

1 SENATE BILL 128

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO CHILDREN; AMENDING THE FAMILY IN NEED OF COURT-
12 ORDERED SERVICES ACT AND THE ABUSE AND NEGLECT ACT; REVISING
13 PROCEDURES FOR PLACING CHILDREN IN PROTECTIVE CUSTODY.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 32A-1-4 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 13, as amended) is amended to read:

18 "32A-1-4. DEFINITIONS.--As used in the Children's Code:

19 A. "active efforts" means efforts that are
20 affirmative, active, thorough and timely and that represent a
21 higher standard of conduct than reasonable efforts;

22 B. "adult" means a person who is eighteen years of
23 age or older;

24 C. "child" means a person who is less than eighteen
25 years old;

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1 D. "council" means the substitute care advisory
2 council established pursuant to Section 32A-8-4 NMSA 1978;

3 E. "court", when used without further
4 qualification, means the children's court division of the
5 district court and includes the judge, special master or
6 commissioner appointed pursuant to the provisions of the
7 Children's Code or supreme court rule;

8 F. "court-appointed special advocate" means a
9 person appointed pursuant to the provisions of the Children's
10 Court Rules to assist the court in determining the best
11 interests of the child by investigating the case and submitting
12 a report to the court;

13 G. "custodian" means an adult with whom the child
14 lives who is not a parent or guardian of the child;

15 H. "department" means the children, youth and
16 families department, unless otherwise specified;

17 I. "disproportionate minority contact" means the
18 involvement of a racial or ethnic group with the criminal or
19 juvenile justice system at a proportion either higher or lower
20 than that group's proportion in the general population;

21 J. "federal Indian Child Welfare Act of 1978" means
22 the federal Indian Child Welfare Act of 1978, as that act may
23 be amended or its sections renumbered;

24 K. "fictive kin" means a person:

25 (1) who is not a relative or an extended

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1 family member of a child and who has a significant, family-like
2 relationship with the child or the child's family, which
3 relationship existed prior to the child's entry into foster
4 care; or

5 (2) chosen by a child who is fourteen years of
6 age or older, when it is in the best interest of the child to
7 identify that person as fictive kin;

8 ~~[K.]~~ L. "foster parent" means a person, including a
9 relative of the child, licensed or certified by the department
10 or a child placement agency to provide care for children in the
11 custody of the department or agency;

12 ~~[L.]~~ M. "guardian" means a person appointed as a
13 guardian by a court or Indian tribal authority or a person
14 authorized to care for the child by a parental power of
15 attorney as permitted by law;

16 ~~[M.]~~ N. "guardian ad litem" means an attorney
17 appointed by the children's court to represent and protect the
18 best interests of the child in a case; provided that no party
19 or employee or representative of a party to the case shall be
20 appointed to serve as a guardian ad litem;

21 ~~[N.]~~ O. "Indian" means, whether an adult or child,
22 a person who is:

- 23 (1) a member of an Indian tribe; or
24 (2) eligible for membership in an Indian
25 tribe;

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1 [Θ-] P. "Indian child" means an Indian person, or a
2 person whom there is reason to know is an Indian person, under
3 eighteen years of age, who is neither:

- 4 (1) married; or
- 5 (2) emancipated;

6 [P-] Q. "Indian child's tribe" means:

- 7 (1) the Indian tribe in which an Indian child
8 is a member or eligible for membership; or
- 9 (2) in the case of an Indian child who is a
10 member or eligible for membership in more than one tribe, the
11 Indian tribe with which the Indian child has more significant
12 contacts;

13 [Q-] R. "Indian custodian" means an Indian who,
14 pursuant to tribal law or custom or pursuant to state law:

- 15 (1) is an adult with legal custody of an
16 Indian child; or
- 17 (2) has been transferred temporary physical
18 care, custody and control by the parent of the Indian child;

19 [R-] S. "Indian tribe" means an Indian nation,
20 tribe, pueblo or other band, organized group or community of
21 Indians recognized as eligible for the services provided to
22 Indians by the secretary because of their status as Indians,
23 including an Alaska native village as defined in 43 U.S.C.
24 Section 1602(c) or a regional corporation as defined in 43
25 U.S.C. Section 1606. For the purposes of notification to and

1 communication with a tribe as required in the Indian Family
2 Protection Act, "Indian tribe" also includes those tribal
3 officials and staff who are responsible for child welfare and
4 social services matters;

5 ~~[S.]~~ T. "judge", when used without further
6 qualification, means the judge of the court;

7 ~~[F.]~~ U. "legal custody" means a legal status
8 created by order of the court or other court of competent
9 jurisdiction or by operation of statute that vests in a person,
10 department or agency the right to determine where and with whom
11 a child shall live; the right and duty to protect, train and
12 discipline the child and to provide the child with food,
13 shelter, personal care, education and ordinary and emergency
14 medical care; the right to consent to major medical,
15 psychiatric, psychological and surgical treatment and to the
16 administration of legally prescribed psychotropic medications
17 pursuant to the Children's Mental Health and Developmental
18 Disabilities Act; and the right to consent to the child's
19 enlistment in the armed forces of the United States;

20 ~~[U.]~~ V. "member" or "membership" means a
21 determination made by an Indian tribe that a person is a member
22 of or eligible for membership in that Indian tribe;

23 ~~[V.]~~ W. "parent" or "parents" means a biological or
24 adoptive parent if the biological or adoptive parent has a
25 constitutionally protected liberty interest in the care and

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1 custody of the child or a person who has lawfully adopted an
2 Indian child pursuant to state law or tribal law or tribal
3 custom;

4 ~~[W.]~~ X. "permanency plan" means a determination by
5 the court that the child's interest will be served best by:

6 (1) reunification;

7 (2) placement for adoption after the parents'
8 rights have been relinquished or terminated or after a motion
9 has been filed to terminate parental rights;

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

12 (4) placement in the legal custody of the
13 department with the child placed in the home of a fit and
14 willing relative; or

15 (5) placement in the legal custody of the
16 department under a planned permanent living arrangement;

17 ~~[X.]~~ Y. "person" means an individual or any other
18 form of entity recognized by law;

19 ~~[Y.]~~ Z. "plan of care" means a plan created by a
20 health care professional intended to ensure the safety and
21 well-being of a substance-exposed newborn by addressing the
22 treatment needs of the child and any of the child's parents,
23 relatives, guardians, family members or caregivers to the
24 extent those treatment needs are relevant to the safety of the
25 child;

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1 ~~[Z.]~~ AA. "preadoptive parent" means a person with
2 whom a child has been placed for adoption;

3 ~~[AA.]~~ BB. "protective supervision" means the right
4 to visit the child in the home where the child is residing,
5 inspect the home, transport the child to court-ordered
6 diagnostic examinations and evaluations and obtain information
7 and records concerning the child;

8 ~~[BB.]~~ CC. "relative" means a person related to
9 another person:

10 (1) by blood within the fifth degree of
11 consanguinity or through marriage by the fifth degree of
12 affinity; or

13 (2) with respect to an Indian child, as
14 established or defined by the Indian child's tribe's custom or
15 law;

16 ~~[CC.]~~ DD. "reservation" means:

17 (1) "Indian country" as defined in 18 U.S.C.
18 Section 1151;

19 (2) any lands to which the title is held by
20 the United States in trust for the benefit of an Indian tribe
21 or individual; or

22 (3) any lands held by an Indian tribe or
23 individual subject to a restriction by the United States
24 against alienation;

25 ~~[DD.]~~ EE. "reunification" means either a return of

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1 the child to the parent or to the home from which the child was
2 removed or a return to the noncustodial parent;

3 ~~[EE-]~~ FF. "secretary" means the United States
4 secretary of the interior;

5 ~~[FF-]~~ GG. "tribal court" means a court with
6 jurisdiction over child custody proceedings that is either a
7 court of Indian offenses, a court established and operated
8 under the law or custom of an Indian tribe or any other
9 administrative body that is vested by an Indian tribe with
10 authority over child custody proceedings;

11 ~~[GG-]~~ HH. "tribal court order" means a document
12 issued by a tribal court that is signed by an appropriate
13 authority, including a judge, governor or tribal council
14 member, and that orders an action that is within the tribal
15 court's jurisdiction; and

16 ~~[HH-]~~ II. "tribunal" means any judicial forum other
17 than the court."

18 SECTION 2. Section 32A-3B-3 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 75, as amended) is amended to read:

20 "32A-3B-3. PROTECTIVE CUSTODY--INTERFERENCE WITH
21 PROTECTIVE CUSTODY--PENALTY.--

22 A. A child may be taken into protective custody by
23 ~~[a law enforcement officer]~~ the department without a court
24 order when the ~~[officer]~~ department has reasonable grounds to
25 believe that the child:

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1 (1) has run away from the child's parent,
2 guardian or custodian;

3 (2) without parental supervision is suffering
4 from illness or injury;

5 (3) has been abandoned;

6 (4) is endangered by the child's surroundings
7 and removal from those surroundings is necessary to ensure the
8 child's safety;

9 (5) is engaged in an act that would be
10 designated as prostitution if committed by an adult; or

11 (6) is a victim of human trafficking as
12 defined in Section 30-52-1 NMSA 1978.

13 B. Law enforcement shall assist in taking a child
14 into protective custody at the request of the department.

15 C. When a law enforcement officer finds a child in
16 a situation that may result in the department taking the child
17 into protective custody pursuant to Subsection A of this
18 section, the law enforcement officer shall hold the child until
19 the department is available to determine whether the child
20 should be taken into protective custody. When a child is found
21 in surroundings or conditions outside of the child's home that
22 imminently endanger the child's health or welfare, the law
23 enforcement officer may transport the child to, and hold the
24 child in, an alternate safe location until the department is
25 available. The child shall not be held in a jail or another

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1 facility intended or used for the incarceration of adults
2 charged with criminal offenses or for the detention of children
3 alleged to be delinquent children, an immigration processing or
4 detention facility or any other secure facility.

5 ~~[B.]~~ D. A child may be taken into protective
6 custody pursuant to a court order issued after an agency
7 legally charged with the supervision of the child has notified
8 ~~[a law enforcement agency]~~ the department that the child has
9 run away from a placement.

10 ~~[C.]~~ E. When a child is taken into protective
11 custody, the department shall make ~~[a reasonable effort]~~ active
12 efforts to determine whether the child is an Indian child.

13 ~~[D.]~~ F. Any person, other than the child taken into
14 protective custody, who interferes with placing the child in
15 protective custody is guilty of a petty misdemeanor and shall
16 be sentenced pursuant to the provisions of Section 31-19-1 NMSA
17 1978."

18 SECTION 3. Section 32A-3B-4 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 76, as amended) is amended to read:

20 "32A-3B-4. PROTECTIVE CUSTODY--RESTRICTIONS--TIME
21 LIMITATIONS.--

22 A. ~~[A law enforcement officer who]~~ When the
23 department takes a child into protective custody, the
24 department shall, with all reasonable speed, ~~[and]~~ inform the
25 child of the reasons for the protective custody ~~[and]~~

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1 ~~(2) contact the department].~~

2 B. When the department [~~is contacted by a law~~
3 ~~enforcement officer who~~] has taken a child into protective
4 custody, the department shall refer the child to community
5 based services and may:

6 (1) accept custody of the child and designate
7 an appropriate placement in the community for the child; or

8 (2) return the child to the child's parent,
9 guardian or custodian if the child's safety is assured.

10 C. A child [~~taken into protective custody~~] being
11 held or transported by a law enforcement officer pursuant to
12 Subsection C of Section 32A-3B-3 NMSA 1978 shall not be placed
13 in or transported in a law enforcement vehicle or any other
14 vehicle that contains an adult placed under arrest, unless
15 circumstances exist in which any delay in transporting the
16 child to an appropriate facility would be likely to result in
17 imminent substantial danger to the child's physical safety.
18 When such circumstances exist, the circumstances shall be
19 described in writing by the driver of the vehicle and submitted
20 to the driver's supervisor and the department within two days
21 after the driver transported the child.

22 D. A child taken into protective custody shall not
23 be held involuntarily for more than [~~two~~] three days, unless a
24 petition [~~to extend the custody~~] is filed pursuant to the
25 provisions of the Family in Need of Court-Ordered Services Act

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1 or the Abuse and Neglect Act.

2 E. When a petition is filed or any time thereafter,
3 the children's court or district court may issue an ex-parte
4 custody order based upon a sworn written statement of facts
5 showing that probable cause exists to believe that protective
6 custody of the child is necessary.

7 F. The [~~protective~~] ex-parte custody order shall be
8 served on the respondent by a person authorized to serve arrest
9 warrants [~~and shall direct the law enforcement officer to take~~
10 ~~custody of the child and deliver the child to a place~~
11 ~~designated by the court~~].

12 G. The Rules of Evidence do not apply to the
13 issuance of an ex-parte custody order."

14 SECTION 4. Section 32A-3B-7 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 79) is amended to read:

16 "32A-3B-7. PROTECTIVE CUSTODY HEARING--TIME
17 LIMITATIONS.--

18 A. When a child of an alleged family in need of
19 court-ordered services is taken into protective custody by the
20 department or the department petitions the court for protective
21 custody of the child, a custody hearing shall be held within
22 [~~ten~~] seven days from the date the petition is filed to
23 determine if the child should remain with the family or be
24 placed in the custody of the department pending adjudication.
25 Upon written request of the respondent, the hearing may be held

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1 earlier, but in no event shall the hearing be held sooner than
2 two days after the date the petition was filed.

3 B. The parent, guardian or custodian of the child
4 shall be given reasonable notice of the time and place of the
5 hearing.

6 C. When the custody hearing is conducted, the court
7 shall release the child to [~~his~~] the child's parent, guardian
8 or custodian unless probable cause exists to believe that:

9 (1) the child is in immediate danger from
10 [~~his~~] the child's surroundings and the child's removal from
11 those surroundings is necessary for [~~his~~] the child's safety or
12 well-being;

13 (2) the child will be subject to injury by
14 others if not placed in the protective custody of the
15 department; or

16 (3) a parent, guardian or custodian of the
17 child or any other person is unable or unwilling to provide
18 adequate supervision and care for the child.

19 D. At the conclusion of the protective custody
20 hearing, if the court determines that protective custody
21 pending adjudication is appropriate, the court may:

22 (1) award custody of the child to the
23 department; or

24 (2) return the child to the child's parent,
25 guardian or custodian, subject to conditions that will

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1 reasonably [~~assure~~] ensure the safety and well-being of the
2 child.

3 E. In addition to any disposition made by the court
4 pursuant to the provisions of Subsection D of this section, the
5 court may order the child and family to participate in an
6 assessment and referral process. Copies of any diagnostic or
7 evaluation reports ordered by the court shall be provided to
8 the parties at least five days before the adjudicatory hearing
9 is scheduled. The diagnostic and evaluation reports shall not
10 be sent to the court.

11 F. The Rules of Evidence shall not apply to
12 protective custody hearings conducted pursuant to the
13 provisions of this section."

14 SECTION 5. Section 32A-4-2 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 96, as amended) is amended to read:

16 "32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect
17 Act:

18 A. "abandonment" includes instances when the
19 parent, without justifiable cause:

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

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

25 (a) three months if the child was under

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1 six years of age at the commencement of the three-month period;
2 or

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

5 B. "abused child" means a child:

6 (1) who has suffered or who is at risk of
7 suffering serious harm because of the action or inaction of the
8 child's parent, guardian or custodian;

9 (2) who has suffered physical abuse, emotional
10 abuse or psychological abuse inflicted or caused by the child's
11 parent, guardian or custodian;

12 (3) who has suffered sexual abuse or sexual
13 exploitation inflicted by the child's parent, guardian or
14 custodian;

15 (4) whose parent, guardian or custodian has
16 knowingly, intentionally or negligently placed the child in a
17 situation that may endanger the child's life or health; or

18 (5) whose parent, guardian or custodian has
19 knowingly or intentionally tortured, cruelly confined or
20 cruelly punished the child;

21 C. "aggravated circumstances" includes those
22 circumstances in which the parent, guardian or custodian has:

23 (1) attempted, conspired to cause or caused
24 great bodily harm to the child or great bodily harm or death to
25 the child's sibling;

1 (2) attempted, conspired to cause or caused
2 great bodily harm or death to another parent, guardian or
3 custodian of the child;

4 (3) attempted, conspired to subject or has
5 subjected the child to torture, chronic abuse or sexual abuse;
6 or

7 (4) had parental rights over a sibling of the
8 child terminated involuntarily;

9 D. "educational decision maker" means an individual
10 appointed by the children's court to attend school meetings and
11 to make decisions about the child's education that a parent
12 could make under law, including decisions about the child's
13 educational setting, and the development and implementation of
14 an individual education plan for the child;

15 ~~[E. "fictive kin" means a person not related by~~
16 ~~birth, adoption or marriage with whom a child has an~~
17 ~~emotionally significant relationship;]~~

18 E. "exigent circumstances" means there is probable
19 cause to believe that a child is likely to suffer serious
20 imminent harm in the time it would take to obtain an ex-parte
21 removal order, there is no less intrusive alternative to
22 removing the child from the home that would reasonably and
23 sufficiently protect the child's health or safety and probable
24 cause exists to believe one of the following is true:

25 (1) the child requires immediate care or

1 diagnosis for sexual abuse or abuse involving serious physical
2 injury;

3 (2) the child is in need of immediate medical
4 care for a serious medical condition;

5 (3) there is a threat to the health or safety
6 of the child that cannot be mitigated by any reasonable means
7 other than immediate removal; or

8 (4) the child has been left by the parent,
9 guardian or custodian without adequate supervision or an
10 adequate plan for support and care;

11 F. "great bodily harm" means an injury to a person
12 that creates a high probability of death, that causes serious
13 disfigurement or that results in permanent or protracted loss
14 or impairment of the function of a member or organ of the body;

15 G. "neglected child" means a child:

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

18 (2) who is without proper parental care and
19 control or subsistence, education, medical or other care or
20 control necessary for the child's well-being because of the
21 faults or habits of the child's parent, guardian or custodian
22 or the failure or refusal of the parent, guardian or custodian,
23 when able to do so, to provide them;

24 (3) who has been physically or sexually
25 abused, when the child's parent, guardian or custodian knew or

1 should have known of the abuse and failed to take reasonable
2 steps to protect the child from further harm;

3 (4) whose parent, guardian or custodian is
4 unable to discharge that person's responsibilities to and for
5 the child because of incarceration, hospitalization or physical
6 or mental disorder or incapacity; or

7 (5) who has been placed for care or adoption
8 in violation of the law; provided that nothing in the
9 Children's Code shall be construed to imply that a child who is
10 being provided with treatment by spiritual means alone through
11 prayer, in accordance with the tenets and practices of a
12 recognized church or religious denomination, by a duly
13 accredited practitioner thereof is for that reason alone a
14 neglected child within the meaning of the Children's Code; and
15 further provided that no child shall be denied the protection
16 afforded to all children under the Children's Code;

17 H. "physical abuse" includes any case in which the
18 child suffers strangulation or suffocation and any case in
19 which the child exhibits evidence of skin bruising, bleeding,
20 malnutrition, failure to thrive, burns, fracture of any bone,
21 subdural hematoma, soft tissue swelling or death and:

22 (1) there is not a justifiable explanation for
23 the condition or death;

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

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

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

5 I. "relative" means a person related to another
6 person by birth, adoption or marriage within the fifth degree
7 of consanguinity;

8 J. "sexual abuse" includes criminal sexual contact,
9 incest or criminal sexual penetration, as those acts are
10 defined by state law;

11 K. "sexual exploitation" includes:

12 (1) allowing, permitting or encouraging a
13 child to engage in prostitution;

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

16 (3) filming or depicting a child for obscene
17 or pornographic commercial purposes, as those acts are defined
18 by state law;

19 L. "sibling" means a brother or sister having one
20 or both parents in common by birth or adoption;

21 M. "strangulation" has the same meaning as set
22 forth in Section 30-3-11 NMSA 1978;

23 N. "suffocation" has the same meaning as set forth
24 in Section 30-3-11 NMSA 1978; and

25 O. "transition plan" means an individualized

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1 written plan for a child, based on the unique needs of the
2 child, that outlines all appropriate services to be provided to
3 the child to increase independent living skills. The plan
4 shall also include responsibilities of the child, and any other
5 party as appropriate, to enable the child to be self-sufficient
6 upon emancipation."

7 SECTION 6. Section 32A-4-4 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 98, as amended) is amended to read:

9 "32A-4-4. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY.--

10 A. Reports alleging neglect or abuse shall be
11 referred to the department, which shall conduct an
12 investigation to determine the best interests of the child with
13 regard to any action to be taken. The name and information
14 regarding the person making the report shall not be disclosed
15 absent the consent of the informant or a court order.

16 B. If a report alleging neglect or abuse meets the
17 criteria established pursuant to Section 32A-4-4.1 NMSA 1978,
18 the department may assign the case to the multilevel response
19 system.

20 C. During the investigation of a report alleging
21 neglect or abuse, the matter may be referred to another
22 appropriate agency and conferences may be conducted for the
23 purpose of effecting adjustments or agreements that will
24 obviate the necessity for filing a petition. A representative
25 of the department shall, at the initial time of contact with

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1 the party subject to the investigation, advise the party of the
2 reports or allegations made, in a manner that is consistent
3 with laws protecting the rights of the informant. The parties
4 shall be advised of their basic rights and no party may be
5 compelled to appear at any conference, to produce any papers or
6 to visit any place. The investigation shall be completed
7 within a reasonable period of time from the date the report was
8 made.

9 ~~[D. After completion of the investigation on a~~
10 ~~neglect or abuse report, the department shall either recommend~~
11 ~~or refuse to recommend the filing of a petition.~~

12 E.] D. When a child is taken into temporary
13 custody, the department shall file a petition within [~~two~~]
14 three days. If a petition is not filed in a timely manner, the
15 child shall be released to the child's parent, guardian or
16 custodian."

17 SECTION 7. Section 32A-4-6 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 100, as amended) is amended to read:

19 "32A-4-6. TAKING INTO CUSTODY--RELEASE OR DELIVERY FROM
20 CUSTODY--PENALTY.--

21 A. A child may be [~~held or~~] taken into temporary
22 custody

23 [~~(1) by a law enforcement officer when the~~
24 ~~officer has evidence giving rise to reasonable grounds to~~
25 ~~believe that the child is abused or neglected and that there is~~

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1 ~~an immediate threat to the child's safety; provided that the~~
2 ~~law enforcement officer contacts the department to enable the~~
3 ~~department to conduct an on-site safety assessment to determine~~
4 ~~whether it is appropriate to take the child into immediate~~
5 ~~custody, except that a child may be taken into custody by a law~~
6 ~~enforcement officer without a protective services assessment~~
7 ~~being conducted if:~~

8 ~~(a) the child's parent, guardian or~~
9 ~~custodian has attempted, conspired to cause or caused great~~
10 ~~bodily harm to the child or great bodily harm or death to the~~
11 ~~child's sibling;~~

12 ~~(b) the child's parent, guardian or~~
13 ~~custodian has attempted, conspired to cause or caused great~~
14 ~~bodily harm or death to another parent, guardian or custodian~~
15 ~~of the child;~~

16 ~~(c) the child has been abandoned;~~

17 ~~(d) the child is in need of emergency~~
18 ~~medical care;~~

19 ~~(e) the department is not available to~~
20 ~~conduct a safety assessment in a timely manner; or~~

21 ~~(f) the child is in imminent risk of~~
22 ~~abuse; or~~

23 ~~(2) by medical personnel when there are~~
24 ~~reasonable grounds to believe that the child has been injured~~
25 ~~as a result of abuse or neglect and that the child may be at~~

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1 ~~risk of further injury if returned to the child's parent,~~
2 ~~guardian or custodian. The medical personnel shall hold the~~
3 ~~child until a law enforcement officer is available to take~~
4 ~~custody of the child pursuant to Paragraph (1) of this~~
5 ~~subsection]~~ only pursuant to an order from the district court
6 or exigent circumstances as defined in Subsection E of Section
7 32A-4-2 NMSA 1978.

8 B. When the department determines the criteria for
9 temporary removal is met, the department shall file an
10 application for removal. An application for a removal order
11 filed by the department shall include a sworn written statement
12 of facts by a department representative, law enforcement
13 officer or medical personnel. Upon review of the application,
14 the district court may issue an ex-parte removal order
15 authorizing the department to take temporary custody of a child
16 upon finding that continuation in the home would be contrary to
17 the child's welfare and probable cause exists to believe that
18 temporary custody is necessary to protect the child from
19 imminent threat of abuse or neglect. When determining whether
20 to issue an ex-parte removal order, the court shall consider
21 whether the threat can be mitigated by less extreme measures
22 and whether the harm from any imminent threat of abuse or
23 neglect outweighs the harm to the child resulting from removal.

24 C. The department may take a child into temporary
25 custody without an ex-parte removal order if exigent

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1 circumstances exist. The department shall document its
2 decision to take the child into temporary custody based on
3 exigent circumstances. When the department has obtained
4 temporary custody through a determination that exigent
5 circumstances exist, the department shall file an application
6 for removal within eighteen hours of the determination.

7 D. Pending the department filing the application
8 for removal and the court's action on the application, or upon
9 a determination that exigent circumstances exist, the
10 department may hold and transport the child. Law enforcement
11 shall assist in taking a child into the department's temporary
12 custody at the request of the department.

13 E. When a law enforcement officer or medical
14 personnel has a reasonable belief that a child has been injured
15 as a result of abuse or neglect or that the child may be at
16 risk of imminent harm if returned to the child's parent,
17 guardian or custodian, the law enforcement officer or medical
18 personnel shall contact the department and shall hold the child
19 until the department is available to conduct an on-site safety
20 assessment to determine whether it is necessary to take the
21 child into temporary custody pursuant to Subsection A of this
22 section.

23 F. If a law enforcement officer has evidence to
24 believe exigent circumstances exist, and the department
25 declined to take temporary custody of a child under exigent

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1 circumstances, law enforcement may place the child in the
2 temporary custody of the department. At the time the child is
3 placed in the department's custody, law enforcement shall
4 provide the department with written documentation of the
5 evidence establishing exigent circumstances. The department
6 shall file an application for removal within eighteen hours of
7 receiving custody or return the child to the child's parent,
8 guardian or custodian if the department determines that the
9 child can be safely returned.

10 G. When the department has obtained temporary
11 custody of a child through an ex-parte removal order or through
12 a determination that exigent circumstances exist, the
13 department shall file a petition within three days from the
14 date that the child was taken into temporary custody. This
15 three-day period runs concurrently with the eighteen-hour
16 period for filing an application for removal under exigent
17 circumstances when applicable. The department may return the
18 child to the child's parent, guardian or custodian at any time
19 within the three-day period after the child was taken into
20 temporary custody if the department determines that the child
21 can be safely returned.

22 ~~[B.]~~ H. A child shall not be taken into
23 ~~[protective]~~ temporary custody solely on the grounds that the
24 child's parent, guardian or custodian refuses to consent to the
25 administration of a psychotropic medication to the child.

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1 ~~[G. When a child is taken into custody by law~~
2 ~~enforcement, the department is not compelled to place the child~~
3 ~~in an out-of-home placement and may release the child to the~~
4 ~~child's parent, guardian or custodian.~~

5 D.] I. When [a child is taken into custody] the
6 department has obtained temporary custody of a child through an
7 ex-parte removal order or through a determination that exigent
8 circumstances exist, the department shall make active efforts
9 to determine whether the child is an Indian child as required
10 pursuant to the Indian Family Protection Act.

11 J. When the department has obtained temporary
12 custody of a child through an ex-parte removal order or through
13 a determination that exigent circumstances exist, but the
14 initial allegations did not include concerns for the child's
15 siblings or other children living in the home, the safety of
16 the other children living in the home and siblings living in or
17 outside the home shall be assessed by the department. If there
18 are danger indicators that cannot be mitigated, the siblings
19 and other children shall also be taken into temporary custody
20 only if independent probable cause exists to believe temporary
21 custody is necessary as to each child.

22 K. When the department has obtained temporary
23 custody of a child through an ex-parte removal order or through
24 a determination that exigent circumstances exist, the
25 department shall give written notice thereof, including the

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1 court order, if any, as soon as possible, and in no case later
2 than twenty-four hours, to the child's parent, guardian or
3 custodian together with a statement of the reason for taking
4 the child into custody.

5 L. When the department takes a child into temporary
6 custody through a determination that exigent circumstances
7 exist due to alleged sexual abuse or abuse involving serious
8 physical injury, the department shall immediately arrange to
9 have the child examined by a physician or a health care
10 provider who has specific training in evaluations of child
11 abuse. If the examination rules out abuse, the department
12 shall release the child to the custody of the parent, guardian
13 or custodian unless the department files an application for a
14 removal order.

15 M. The Rules of Evidence shall not apply to the
16 issuance of an ex-parte removal order.

17 ~~[E-]~~ N. Any person who intentionally interferes
18 with protection of a child, as provided by ~~[Subsection A of]~~
19 this section, is guilty of a petty misdemeanor."

20 SECTION 8. Section 32A-4-17.1 NMSA 1978 (being Laws 2016,
21 Chapter 54, Section 3) is amended to read:

22 "32A-4-17.1. NOTICE TO GRANDPARENTS AND RELATIVES.--
23 Within thirty days after a child is taken into custody by ~~[law~~
24 ~~enforcement]~~ the department, or when the department files a
25 petition seeking legal custody of the child, whichever occurs

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1 first, the department shall exercise due diligence and make
2 reasonable efforts to identify and provide notice to all
3 grandparents; all parents of a sibling of the child, when the
4 parent has legal custody of the sibling; and other adult
5 relatives of the child, including adult relatives suggested by
6 the parents, unless such notice would be contrary to the best
7 interests of the child due to family or domestic violence. The
8 notice shall:

9 A. specify that the child has been or is being
10 removed from the custody of the parent or parents of the child;

11 B. explain the options the relative has under
12 federal, state or other law to participate in the care and
13 placement of the child, including any options that may be lost
14 by failing to respond to the notice;

15 C. describe the requirements for becoming a foster
16 family home and the additional services and support that are
17 available for children placed in such a home; and

18 D. set out the dates of any currently scheduled
19 court hearings that involve the child."

20 SECTION 9. Section 32A-4-18 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 112, as amended) is amended to read:

22 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
23 PROBABLE CAUSE.--

24 A. ~~[When a child alleged to be neglected or abused~~
25 ~~has been placed in the legal custody of the department or the~~

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1 ~~department has petitioned the court for temporary custody]~~ A
2 custody hearing shall be held within ~~[ten]~~ seven days from the
3 date the petition alleging abuse or neglect is filed to
4 determine if ~~[the]~~ a child should remain in or be placed in the
5 department's custody pending adjudication. Upon written
6 request of the respondent, the hearing may be held earlier, but
7 in no event shall the hearing be held sooner than two days
8 after the date the petition was filed.

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

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

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

18 (2) the child is in immediate danger from the
19 child's surroundings and removal from those surroundings is
20 necessary for the child's safety or well-being;

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

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

25 (5) the parent, guardian or custodian ~~[is not~~

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1 ~~able or willing to provide adequate supervision and care for~~
2 ~~the child]~~ left the child without adequate supervision or a
3 plan for support and care.

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

7 (1) return legal custody of the child to the
8 child's parent, guardian or custodian upon such conditions as
9 will reasonably ensure the safety and well-being of the child,
10 including protective supervision or maintenance at home by the
11 department or participation in programs or services aimed at
12 addressing the underlying causative factors that impact the
13 safety or well-being of the child; or

14 (2) award legal custody of the child to the
15 department.

16 E. Reasonable efforts shall be made to preserve and
17 reunify the family, with the paramount concern being the
18 child's health and safety. When the department determines that
19 the home of an adult relative of the child meets all relevant
20 child protection and licensing standards and placement in the
21 home would be in the best interest of the child, the department
22 shall give a preference to placement of the child in that home.
23 The department shall make reasonable efforts to conduct home
24 studies on appropriate relatives who express an interest in
25 providing placement for the child.

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

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

7 (2) return legal custody of the child to the
8 child's parent, guardian or custodian with conditions to
9 provide for the safety and well-being of the child; and

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

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

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1 H. The Rules of Evidence shall not apply to custody
2 hearings.

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

13 SECTION 10. A new section of the Abuse and Neglect Act,
14 Section 32A-4-18.1 NMSA 1978, is enacted to read:

15 "32A-4-18.1. [NEW MATERIAL] POST-PETITION REMOVAL
16 HEARING.--

17 A. A child who is subject to an abuse or neglect
18 petition, but who is not in the department's custody, may be
19 removed by the department for the reasons and in the manner
20 described in Section 32A-4-6 NMSA 1978.

21 B. Pursuant to Subsection A of this section, a
22 hearing shall be held within seven days of the removal to
23 determine if the child should remain in the department's
24 custody. Upon written request of the respondent, the hearing
25 may be held earlier, but in no event shall the hearing be held

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1 sooner than two days after the removal.

2 C. At a removal hearing held before the child is
3 adjudicated as abused or neglected, the court shall return
4 legal custody of the child to the child's parent, guardian or
5 custodian unless probable cause exists to believe that:

6 (1) the child is suffering from a serious
7 illness or injury, and the parent, guardian or custodian is not
8 providing adequate care for the child;

9 (2) the child is in immediate danger from the
10 child's surroundings, and removal from those surroundings is
11 necessary for the child's safety or well-being;

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

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

16 (5) the parent, guardian or custodian left the
17 child without adequate supervision or an adequate plan for
18 support and care.

19 D. At a removal hearing held after the child is
20 adjudicated as abused or neglected, the court shall return
21 legal custody of the child to the child's parent, guardian or
22 custodian unless a preponderance of the evidence exists to
23 believe that one of the conditions of Subsection C of this
24 section exists.

25 E. At the conclusion of the removal hearing, if the

1 court determines that probable cause exists pursuant to
2 Subsection C of this section or that a preponderance of the
3 evidence exists pursuant to Subsection D of this section, the
4 court may:

5 (1) return legal custody of the child to the
6 child's parent, guardian or custodian upon such conditions as
7 will reasonably ensure the safety and well-being of the child,
8 including protective supervision or maintenance at home by the
9 department or participation in programs or services aimed at
10 addressing the underlying causative factors that impact the
11 safety or well-being of the child; or

12 (2) award legal custody of the child to the
13 department.

14 F. At the conclusion of the removal hearing, if the
15 court determines that probable cause does not exist pursuant to
16 Subsection C of this section or that a preponderance of the
17 evidence does not exist pursuant to Subsection D of this
18 section, the court shall:

19 (1) retain jurisdiction and, unless the court
20 permits otherwise, order that the respondent and child remain
21 in the jurisdiction of the court;

22 (2) return legal custody of the child to the
23 child's parent, guardian or custodian with conditions to
24 provide for the safety and well-being of the child; and

25 (3) order the child's parent, guardian or

