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SENATE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

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

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

SECTION 1. Section 32A-3B-3 NMSA 1978 (being Laws 1993,
Chapter 77, Section 75, as amended) is amended to read:

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

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

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

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

3 (3) has been abandoned;

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

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

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

11 B. A child may be taken into protective custody
12 pursuant to a court order issued after an agency legally
13 charged with the supervision of the child has notified [~~a law~~
14 ~~enforcement agency~~] the department that the child has run away
15 from a placement.

16 C. When a child is taken into protective custody,
17 the department shall make a reasonable effort to determine
18 whether the child is an Indian child.

19 D. Any person, other than the child taken into
20 protective custody, who interferes with placing the child in
21 protective custody is guilty of a petty misdemeanor and shall
22 be sentenced pursuant to the provisions of Section 31-19-1 NMSA
23 1978."

24 SECTION 2. Section 32A-3B-4 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 76, as amended) is amended to read:

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1 "32A-3B-4. PROTECTIVE CUSTODY--RESTRICTIONS--TIME
2 LIMITATIONS.--

3 A. [~~A law enforcement officer who~~] When the
4 department takes a child into protective custody, the
5 department shall, with all reasonable speed, [~~(1)~~] inform the
6 child of the reasons for the protective custody [~~and~~
7 ~~(2) contact the department~~].

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

- 12 (1) accept custody of the child and designate
- 13 an appropriate placement in the community for the child; or
- 14 (2) return the child to the child's parent,
- 15 guardian or custodian if the child's safety is assured.

16 C. A child taken into protective custody shall not
17 be placed in or transported in a law enforcement vehicle or any
18 other vehicle that contains an adult placed under arrest,
19 unless circumstances exist in which any delay in transporting
20 the child to an appropriate facility would be likely to result
21 in substantial danger to the child's physical safety. When
22 such circumstances exist, the circumstances shall be described
23 in writing by the driver of the vehicle and submitted to the
24 driver's supervisor within two days after the driver
25 transported the child.

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1 D. A child taken into protective custody shall not
2 be held involuntarily for more than [~~two~~] three days, unless a
3 petition [~~to extend the custody~~] is filed pursuant to the
4 provisions of the Family in Need of Court-Ordered Services Act
5 or the Abuse and Neglect Act.

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

11 F. The [~~protective~~] custody order shall be served
12 on the respondent by a person authorized to serve arrest
13 warrants [~~and shall direct the law enforcement officer to take~~
14 ~~custody of the child and deliver the child to a place~~
15 ~~designated by the court~~].

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

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

20 "32A-3B-7. PROTECTIVE CUSTODY HEARING--TIME
21 LIMITATIONS.--

22 A. When a child of an alleged family in need of
23 court-ordered services is taken into protective custody by the
24 department or the department petitions the court for protective
25 custody of the child, a custody hearing shall be held within

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1 ~~ten~~ seven days from the date the petition is filed to
2 determine if the child should remain with the family or be
3 placed in the custody of the department pending adjudication.
4 Upon written request of the respondent, the hearing may be held
5 earlier, but in no event shall the hearing be held sooner than
6 two days after the date the petition was filed.

7 B. The parent, guardian or custodian of the child
8 shall be given reasonable notice of the time and place of the
9 hearing.

10 C. When the custody hearing is conducted, the court
11 shall release the child to ~~his~~ the child's parent, guardian
12 or custodian unless probable cause exists to believe that:

13 (1) the child is in immediate danger from
14 ~~his~~ the child's surroundings and the child's removal from
15 those surroundings is necessary for ~~his~~ the child's safety or
16 well-being;

17 (2) the child will be subject to injury by
18 others if not placed in the protective custody of the
19 department; or

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

23 D. At the conclusion of the protective custody
24 hearing, if the court determines that protective custody
25 pending adjudication is appropriate, the court may:

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

3 (2) return the child to the child's parent,
4 guardian or custodian, subject to conditions that will
5 reasonably [~~assure~~] ensure the safety and well-being of the
6 child.

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

15 F. The Rules of Evidence shall not apply to
16 protective custody hearings conducted pursuant to the
17 provisions of this section."

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

20 "32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect
21 Act:

22 A. "abandonment" includes instances when the
23 parent, without justifiable cause:

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

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

4 (a) three months if the child was under
5 six years of age at the commencement of the three-month period;
6 or

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

9 B. "abused child" means a child:

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

13 (2) who has suffered physical abuse, emotional
14 abuse or psychological abuse inflicted or caused by the child's
15 parent, guardian or custodian;

16 (3) who has suffered sexual abuse or sexual
17 exploitation inflicted by the child's parent, guardian or
18 custodian;

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

22 (5) whose parent, guardian or custodian has
23 knowingly or intentionally tortured, cruelly confined or
24 cruelly punished the child;

25 C. "aggravated circumstances" includes those

1 circumstances in which the parent, guardian or custodian has:

2 (1) attempted, conspired to cause or caused
3 great bodily harm to the child or great bodily harm or death to
4 the child's sibling;

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

8 (3) attempted, conspired to subject or has
9 subjected the child to torture, chronic abuse or sexual abuse;
10 or

11 (4) had parental rights over a sibling of the
12 child terminated involuntarily;

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

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

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1 (1) the child requires immediate care or
2 diagnosis for sexual abuse or abuse involving serious physical
3 injury;

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

6 (3) the physical environment poses an
7 immediate threat to the health or safety of the child that
8 cannot be mitigated by any reasonable means other than
9 immediate removal; or

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

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

16 ~~[F-]~~ G. "great bodily harm" means an injury to a
17 person that creates a high probability of death, that causes
18 serious disfigurement or that results in permanent or
19 protracted loss or impairment of the function of a member or
20 organ of the body;

21 ~~[G-]~~ H. "neglected child" means a child:

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

24 (2) who is without proper parental care and
25 control or subsistence, education, medical or other care or

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1 control necessary for the child's well-being because of the
2 faults or habits of the child's parent, guardian or custodian
3 or the failure or refusal of the parent, guardian or custodian,
4 when able to do so, to provide them;

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

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

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

23 [H-] I. "physical abuse" includes any case in which
24 the child suffers strangulation or suffocation and any case in
25 which the child exhibits evidence of skin bruising, bleeding,

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1 malnutrition, failure to thrive, burns, fracture of any bone,
2 subdural hematoma, soft tissue swelling or death and:

3 (1) there is not a justifiable explanation for
4 the condition or death;

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

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

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

11 [~~F.~~] J. "relative" means a person related to
12 another person by birth, adoption or marriage within the fifth
13 degree of consanguinity;

14 [~~J.~~] K. "sexual abuse" includes criminal sexual
15 contact, incest or criminal sexual penetration, as those acts
16 are defined by state law;

17 [~~K.~~] L. "sexual exploitation" includes:

18 (1) allowing, permitting or encouraging a
19 child to engage in prostitution;

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

22 (3) filming or depicting a child for obscene
23 or pornographic commercial purposes, as those acts are defined
24 by state law;

25 [~~L.~~] M. "sibling" means a brother or sister having

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1 one or both parents in common by birth or adoption;

2 [M-] N. "strangulation" has the same meaning as set
3 forth in Section 30-3-11 NMSA 1978;

4 [N-] O. "suffocation" has the same meaning as set
5 forth in Section 30-3-11 NMSA 1978; and

6 [O-] P. "transition plan" means an individualized
7 written plan for a child, based on the unique needs of the
8 child, that outlines all appropriate services to be provided to
9 the child to increase independent living skills. The plan
10 shall also include responsibilities of the child, and any other
11 party as appropriate, to enable the child to be self-sufficient
12 upon emancipation."

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

15 "32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD
16 NEGLECT--RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR
17 NEGLECT--PENALTY--NOTIFICATION OF PLAN OF CARE.--

18 A. Every person, including a licensed physician; a
19 resident or an intern examining, attending or treating a child;
20 a law enforcement officer; a judge presiding during a
21 proceeding; a registered nurse; a visiting nurse; a
22 schoolteacher; a school official; a social worker acting in an
23 official capacity; or a member of the clergy who has
24 information that is not privileged as a matter of law, who
25 knows or has a reasonable suspicion that a child is an abused

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1 or a neglected child shall report the matter immediately to:

2 (1) a local law enforcement agency;

3 (2) the department; or

4 (3) a tribal law enforcement or social

5 services agency for any Indian child residing in Indian

6 country.

7 B. A law enforcement agency receiving the report

8 shall immediately transmit the facts of the report and the

9 name, address and phone number of the reporter by telephone to

10 the department and shall transmit the same information in

11 writing within forty-eight hours. The department shall

12 immediately transmit the facts of the report and the name,

13 address and phone number of the reporter by telephone to a

14 local law enforcement agency and shall transmit the same

15 information in writing within forty-eight hours. The written

16 report shall contain the names and addresses of the child and

17 the child's parents, guardian or custodian, the child's age,

18 the nature and extent of the child's injuries, including any

19 evidence of previous injuries, and other information that the

20 maker of the report believes might be helpful in establishing

21 the cause of the injuries and the identity of the person

22 responsible for the injuries. The written report shall be

23 submitted upon a standardized form agreed to by the law

24 enforcement agency and the department. A report to the

25 department alleging abuse or neglect by a child's parent,

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1 guardian or custodian that is screened out by the department
2 shall not be transmitted to law enforcement.

3 C. The recipient of a report under Subsection A of
4 this section shall take immediate steps to ensure prompt
5 investigation of the report. The investigation shall ensure
6 that immediate steps are taken to protect the health or welfare
7 of the alleged abused or neglected child, as well as that of
8 any other child under the same care who may be in danger of
9 abuse or neglect. A local law enforcement officer trained in
10 the investigation of child abuse and neglect is responsible for
11 investigating reports of alleged child abuse or neglect at
12 schools, daycare facilities or child care facilities.

13 D. If the child alleged to be abused or neglected
14 is in the care or control of or in a facility administratively
15 connected to the department, the report shall be investigated
16 by a local law enforcement officer trained in the investigation
17 of child abuse and neglect. The investigation shall ensure
18 that immediate steps are taken to protect the health or welfare
19 of the alleged abused or neglected child, as well as that of
20 any other child under the same care who may be in danger of
21 abuse or neglect.

22 E. A law enforcement agency or the department
23 shall have access to any of the records pertaining to a child
24 abuse or neglect case maintained by any of the persons
25 enumerated in Subsection A of this section, except as otherwise

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1 provided in the Abuse and Neglect Act.

2 F. A person who violates the provisions of
3 Subsection A of this section is guilty of a misdemeanor and
4 shall be sentenced pursuant to the provisions of Section
5 31-19-1 NMSA 1978.

6 G. A finding that a pregnant woman is using or
7 abusing drugs made pursuant to an interview, self-report,
8 clinical observation or routine toxicology screen shall not
9 alone form a sufficient basis to report child abuse or neglect
10 to the department pursuant to Subsection A of this section. A
11 volunteer, contractor or staff of a hospital or freestanding
12 birthing center shall not make a report based solely on that
13 finding and shall make a notification pursuant to Subsection H
14 of this section. Nothing in this subsection shall be construed
15 to prevent a person from reporting to the department a
16 reasonable suspicion that a child is an abused or neglected
17 child based on other criteria as defined by Section 32A-4-2
18 NMSA 1978, or a combination of criteria that includes a finding
19 pursuant to this subsection.

20 H. A volunteer, contractor or staff of a hospital
21 or freestanding birthing center shall:

22 (1) complete a written plan of care for a
23 substance-exposed newborn as provided for by department rule
24 and the Children's Code; and

25 (2) provide notification to the department.

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1 Notification by a health care provider pursuant to this
2 paragraph shall not be construed as a report of child abuse or
3 neglect.

4 I. As used in this section, "notification" means
5 informing the department that a substance-exposed newborn was
6 born and providing a copy of the plan of care that was created
7 for the child; provided that notification shall comply with
8 federal guidelines and shall not constitute a report of child
9 abuse or neglect."

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

12 "32A-4-4. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY.--

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

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

23 C. During the investigation of a report alleging
24 neglect or abuse, the matter may be referred to another
25 appropriate agency and conferences may be conducted for the

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1 purpose of effecting adjustments or agreements that will
2 obviate the necessity for filing a petition. A representative
3 of the department shall, at the initial time of contact with
4 the party subject to the investigation, advise the party of the
5 reports or allegations made, in a manner that is consistent
6 with laws protecting the rights of the informant. The parties
7 shall be advised of their basic rights and no party may be
8 compelled to appear at any conference, to produce any papers or
9 to visit any place. The investigation shall be completed
10 within a reasonable period of time from the date the report was
11 made.

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

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

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

22 "32A-4-6. TAKING INTO CUSTODY--PENALTY--RELEASE OR
23 DELIVERY FROM CUSTODY.--

24 A. A child may be [~~held or~~] taken into temporary
25 custody

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1 [~~(1)~~] by a law enforcement officer when the
2 officer has evidence giving rise to reasonable grounds to
3 believe that the child is abused or neglected and that there is
4 an immediate threat to the child's safety; provided that the
5 law enforcement officer contacts the department to enable the
6 department to conduct an on-site safety assessment to determine
7 whether it is appropriate to take the child into immediate
8 custody, except that a child may be taken into custody by a law
9 enforcement officer without a protective services assessment
10 being conducted if:

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

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

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

20 ~~(d) the child is in need of emergency~~
21 ~~medical care;~~

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

24 ~~(f) the child is in imminent risk of~~
25 ~~abuse; or~~

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1 ~~(2) by medical personnel when there are~~
2 ~~reasonable grounds to believe that the child has been injured~~
3 ~~as a result of abuse or neglect and that the child may be at~~
4 ~~risk of further injury if returned to the child's parent,~~
5 ~~guardian or custodian. The medical personnel shall hold the~~
6 ~~child until a law enforcement officer is available to take~~
7 ~~custody of the child pursuant to Paragraph (1) of this~~
8 ~~subsection] only pursuant to the following:~~

9 (1) an order of the district court; or

10 (2) exigent circumstances as defined in
11 Section 32A-4-2 NMSA 1978.

12 B. When the department determines filing an
13 application for removal is necessary, it shall file without
14 delay. On an application for a removal order filed by the
15 department upon a sworn written statement of facts by a
16 department representative, law enforcement officer or medical
17 personnel, the district court may issue an ex-parte removal
18 order authorizing the department to take temporary custody of a
19 child on finding that continuation in the home would be
20 contrary to the child's welfare and probable cause exists to
21 believe that temporary custody is necessary to protect the
22 child from imminent threat of abuse or neglect. When
23 determining whether to issue an ex-parte removal order, the
24 court shall consider whether the threat can be mitigated by
25 less extreme measures and whether the harm from any imminent

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1 threat of abuse or neglect outweighs the harm to the child
2 resulting from removal. Pending the department filing the
3 application and the court's action on the application, the
4 department may hold and transport the child.

5 C. If a child is taken into temporary custody
6 pursuant to this section, but the initial allegations did not
7 include concerns for the child's sibling, the safety of the
8 sibling shall be assessed by the department. If there are
9 danger indicators that cannot be mitigated, the sibling shall
10 also be taken into temporary custody only if independent
11 probable cause exists to believe temporary custody is necessary
12 as to each child.

13 D. The department may take a child into temporary
14 custody without an ex-parte removal order if exigent
15 circumstances exist. If a law enforcement officer or medical
16 personnel has evidence to believe exigent circumstances exist,
17 the law enforcement officer or medical personnel shall contact
18 the department, which will then conduct an on-site safety
19 assessment to determine whether it is necessary to take the
20 child into temporary custody without a court order. The
21 department shall document its decision to take the child into
22 temporary custody based on exigent circumstances.

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

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1 psychotropic medication to the child.

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

6 F. When a law enforcement officer or medical
7 personnel has a reasonable belief that a child has been injured
8 as a result of abuse or neglect or that the child may be at
9 risk of harm if returned to the child's parent, guardian or
10 custodian, the law enforcement officer or medical personnel
11 shall hold the child until the department is available to
12 conduct an on-site safety assessment to determine whether it is
13 necessary to take the child into temporary custody pursuant to
14 Subsection A of this section.

15 G. When the department takes a child into temporary
16 custody due to alleged sexual abuse or abuse involving serious
17 physical injury pursuant to Subsection D of this section, the
18 department shall immediately arrange to have the child examined
19 by a physician or a health care provider who has specific
20 training in evaluations of child abuse. If the examination
21 rules out abuse, the department shall release the child to the
22 custody of the parent, guardian or custodian unless the
23 department files an application for a removal order.

24 ~~[D.]~~ H. When a child is taken into temporary
25 custody, the department shall make reasonable efforts to

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1 determine whether the child is an Indian child. The department
2 shall provide written notice to the Indian child's tribe of its
3 investigation.

4 I. The department shall make active efforts to
5 prevent or eliminate the need for removing the child from the
6 child's home, with the paramount concern being the child's
7 health and safety. If the department knows or has reason to
8 know that the child is an Indian child, the department shall
9 also provide remedial services and rehabilitative programs
10 designed to prevent the breakup of the Indian family.

11 J. When the department has obtained temporary
12 custody of the child through an ex-parte removal order or
13 through a determination that exigent circumstances exist, the
14 department shall give written notice thereof, including the
15 court order, if any, as soon as possible, and in no case later
16 than twenty-four hours, to the child's parent, guardian or
17 custodian together with a statement of the reason for taking
18 the child into custody.

19 ~~[E-]~~ K. If a child taken into temporary custody is
20 an Indian child or there is a reason to know the child is an
21 Indian child, ~~[and is alleged to be neglected or abused]~~ the
22 department shall give notice to the agent of the Indian child's
23 tribe in accordance with the federal Indian Child Welfare Act
24 of 1978.

25 L. When the department has obtained temporary

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1 custody of a child through an ex-parte removal order or through
2 a determination that exigent circumstances exist, the
3 department shall file a petition within three days from the
4 date that the child was taken into temporary custody. When the
5 department obtains temporary custody based on a determination
6 that exigent circumstances exist, the department shall obtain
7 an ex-parte removal order within eighteen hours of the
8 determination. The department may release the child at any
9 time within the three-day period after the child was taken into
10 temporary custody if the department determines that release is
11 appropriate.

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

14 [~~F-~~] N. Any person who intentionally interferes
15 with protection of a child, as provided by [~~Subsection A of~~]
16 this section, is guilty of a petty misdemeanor."

17 **SECTION 8.** Section 32A-4-17.1 NMSA 1978 (being Laws
18 2016, Chapter 54, Section 3) is amended to read:

19 "32A-4-17.1. NOTICE TO GRANDPARENTS AND RELATIVES.--
20 Within thirty days after a child is taken into custody by [~~law~~
21 ~~enforcement]~~ the department, or when the department files a
22 petition seeking legal custody of the child, whichever occurs
23 first, the department shall exercise due diligence and make
24 reasonable efforts to identify and provide notice to all
25 grandparents; all parents of a sibling of the child, when the

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1 parent has legal custody of the sibling; and other adult
2 relatives of the child, including adult relatives suggested by
3 the parents, unless such notice would be contrary to the best
4 interests of the child due to family or domestic violence.

5 The notice shall:

6 A. specify that the child has been or is being
7 removed from the custody of the parent or parents of the
8 child;

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

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

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

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

20 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
21 PROBABLE CAUSE.--

22 A. [~~When a child alleged to be neglected or abused~~
23 ~~has been placed in the legal custody of the department or the~~
24 ~~department has petitioned the court for temporary custody]~~ A
25 custody hearing shall be held within [~~ten~~] seven days from the

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1 date the petition is filed to determine if the child should
2 remain in or be placed in the department's custody pending
3 adjudication. Upon written request of the respondent, the
4 hearing may be held earlier, but in no event shall the hearing
5 be held sooner than two days after the date the petition was
6 filed.

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

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

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

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

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

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

23 (5) the parent, guardian or custodian [~~is~~
24 ~~not able or willing to provide adequate supervision and care~~
25 ~~for the child]~~ left the child without adequate supervision or

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1 a plan for support and care.

2 D. At the conclusion of the custody hearing, if
3 the court determines that probable cause exists pursuant to
4 Subsection C of this section, the 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 E. Reasonable efforts shall be made to preserve
15 and reunify the family, with the paramount concern being the
16 child's health and safety. When the department determines
17 that the home of an adult relative of the child meets all
18 relevant child protection and licensing standards and
19 placement in the home would be in the best interest of the
20 child, the department shall give a preference to placement of
21 the child in that home. The department shall make reasonable
22 efforts to conduct home studies on appropriate relatives who
23 express an interest in providing placement for the child.

24 F. At the conclusion of the custody hearing, if
25 the court determines that probable cause does not exist

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1 pursuant to Subsection C of this section, the court shall:

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

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

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

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

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1 H. The Rules of Evidence shall not apply to
2 custody 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
8 to the appeal, the appeal shall be expedited and shall be
9 heard at the earliest practicable time. While an appeal
10 pursuant to this section is pending, the court shall have
11 jurisdiction to take further action in the case pursuant to
12 Subsection B of Section 32A-1-17 NMSA 1978.

13 J. Nothing in this section shall be construed to
14 abridge the rights of [~~Indian children pursuant to~~] the
15 parties and the Indian child's tribe in a proceeding to which
16 the federal Indian Child Welfare Act of 1978 applies."

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

19 "32A-4-18.1. [NEW MATERIAL] POST-PETITION REMOVAL
20 HEARING.--

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

25 B. Pursuant to Subsection A of this section, a

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1 hearing shall be held within seven days of the removal to
2 determine if the child should remain in the department's
3 custody.

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

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

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

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

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

18 (5) the parent, guardian or custodian left
19 the child without adequate supervision or a plan for support
20 and care.

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

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1 section exists.

2 E. At the conclusion of the removal hearing, if
3 the court determines that probable cause exists pursuant to
4 Subsection C of this section or that a preponderance of the
5 evidence exists pursuant to Subsection D of this section, the
6 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 F. At the conclusion of the removal hearing, if
17 the court determines that probable cause does not exist
18 pursuant to Subsection C of this section or that a
19 preponderance of the evidence does not exist pursuant to
20 Subsection D of this section, the court shall:

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

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

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

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

5 G. The Rules of Evidence shall not apply to
6 removal hearings.

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

17 I. Nothing in this section shall be construed to
18 abridge the rights of the parties and the Indian child's tribe
19 in a proceeding to which the federal Indian Child Welfare Act
20 of 1978 applies."

21 SECTION 11. REPEAL.--Sections 32A-4-7 and 32A-4-16 NMSA
22 1978 (being Laws 1993, Chapter 77, Sections 101 and 110, as
23 amended) are repealed.

24 SECTION 12. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is October 1, 2021.

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