11 report to the legislative health and human services committee
12 in 2018 and every four years thereafter as to the
13 effectiveness and functions of the Citizen Substitute Care
14 Review Act.

15 F. State advisory committee members shall receive
16 per diem and mileage as provided for nonsalaried public
17 officers in the Per Diem and Mileage Act, unless a different
18 provision of that act applies to a specific member, in which
19 case that member shall be paid pursuant to the applicable
20 provision. Members shall receive no other compensation,
21 perquisite or allowance."

22 SECTION 3. Section 32A-8-5 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 207) is amended to read:

24 "32A-8-5. APPOINTMENTS--EXCLUSION--TERMS--TRAINING--
25 COMPENSATION--MEETINGS.--

A. The state advisory committee shall establish no
fewer than three substitute care review boards. The

1 administrative office of the courts or a contractor that is
2 selected by the administrative office of the courts pursuant
3 to the provisions of Section 32A-8-3 NMSA 1978 shall
4 administer substitute care review boards as provided in the
5 Citizen Substitute Care Review Act. The composition of each
6 board shall, to the maximum extent feasible, represent the
7 various socioeconomic, racial and ethnic groups of the
8 community that each board serves.

9 B. Criteria for membership and tenure on
10 substitute care review boards shall be determined by the
11 state advisory committee. No person employed by the
12 administrative office of the courts, the department or a
13 district court may serve on a substitute care review board.

14 C. The state advisory committee shall determine
15 the structure for each substitute care review board. In
16 consultation with local children's court judges, the chief
17 justice of the supreme court shall appoint the members and
18 officers of each substitute care review board.

19 D. Substitute care review board members may
20 receive per diem and mileage as provided for nonsalaried
21 public officers in the Per Diem and Mileage Act and shall
22 receive no other compensation, perquisite or allowance."

23 SECTION 4. Section 32A-8-6 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 208) is repealed and a new
25 Section 32A-8-6 NMSA 1978 is enacted to read:

"32A-8-6. SUBSTITUTE CARE REVIEW BOARDS.--

A. The state advisory committee shall establish

1 substitute care review boards that provide opportunities for
2 citizens to play an integral role in furthering the purposes
3 of the Citizen Substitute Care Review Act. The state
4 advisory committee shall identify focus areas and case
5 selection criteria for the substitute care review boards.

6 B. Upon request of the state advisory committee, a
7 substitute care review board shall prepare a report that
8 summarizes the activities of that board and provides
9 recommendations to the state advisory committee."

10 SECTION 5. Section 32A-8-7 NMSA 1978 (being Laws 1993,
11 Chapter 77, Section 209) is amended to read:

12 "32A-8-7. CITIZEN SUBSTITUTE CARE REVIEW--TRANSFER--
13 FUNDS--CONTRACTS.--

14 A. On July 1, 2015, all records, money, property,
15 equipment and supplies of the department of finance and
16 administration relating to the Citizen Substitute Care Review
17 Act shall be transferred to the administrative office of the
18 courts.

19 B. On July 1, 2015, all appropriations, contract
20 funds and funds for contract administration and staff, the
21 cost of advisory committee per diem and travel, training and
22 all other costs relating to the Citizen Substitute Care
23 Review Act shall be transferred from the department of
24 finance and administration to the administrative office of
25 the courts.

C. On July 1, 2015, all existing rules and
regulations and contracts in effect as of January 1, 2015

1 with the department of finance and administration for
2 providing a statewide system of substitute care review boards
3 shall be binding and effective on the administrative office
4 of the courts."

5 SECTION 6. Section 32A-1-7 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 16, as amended) is amended to read:

7 "32A-1-7. GUARDIAN AD LITEM--POWERS AND DUTIES.--

8 A. A guardian ad litem shall zealously represent
9 the child's best interests in the proceeding for which the
10 guardian ad litem has been appointed and in any subsequent
11 appeals.

12 B. Unless excused by a court, a guardian ad litem
13 appointed to represent a child's best interests shall
14 continue the representation in any subsequent appeals.

15 C. Any party may petition the court for an order
16 to remove a guardian ad litem on the grounds that the
17 guardian ad litem has a conflict of interest or is unwilling
18 or unable to zealously represent the child's best interests.

19 D. After consultation with the child, a guardian
20 ad litem shall convey the child's declared position to the
21 court at every hearing.

22 E. Unless a child's circumstances render the
23 following duties and responsibilities unreasonable, a
24 guardian ad litem shall:

25 (1) meet with and interview the child prior
to custody hearings, adjudicatory hearings, dispositional
hearings, judicial reviews and any other hearings scheduled

1 in accordance with the provisions of the Children's Code;

2 (2) communicate with health care, mental

3 health care and other professionals involved with the child's

4 case;

5 (3) review medical and psychological reports

6 relating to the child and the respondents;

7 (4) contact the child prior to any proposed

8 change in the child's placement;

9 (5) contact the child after changes in the

10 child's placement;

11 (6) report to the court on the child's

12 adjustment to placement, the department's and respondent's

13 compliance with prior court orders and treatment plans and

14 the child's degree of participation during visitations; and

15 (7) represent and protect the cultural needs

16 of the child.

17 F. A guardian ad litem may retain separate counsel

18 to represent the child in a tort action on a contingency fee

19 basis or any other cause of action in proceedings that are

20 outside the jurisdiction of the children's court. When a

21 guardian ad litem retains separate counsel to represent the

22 child, the guardian ad litem shall provide the court with

23 written notice within ten days of retaining the separate

24 counsel. A guardian ad litem shall not retain or

25 subsequently obtain any pecuniary interest in an action filed

on behalf of the child outside of the jurisdiction of the

children's court.

1 G. In the event of a change of venue, the
2 originating guardian ad litem shall remain on the case until
3 a new guardian ad litem is appointed by the court in the new
4 venue and the new guardian ad litem has communicated with and
5 received all pertinent information from the former guardian
6 ad litem.

7 H. A guardian ad litem shall receive notices,
8 pleadings or other documents required to be provided to or
9 served upon a party. A guardian ad litem may file motions
10 and other pleadings and take other actions consistent with
11 the guardian ad litem's powers and duties.

12 I. A guardian ad litem shall not serve
13 concurrently as both the child's delinquency attorney and
14 guardian ad litem."

15 SECTION 7. Section 32A-3B-22 NMSA 1978 (being Laws
16 1993, Chapter 77, Section 94, as amended) is amended to read:

17 "32A-3B-22. CONFIDENTIALITY--RECORDS--PENALTY.--

18 A. All records or information concerning a family
19 in need of court-ordered services, including social records,
20 diagnostic evaluation, psychiatric or psychological reports,
21 videotapes, transcripts and audio recordings of a child's
22 statement of abuse or medical reports, obtained as a result
23 of an investigation in anticipation of or incident to a
24 family in need of court-ordered services proceeding shall be
25 confidential and closed to the public.

 B. The records described in Subsection A of this
section shall be disclosed only to the parties and to:

- (1) court personnel;
- (2) court appointed special advocates;
- (3) the child's guardian ad litem or attorney;
- (4) the child's attorney representing the child in an abuse or neglect action, a delinquency action or any other action, including a public defender;
- (5) department personnel;
- (6) any substitute care review board or any agency contracted to implement substitute care review boards;
- (7) law enforcement officials;
- (8) district attorneys;
- (9) a state or tribal government social services agency of any state;
- (10) those persons or entities of an Indian tribe specifically authorized to inspect the records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;
- (11) tribal juvenile justice system and social service representatives;
- (12) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent and the records concern the social, medical, psychological or educational needs of the child;
- (13) school personnel involved with the child, if the records concern the child's social or

1 educational needs;

2 (14) health care or mental health
3 professionals involved in the evaluation or treatment of the
4 child, the child's parents, guardian or custodian or other
5 family members;

6 (15) protection and advocacy
7 representatives, pursuant to the federal Developmental
8 Disabilities Assistance and Bill of Rights Act and the
9 federal Protection and Advocacy for Mentally Ill Individuals
10 Amendments Act of 1991; and

11 (16) any other person or entity, by order of
12 the court, having a legitimate interest in the case or the
13 work of the court.

14 C. Whoever intentionally and unlawfully releases
15 any information or records that are closed to the public
16 pursuant to the provisions of the Children's Code or releases
17 or makes other unlawful use of records in violation of that
18 code is guilty of a petty misdemeanor.

19 D. The department shall promulgate rules for
20 implementing disclosure of records pursuant to this section
21 and in compliance with state and federal law and the
22 Children's Court Rules."

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

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

A. The initial judicial review shall be held

1 within sixty days of the disposition. At the initial review,
2 the parties shall demonstrate to the court efforts made to
3 implement the treatment plan approved by the court in its
4 dispositional order. The court shall determine the extent to
5 which the treatment plan has been implemented and make
6 supplemental orders as necessary to ensure compliance with
7 the treatment plan and the safety of the child.

8 B. Subsequent periodic reviews of dispositional
9 orders shall be held within six months of the conclusion of
10 the permanency hearing or, if a motion has been filed for
11 termination of parental rights or permanent guardianship,
12 within six months of the decision on that motion and every
13 six months thereafter. The review may be carried out by
14 either of the following:

15 (1) a judicial review hearing conducted by
16 the court; or

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

21 C. The children's court attorney shall give notice
22 to all parties, including the child by and through the
23 child's guardian ad litem or attorney, the child's CASA and
24 the child's foster parent or substitute care provider of the
25 time, place and purpose of any judicial review hearing held
 pursuant to Subsection A or B of this section.

26 D. At any judicial review hearing held pursuant to

1 Subsection B of this section, the department, the child's
2 guardian ad litem or attorney and all parties given notice
3 pursuant to Subsection C of this section shall have the
4 opportunity to present evidence and to cross-examine
5 witnesses. At the hearing, the department shall show that it
6 has made reasonable effort to implement any treatment plan
7 approved by the court in its dispositional order and shall
8 present a treatment plan consistent with the purposes of the
9 Children's Code for any period of extension of the
10 dispositional order. The respondent shall demonstrate to the
11 court that efforts to comply with the treatment plan approved
12 by the court in its dispositional order and efforts to
13 maintain contact with the child were diligent and made in
14 good faith. The court shall determine the extent of
15 compliance with the treatment plan and whether progress is
16 being made toward establishing a stable and permanent
17 placement for the child.

18 E. The Rules of Evidence shall not apply to
19 hearings held pursuant to this section. The court may admit
20 testimony by any person given notice of the hearing who has
21 information about the status of the child or the status of
22 the treatment plan.

23 F. At the conclusion of any hearing held pursuant
24 to this section, the court shall make findings of fact and
25 conclusions of law.

 G. When the child is an Indian child, the court
shall determine during review of a dispositional order

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

8 H. Based on its findings at a judicial review
9 hearing held pursuant to Subsection B of this section, the
10 court shall order one of the following dispositions:

11 (1) dismiss the action and return the child
12 to the child's parent without supervision if the court finds
13 that conditions in the home that led to abuse have been
14 corrected and it is now safe for the return of the abused
15 child;

16 (2) permit the child to remain with the
17 child's parent, guardian or custodian subject to those
18 conditions and limitations the court may prescribe, including
19 protective supervision of the child by the department;

20 (3) return the child to the child's parent
21 and place the child under the protective supervision of the
22 department;

23 (4) transfer or continue legal custody of
24 the child to:

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

(b) a relative or other individual who, SPAC/SB 115
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1 after study by the department or other agency designated by
2 the court, is found by the court to be qualified to receive
3 and care for the child and is appointed as a permanent
4 guardian of the child; or

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

7 (5) continue the child in the legal custody
8 of the department with or without any required parental
9 involvement in a treatment plan. Reasonable efforts shall be
10 made to preserve and reunify the family, with the paramount
11 concern being the child's health and safety unless the court
12 finds that such efforts are not required. The court may
13 determine that reasonable efforts are not required to be made
14 when the court finds that:

15 (a) the efforts would be futile; or
16 (b) the parent, guardian or custodian
17 has subjected the child to aggravated circumstances;

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

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

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

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

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

J. When the court determines, pursuant to Paragraph (5) of Subsection H of this section, that no reasonable efforts at reunification are required, the court shall conduct, within thirty days, a permanency hearing as described in Section 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child."

SECTION 9. Section 32A-4-25.1 NMSA 1978 (being Laws 1997, Chapter 34, Section 8, as amended) is amended to read:

"32A-4-25.1. PERMANENCY HEARINGS--PERMANENCY REVIEW
HEARINGS.--

A. A permanency hearing shall be commenced within six months of the initial judicial review of a child's dispositional order or within twelve months of a child entering foster care pursuant to Subsection D of this section, whichever occurs first. Prior to the initial

1 permanency hearing, all parties to the hearing shall attend a
2 mandatory meeting and attempt to settle issues attendant to
3 the permanency hearing and develop a proposed treatment plan
4 that serves the child's best interest.

5 B. At the permanency hearing, all parties shall
6 have the opportunity to present evidence and to cross-examine
7 witnesses. At the conclusion of the permanency hearing, the
8 court shall order one of the following permanency plans for
9 the child:

10 (1) reunification;
11 (2) placement for adoption after the
12 parents' rights have been relinquished or terminated or after
13 a motion has been filed to terminate parental rights;

14 (3) placement with a person who will be the
15 child's permanent guardian;

16 (4) placement in the legal custody of the
17 department with the child placed in the home of a fit and
18 willing relative; or

19 (5) placement in the legal custody of the
20 department under a planned permanent living arrangement,
21 provided that there is substantial evidence that none of the
22 above plans is appropriate for the child.

23 C. If the court adopts a permanency plan of
24 reunification, the court shall adopt a plan for transitioning
25 the child home and schedule a permanency review hearing
within three months. If the child is reunified, the
subsequent hearing may be vacated.

1 D. If the court adopts a permanency plan other
2 than reunification, the court shall determine whether the
3 department has made reasonable efforts to identify and locate
4 all grandparents and other relatives. The court shall also
5 determine whether the department has made reasonable efforts
6 to conduct home studies on any appropriate relative
7 expressing an interest in providing permanency for the child.
8 The court must ensure the consideration has been given to the
9 child's familial identity and connections. If the court
10 finds that reasonable efforts have not been made to identify
11 or locate grandparents and other relatives or to conduct home
12 studies on appropriate and willing relatives, the court shall
13 schedule a permanency review within sixty days to determine
14 whether an appropriate relative placement has been made. If
15 a relative placement is made, the subsequent hearing may be
16 vacated.

17 E. At the permanency review hearing, all parties
18 and the child's guardian ad litem or attorney shall have the
19 opportunity to present evidence and cross-examine witnesses.
20 Based on the evidence, the court shall:

21 (1) change the plan from reunification to
22 one of the alternative plans provided in Subsection B of this
23 section;

24 (2) dismiss the case and return custody of
25 the child to the child's parent, guardian or custodian; or

 (3) return the child to the custody of the
child's parent, guardian or custodian, subject to any

1 conditions or limitations as the court may prescribe,
2 including protective supervision of the child by the
3 department and continuation of the treatment plan for not
4 more than six months, after which the case shall be
5 dismissed. The department may seek removal of a child from
6 the home by obtaining an order in the pending case or by
7 seeking emergency removal under Section 32A-4-6 NMSA 1978
8 during the period of protective supervision if the child's
9 best interest requires such action. When a child is removed
10 in this situation, a permanency hearing shall be scheduled
11 within thirty days of the child coming back into the
12 department's legal custody.

13 F. The court shall hold a permanency hearing and
14 adopt a permanency plan for a child within twelve months of
15 the child entering foster care. For purposes of this
16 section, a child shall be considered to have entered foster
17 care on the earlier of:

18 (1) the date of the first judicial finding
19 that the child has been abused or neglected; or

20 (2) sixty days after the date on which the
21 child was removed from the home.

22 G. The court shall hold permanency hearings every
23 twelve months when a child is in the legal custody of the
24 department.

25 H. The children's court attorney shall give notice
to all parties, including the child by and through the
child's guardian ad litem or attorney, the child's CASA and

1 the child's foster parent or substitute care provider of the
2 time, place and purpose of any permanency hearing or
3 permanency review hearing held pursuant to this section.

4 I. The Rules of Evidence shall not apply to
5 permanency hearings. The court may admit testimony by any
6 person given notice of the permanency hearing who has
7 information about the status of the child or the status of
8 the treatment plan. All testimony shall be subject to
9 cross-examination."

10 SECTION 10. Section 32A-4-33 NMSA 1978 (being Laws
11 1993, Chapter 77, Section 127, as amended) is amended to
12 read:

13 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

14 A. All records or information concerning a party
15 to a neglect or abuse proceeding, including social records,
16 diagnostic evaluations, psychiatric or psychological reports,
17 videotapes, transcripts and audio recordings of a child's
18 statement of abuse or medical reports incident to or obtained
19 as a result of a neglect or abuse proceeding or that were
20 produced or obtained during an investigation in anticipation
21 of or incident to a neglect or abuse proceeding shall be
22 confidential and closed to the public.

23 B. The records described in Subsection A of this
24 section shall be disclosed only to the parties and:

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- (1) court personnel;
- (2) court-appointed special advocates;
- (3) the child's guardian ad litem;

(4) the attorney representing the child in an abuse or neglect action, a delinquency action or any other action under the Children's Code;

(5) department personnel;

(6) any substitute care review board or any agency contracted to implement substitute care review boards;

(7) law enforcement officials, except when use immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

(8) district attorneys, except when use immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

(9) any state government social services agency in any state or when, in the opinion of the department it is in the best interest of the child, a governmental social services agency of another country;

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

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

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

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

(14) protection and advocacy representatives pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991;

(15) children's safehouse organizations conducting investigatory interviews of children on behalf of a law enforcement agency or the department; and

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

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

1 information to the department.

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

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8 E. The department shall promulgate rules for
9 implementing disclosure of records pursuant to this section
10 and in compliance with state and federal law and the
11 Children's Court Rules."

12 SECTION 11. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2015.

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