

1 SENATE BILL 373

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

3 INTRODUCED BY

4 David M. Gallegos

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9  
10 AN ACT

11 RELATING TO FAMILIES; ENACTING THE OFFICE OF CHILD ADVOCATE  
12 ACT; PROVIDING FOR THE CHIEF CHILD ADVOCATE; CREATING THE  
13 OFFICE OF CHILD ADVOCATE AND ESTABLISHING THE POWERS AND DUTIES  
14 OF THAT OFFICE; PROVIDING FOR THE ESTABLISHMENT OF THE CHIEF  
15 CHILD ADVOCATE SELECTION COMMITTEE; AMENDING AND ENACTING  
16 SECTIONS OF THE NMSA 1978.

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. A new section of the Children's Code is  
20 enacted to read:

21 "[NEW MATERIAL] SHORT TITLE.--Sections 1 through 13 of  
22 this act may be cited as the "Office of Child Advocate Act"."

23 SECTION 2. A new section of the Children's Code is  
24 enacted to read:

25 "[NEW MATERIAL] DEFINITIONS.--As used in the Office of  
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1 Child Advocate Act:

2 A. "committee" means the chief child advocate  
3 selection committee;

4 B. "fictive kin" means a person not related by  
5 birth, adoption or marriage with whom a child has an  
6 emotionally significant relationship;

7 C. "guardian" means a person appointed as a  
8 guardian by a court or Indian tribal authority or a person  
9 authorized to care for the child by a parental power of  
10 attorney as permitted by law;

11 D. "office" means the office of child advocate;

12 E. "parent" means a biological or adoptive parent  
13 if the biological or adoptive parent has a constitutionally  
14 protected liberty interest in the care and custody of the  
15 child; and

16 F. "substitute caregiver" means a person, including  
17 a relative of the child, licensed or certified by the  
18 department or a child placement agency to provide care for  
19 children in the custody of the department or agency."

20 SECTION 3. A new section of the Children's Code is  
21 enacted to read:

22 "[NEW MATERIAL] OFFICE OF CHILD ADVOCATE--CREATED.--The  
23 "office of child advocate" is created and is administratively  
24 attached to the department of finance and administration  
25 pursuant to Section 9-1-7 NMSA 1978."

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1           SECTION 4. A new section of the Children's Code is  
2 enacted to read:

3           "[NEW MATERIAL] CHIEF CHILD ADVOCATE--APPOINTMENT--  
4 DUTIES.--The head of the office is the "chief child advocate",  
5 who shall be appointed for a term of six years, except that the  
6 initial term shall begin on July 1, 2024 and shall end on  
7 December 31, 2024. The chief child advocate may be reappointed  
8 to successive terms. An appointed chief child advocate shall  
9 serve and have all of the duties, responsibilities and  
10 authority of that office during the period of time prior to  
11 appointment of a new chief child advocate. The governor may  
12 remove the chief child advocate only for malfeasance,  
13 misfeasance or abuse of office. The chief child advocate shall  
14 oversee the office and assign and distribute the work of the  
15 chief child advocate."

16           SECTION 5. A new section of the Children's Code is  
17 enacted to read:

18           "[NEW MATERIAL] CHIEF CHILD ADVOCATE SELECTION COMMITTEE--  
19 DUTIES.--

20           A. The "chief child advocate selection committee"  
21 is created and consists of nine members, including:

22                   (1) one member who shall be selected by the  
23 president pro tempore of the senate;

24                   (2) one member who shall be selected by the  
25 minority floor leader of the senate;

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1 (3) one member who shall be selected by the  
2 speaker of the house of representatives;

3 (4) one member who shall be selected by the  
4 minority floor leader of the house of representatives;

5 (5) four members who shall be selected by the  
6 governor, no more than two of whom are from the same political  
7 party and one of whom shall have specialized expertise in the  
8 federal Indian Child Welfare Act of 1978 and related New Mexico  
9 laws and rules; and

10 (6) a committee chair, whom a majority of the  
11 other eight members select and who is:

12 (a) not a candidate for the position of  
13 chief child advocate; and

14 (b) a person with extensive knowledge of  
15 child protective or juvenile justice services.

16 B. The committee shall meet exclusively for the  
17 purpose of nominating persons to fill a current or impending  
18 vacancy in the position of chief child advocate. The committee  
19 shall actively solicit, accept and evaluate applications for  
20 the position of chief child advocate and may require applicants  
21 to submit any information that the committee deems relevant to  
22 the consideration of applications. Within ninety days before  
23 the date on which the term of a chief child advocate ends or no  
24 later than thirty days after the occurrence of a vacancy in the  
25 chief child advocate position, the committee shall convene and,

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1 within thirty days after convening, submit to the governor the  
2 names of persons who are recommended for appointment to the  
3 position by a majority of the committee members.

4 C. Immediately after receiving nominations for the  
5 chief child advocate, the governor may make one request of the  
6 committee for submission of additional names. The committee  
7 shall promptly submit those additional names if a majority of  
8 the committee members find that additional persons would be  
9 qualified and recommends those persons for appointment as chief  
10 child advocate. The governor shall fill a vacancy or appoint a  
11 successor to fill an impending vacancy in the office of chief  
12 child advocate within thirty days after receiving final  
13 nominations from the committee by appointing one of the persons  
14 nominated by the committee.

15 D. The committee is administratively attached to  
16 the department of finance and administration pursuant to the  
17 provisions of Section 9-1-7 NMSA 1978.

18 E. After the initial meeting of the committee, the  
19 governor or a majority of the committee members may call  
20 subsequent meetings of the committee."

21 SECTION 6. A new section of the Children's Code is  
22 enacted to read:

23 "[NEW MATERIAL] OFFICE OF CHILD ADVOCATE--POWERS--  
24 DUTIES.--The office:

25 A. shall:

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1 (1) review systemic issues in the department's  
2 provision of services to children and families, receive  
3 complaints concerning the actions of the department or of any  
4 entity that provides services to children and families through  
5 funds provided by the department and make appropriate referrals  
6 and investigate complaints when the chief child advocate  
7 determines that a child or family may be in need of assistance  
8 from the office;

9 (2) review current systems to determine the  
10 extent to which the system protects and enhances children's  
11 personal dignity, right to privacy, appropriate health care and  
12 education in accordance with state and federal law;

13 (3) adopt and promulgate rules in accordance  
14 with the State Rules Act as are deemed necessary to carry out  
15 the provisions of the Office of Child Advocate Act;

16 (4) operate a toll-free hotline and electronic  
17 communication portal to receive complaints pursuant to this  
18 section;

19 (5) investigate and attempt to resolve  
20 complaints made by or on behalf of children placed in the  
21 custody of the department, receiving services under the  
22 supervision of the department, subject to a referral to the  
23 department or under investigation by the department;

24 (6) decide, in its discretion, whether to  
25 investigate a complaint or refer complaints to another agency

1 for investigation;

2 (7) upon rendering a decision to investigate a  
3 complaint, notify the complainant of the intention to  
4 investigate and, if the office declines to investigate a  
5 complaint or continue an investigation, notify the complainant  
6 of the reason for the action of the office;

7 (8) update the complainant on the progress of  
8 the investigation and notify the complainant of the final  
9 outcome within a reasonable time frame;

10 (9) work in collaboration with relevant  
11 parties to strengthen the department's services for children  
12 and families;

13 (10) analyze and monitor the development and  
14 implementation of federal, state and local laws, regulations  
15 and policies relating to child and family welfare and recommend  
16 changes when appropriate;

17 (11) support children and families by  
18 providing information about recipients' rights and  
19 responsibilities related to departmental services;

20 (12) upon request, provide systemic  
21 information concerning child and family welfare to the  
22 governor, state agencies and legislators;

23 (13) submit to the legislature and governor on  
24 or before December 1 of each year a report addressing services  
25 provided by the department, including:

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1 (a) the quality of services provided to  
2 children and families;

3 (b) the conditions of placements for New  
4 Mexico's children, including the number of out-of-state  
5 placements and an assessment of each active congregate care and  
6 juvenile justice facility where children in the custody of the  
7 department are placed;

8 (c) the number of children removed from  
9 a residence of a parent, substitute caregiver or guardian;

10 (d) the number of children returned to a  
11 household from which they were removed;

12 (e) the number of children placed in the  
13 custody of a juvenile justice facility;

14 (f) the number of children placed in the  
15 custody of the department that have run away from a department  
16 placement, the number of children placed in the custody of the  
17 department that have been found after running away and the  
18 number of children placed in the custody of the department that  
19 are presently missing;

20 (g) the number of cases in which  
21 families subject to court-ordered treatment plans or voluntary  
22 placement agreements have absconded with children placed in the  
23 custody of the department;

24 (h) a review of systemic issues related  
25 to services for assistance to children and families within the

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1 child protection and juvenile justice systems;

2 (i) findings and recommendations related  
3 to the implementation of the federal Indian Child Welfare Act  
4 of 1978 and associated provisions of the Children's Code that  
5 pertain to the welfare of Indian children;

6 (j) recommendations related to improving  
7 services for children and families;

8 (k) data disaggregated by race,  
9 ethnicity, gender, geographic location, sexual identity,  
10 disability status and any other categories that the office  
11 deems necessary; and

12 (l) an outline of the training and  
13 certification process for the chief child advocate and office  
14 staff;

15 (14) address any challenges accessing  
16 information or records that are necessary for carrying out the  
17 provisions of the Office of Child Advocate Act; and

18 (15) in the course of investigating a  
19 complaint, have authority to request, access and review  
20 information, records or documents, including records of third  
21 parties, that the office deems necessary to conduct a thorough  
22 and independent review of a complaint so long as the department  
23 would be entitled to access or receive such information,  
24 records or documents; and

25 B. may:

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1 (1) adopt and promulgate rules pertaining to  
2 the administration of the office and, subject to appropriation,  
3 hire and contract for such professional, technical and support  
4 staff as needed to carry out the functions of the office;  
5 provided that such hiring and contracting shall be without  
6 regard to party affiliation and solely on the grounds of  
7 competence and fitness to perform the duties of the position.  
8 Employees of the office, except the chief child advocate, are  
9 subject to the provisions of the Personnel Act; and

10 (2) meet or communicate with any children  
11 placed in the custody of the department, receiving services  
12 under the supervision of the department, subject to a referral  
13 to the department or under investigation by the department."

14 SECTION 7. A new section of the Children's Code is  
15 enacted to read:

16 "[NEW MATERIAL] TRAINING AND CERTIFICATION.--

17 A. The chief child advocate shall ensure that  
18 office staff are trained in:

19 (1) federal, state, local and tribal laws,  
20 regulations and policies with respect to child protection and  
21 juvenile justice services in the state;

22 (2) investigative techniques, including  
23 trauma-informed care and questioning;

24 (3) the federal Indian Child Welfare Act of  
25 1978, related New Mexico laws and rules, tribal culture, tribal

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1 relations and sovereign nation status;

2 (4) department policies and procedures,  
3 including policies and procedures related to abuse and neglect,  
4 out-of-home placement and safety and risk assessments; and

5 (5) such other matters as the office deems  
6 appropriate.

7 B. The chief child advocate shall develop  
8 procedures for the training and certification of appropriate  
9 staff.

10 C. An officer, employee or other representative of  
11 the office shall not investigate any complaint filed with the  
12 office unless that person is certified by the office."

13 SECTION 8. A new section of the Children's Code is  
14 enacted to read:

15 "[NEW MATERIAL] CONFLICT OF INTEREST.--Persons who are  
16 employees of the office or who have contracts with the office  
17 shall not have a conflict of interest with the department or  
18 with an entity that provides services to children and families  
19 through funds provided by the department relating to the  
20 performance of their responsibilities pursuant to the  
21 Children's Code. For the purposes of this section, a conflict  
22 of interest exists whenever the chief child advocate, an  
23 employee of the office or a person having a contract with the  
24 office:

25 A. has direct involvement in the licensing,

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1 certification or accreditation of a provider or facility  
2 delivering services to children and families;

3 B. has a direct ownership interest in a provider or  
4 facility delivering services to children and families;

5 C. is employed by or participates in the management  
6 of a provider or facility delivering services to children and  
7 families; or

8 D. receives or has the right to receive, directly  
9 or indirectly, remuneration pursuant to a compensation  
10 arrangement with a provider or facility delivering services to  
11 children and families."

12 SECTION 9. A new section of the Children's Code is  
13 enacted to read:

14 "[NEW MATERIAL] INCIDENTS AND FATALITIES.--

15 A. The department shall provide the office with a  
16 copy of all reports related to actual physical injury to  
17 children in the custody of the department or a significant risk  
18 of such an injury.

19 B. The department shall provide the office with a  
20 written notification within seventy-two hours of:

21 (1) a fatality of a child in its custody or  
22 referred or receiving services under the supervision of the  
23 department; and

24 (2) the restraint or seclusion of a child in  
25 its custody."

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1 SECTION 10. A new section of the Children's Code is  
2 enacted to read:

3 "[NEW MATERIAL] LAW ENFORCEMENT REPORTS.--Upon request by  
4 the office, law enforcement agencies shall share with the  
5 office all law enforcement reports involving children placed in  
6 the custody of the department, receiving services under the  
7 supervision of the department, subject to a referral to the  
8 department or under investigation by the department."

9 SECTION 11. A new section of the Children's Code is  
10 enacted to read:

11 "[NEW MATERIAL] CONFIDENTIALITY OF INFORMATION.--

12 A. The office shall maintain the confidentiality of  
13 all case records, third-party records and court records, as  
14 well as any information gathered in the course of  
15 investigations and system monitoring duties. These records are  
16 exempt from public inspection and copying pursuant to the  
17 Inspection of Public Records Act and shall be kept confidential  
18 unless disclosure is:

- 19 (1) ordered by the court; or  
20 (2) necessary to prevent imminent harm.

21 B. Notwithstanding Subsection A of this section,  
22 the office may publicly report any patterns of conduct or  
23 repeated incidents identified by the office in carrying out the  
24 provisions of the Office of Child Advocate Act; provided that  
25 the office shall not publicly disclose either of the following:

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1 (1) individually identifiable information  
2 about a child unless the information is already known to the  
3 public; and

4 (2) investigation findings when there is  
5 pending law enforcement investigation or prosecution."

6 SECTION 12. A new section of the Children's Code is  
7 enacted to read:

8 "[NEW MATERIAL] OTHER REMEDIES.--An individual who pursues  
9 remedies pursuant to the Office of Child Advocate Act is not  
10 precluded from pursuing other legal or equitable remedies."

11 SECTION 13. A new section of the Children's Code is  
12 enacted to read:

13 "[NEW MATERIAL] NOTIFICATION OF OFFICE.--The department  
14 shall notify all children placed in the custody of the  
15 department, receiving services under the supervision of the  
16 department, subject to a referral to the department or under  
17 investigation by the department and their parents, guardians,  
18 substitute caregivers and fictive kin of the existence of the  
19 office, its purpose and function and its toll-free hotline and  
20 electronic communication portal with instructions for access."

21 SECTION 14. Section 32A-2-32 NMSA 1978 (being Laws 1993,  
22 Chapter 77, Section 61, as amended) is amended to read:

23 "32A-2-32. CONFIDENTIALITY--RECORDS.--

24 A. All records pertaining to the child, including  
25 all related social records, behavioral health screenings,

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1 diagnostic evaluations, psychiatric reports, medical reports,  
2 social studies reports, records from local detention  
3 facilities, client-identifying records from facilities for the  
4 care and rehabilitation of delinquent children, pre-parole or  
5 supervised release reports and supervision histories obtained  
6 by the juvenile probation office, parole officers and the  
7 juvenile public safety advisory board or in possession of the  
8 department, are confidential and shall not be disclosed  
9 directly or indirectly to the public.

10 B. The disclosure of all mental health and  
11 developmental disability records shall be made pursuant to the  
12 Children's Mental Health and Developmental Disabilities Act.

13 C. The records described in Subsection A of this  
14 section, other than mental health and developmental disability  
15 records, shall be disclosed only to any of the following,  
16 provided that the agency, person or institution receiving  
17 information shall not re-release the information without proper  
18 consent or as otherwise provided by law:

- 19 (1) court personnel;  
20 (2) the child's court appointed special  
21 advocates;  
22 (3) the child's attorney or guardian ad litem  
23 representing the child in any matter;  
24 (4) department personnel;  
25 (5) corrections department personnel;

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1 (6) law enforcement officials when the request  
2 is related to the investigation of a crime;

3 (7) district attorneys or children's court  
4 attorneys;

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

7 (9) those persons or entities of a child's  
8 Indian tribe specifically authorized to inspect such records  
9 pursuant to the federal Indian Child Welfare Act of 1978 or any  
10 regulations promulgated under that act;

11 (10) tribal juvenile justice system and social  
12 service representatives;

13 (11) a foster parent, if the records are those  
14 of a child currently placed with that foster parent or of a  
15 child being considered for placement with that foster parent,  
16 when the disclosure of the information is necessary for the  
17 child's treatment or care and shall include only that  
18 information necessary to provide for treatment and care of the  
19 child;

20 (12) school personnel involved with the child  
21 if the records concern the child's educational needs, but shall  
22 only include that information necessary to provide for the  
23 child's educational planning and needs;

24 (13) a health care or mental health  
25 professional involved in the evaluation or treatment of the

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1 child, the child's parents, guardians or custodian or other  
2 family members;

3 (14) representatives of the protection and  
4 advocacy system;

5 (15) the child's parent, guardian or legal  
6 custodian when the disclosure of the information is necessary  
7 for the child's treatment or care and shall include only that  
8 information necessary to provide for the treatment or care of  
9 the child;

10 (16) any other person or entity, by order of  
11 the court, having a legitimate interest in the case or the work  
12 of the court who agrees not to otherwise release the records;  
13 [~~and~~]

14 (17) the child, if fourteen years of age or  
15 older; and

16 (18) the office of child advocate and its  
17 employees and contractors, pursuant to the requirements of the  
18 Delinquency Act, if the records are needed for the purpose of  
19 implementing the Office of Child Advocate Act.

20 D. If disclosure of otherwise confidential records  
21 is made to the child or any other person or entity pursuant to  
22 a valid release of information signed by the child, all victim  
23 or witness identifying information shall be redacted or  
24 otherwise deleted.

25 E. Whoever intentionally and unlawfully releases

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1 any information or records closed to the public pursuant to  
2 this section or releases or makes other unlawful use of records  
3 in violation of this section is guilty of a petty misdemeanor.

4 F. The department shall promulgate rules for  
5 implementing disclosure of records pursuant to this section and  
6 in compliance with state and federal law and the Children's  
7 Court Rules."

8 SECTION 15. Section 32A-4-33 NMSA 1978 (being Laws 1993,  
9 Chapter 77, Section 127, as amended) is amended to read:

10 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

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

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

22 (1) court personnel and persons or entities  
23 authorized by contract with the court to review, inspect or  
24 otherwise have access to records or information in the court's  
25 possession;

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- 1 (2) court-appointed special advocates  
2 appointed to the neglect or abuse proceeding;
- 3 (3) the child's guardian ad litem;
- 4 (4) the attorney representing the child in an  
5 abuse or neglect action, a delinquency action or any other  
6 action under the Children's Code;
- 7 (5) department personnel and persons or  
8 entities authorized by contract with the department to review,  
9 inspect or otherwise have access to records or information in  
10 the department's possession;
- 11 (6) any local substitute care review board or  
12 any agency contracted to implement local substitute care review  
13 boards;
- 14 (7) law enforcement officials, except when use  
15 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;
- 16 (8) district attorneys, except when use  
17 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;
- 18 (9) any state government or tribal government  
19 social services agency in any state or when, in the opinion of  
20 the department, it is in the best interest of the child, a  
21 governmental social services agency of another country;
- 22 (10) a foster parent, if the records are those  
23 of a child currently placed with that foster parent or of a  
24 child being considered for placement with that foster parent  
25 and the records concern the social, medical, psychological or

1 educational needs of the child;

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

4 (12) a grandparent, parent of a sibling,  
5 relative or fictive kin, if the records or information pertain  
6 to a child being considered for placement with that  
7 grandparent, parent of a sibling, relative or fictive kin and  
8 the records or information concern the social, medical,  
9 psychological or educational needs of the child;

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

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

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

21 (16) representatives of the federal government  
22 or their contractors authorized by federal statute or  
23 regulation to review, inspect, audit or otherwise have access  
24 to records and information pertaining to neglect or abuse  
25 proceedings;

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1 (17) any person or entity attending a meeting  
2 arranged by the department to discuss the safety, well-being  
3 and permanency of a child, when the parent or child, or parent  
4 or legal custodian on behalf of a child younger than fourteen  
5 years of age, has consented to the disclosure; ~~and~~

6 (18) any other person or entity, by order of  
7 the court, having a legitimate interest in the case or the work  
8 of the court; and

9 (19) the office of child advocate and its  
10 employees and contractors, pursuant to the requirements of the  
11 Abuse and Neglect Act, if the records are needed for the  
12 purpose of implementing the Office of Child Advocate Act.

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

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1 department.

2 D. Whoever intentionally and unlawfully releases  
3 any information or records closed to the public pursuant to the  
4 Abuse and Neglect Act or releases or makes other unlawful use  
5 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.

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

12 SECTION 16. EFFECTIVE DATE.--The effective date of the  
13 provisions of this act is July 1, 2024.

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