

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 28

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

David M. Gallegos

AN ACT

RELATING TO THE ABUSE AND NEGLECT ACT; AMENDING THE ABUSE AND
NEGLECT ACT; ADDING DEFINITIONS; PROVIDING NOTICE TO
GRANDPARENTS AND OTHER RELATIVES; CHANGING PROCEDURES FOR
PERMANENCY HEARINGS; MODIFYING AND EXPANDING CONFIDENTIALITY
PROVISIONS.

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

SECTION 1. Section 32A-4-1 NMSA 1978 (being Laws 1993,
Chapter 77, Section 95) is amended to read:

"32A-4-1. SHORT TITLE.--Chapter [32] 32A, Article 4 NMSA
1978 may be cited as the "Abuse and Neglect Act"."

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

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

underscoring material = new
~~[bracketed material] = delete~~

1 A. "abandonment" includes instances when the
2 parent, without justifiable cause:

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

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

8 (a) three months if the child was under
9 six years of age at the commencement of the three-month period;
10 or

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

13 B. "abused child" means a child:

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

17 (2) who has suffered physical abuse, emotional
18 abuse or psychological abuse inflicted or caused by the child's
19 parent, guardian or custodian;

20 (3) who has suffered sexual abuse or sexual
21 exploitation inflicted by the child's parent, guardian or
22 custodian;

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

1 (5) whose parent, guardian or custodian has
2 knowingly or intentionally tortured, cruelly confined or
3 cruelly punished the child;

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

6 (1) attempted, conspired to cause or caused
7 great bodily harm to the child or great bodily harm or death to
8 the child's sibling;

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

12 (3) attempted, conspired to subject or has
13 subjected the child to torture, chronic abuse or sexual abuse;
14 or

15 (4) had parental rights over a sibling of the
16 child terminated involuntarily;

17 D. "fictive kin" means a person not related by
18 birth, adoption or marriage with whom a child has an
19 emotionally significant relationship;

20 [~~D-~~] E. "great bodily harm" means an injury to a
21 person that creates a high probability of death, that causes
22 serious disfigurement or that results in permanent or
23 protracted loss or impairment of the function of a member or
24 organ of the body;

25 [~~E-~~] F. "neglected child" means a child:

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

3 (2) who is without proper parental care and
4 control or subsistence, education, medical or other care or
5 control necessary for the child's well-being because of the
6 faults or habits of the child's parent, guardian or custodian
7 or the failure or refusal of the parent, guardian or custodian,
8 when able to do so, to provide them;

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

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

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

underscored material = new
[bracketed material] = delete

1 afforded to all children under the Children's Code;

2 ~~[F-]~~ G. "physical abuse" includes but is not
3 limited to any case in which the child exhibits evidence of
4 skin bruising, bleeding, malnutrition, failure to thrive,
5 burns, fracture of any bone, subdural hematoma, soft tissue
6 swelling or death and:

7 (1) there is not a justifiable explanation for
8 the condition or death;

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

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

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

15 H. "relative" means a person related to another
16 person by birth, adoption or marriage within the fifth degree
17 of consanguinity;

18 ~~[G-]~~ I. "sexual abuse" includes but is not limited
19 to criminal sexual contact, incest or criminal sexual
20 penetration, as those acts are defined by state law;

21 ~~[H-]~~ J. "sexual exploitation" includes but is not
22 limited to:

23 (1) allowing, permitting or encouraging a
24 child to engage in prostitution;

25 (2) allowing, permitting, encouraging or

underscored material = new
[bracketed material] = delete

1 engaging a child in obscene or pornographic photographing; or
2 (3) filming or depicting a child for obscene
3 or pornographic commercial purposes, as those acts are defined
4 by state law; [~~and~~]

5 K. "sibling" means a brother or sister having one
6 or both parents in common by birth or adoption; and

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

14 SECTION 3. A new Section 32A-4-17.1 NMSA 1978 is enacted
15 to read:

16 "32A-4-17.1. [NEW MATERIAL] NOTICE TO GRANDPARENTS AND
17 RELATIVES.--Within thirty days after a child is taken into
18 custody by law enforcement, or when the department files a
19 petition seeking legal custody of the child, whichever occurs
20 first, the department shall exercise due diligence and make
21 reasonable efforts to identify and provide notice to all
22 grandparents; all parents of a sibling of the child, when the
23 parent has legal custody of the sibling; and other adult
24 relatives of the child, including adult relatives suggested by
25 the parents, unless such notice would be contrary to the best

.202474.1

underscoring material = new
~~[bracketed material] = delete~~

1 interests of the child due to family or domestic violence. The
2 notice shall:

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

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

9 C. describe the requirements for becoming a foster
10 family home and the additional services and support that are
11 available for children placed in such a home; and

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

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

16 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
17 PROBABLE CAUSE.--

18 A. When a child alleged to be neglected or abused
19 has been placed in the legal custody of the department or the
20 department has petitioned the court for temporary custody, a
21 custody hearing shall be held within ten days from the date the
22 petition is filed to determine if the child should remain in or
23 be placed in the department's custody pending adjudication.

24 Upon written request of the respondent, the hearing may be held
25 earlier, but in no event shall the hearing be held sooner than

.202474.1

1 two days after the date the petition was filed.

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

5 C. At the custody hearing, 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 an illness or
9 injury, and the parent, guardian or custodian is not providing
10 adequate care for the child;

11 (2) the child is in immediate danger from the
12 child's surroundings, and removal from those surroundings is
13 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 child
17 by the child's parent, guardian or custodian; or

18 (5) the parent, guardian or custodian is not
19 able or willing to provide adequate supervision and care for
20 the child.

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

24 (1) return legal custody of the child to the
25 child's parent, guardian or custodian upon such conditions as

1 will reasonably ensure the safety and well-being of the child,
2 including protective supervision by the department; or

3 (2) award legal custody of the child to the
4 department.

5 E. Reasonable efforts shall be made to preserve and
6 reunify the family, with the paramount concern being the
7 child's health and safety. When the department determines that
8 the home of an adult relative of the child meets all relevant
9 child protection and licensing standards and placement in the
10 home would be in the best interest of the child, the department
11 shall give a preference to placement of the child in that home.
12 The department shall make reasonable efforts to conduct home
13 studies on appropriate relatives who express an interest in
14 providing placement for the child.

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

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

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

24 (3) order that the child's parent, guardian or
25 custodian allow the child necessary contact with the child's

underscoring material = new
~~[bracketed material] = delete~~

1 guardian ad litem or attorney.

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

15 H. The Rules of Evidence shall not apply to custody
16 hearings.

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

.202474.1

underscoring material = new
~~[bracketed material] = delete~~

1 Section 32A-1-17 NMSA 1978.

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

5 SECTION 5. Section 32A-4-21 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 115, as amended) is amended to read:

7 "32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,
8 REPORTS AND EXAMINATIONS.--

9 A. Prior to holding a dispositional hearing, the
10 court shall direct that a predisposition study and report be
11 submitted in writing to the court by the department.

12 B. The predisposition study required pursuant to
13 Subsection A of this section shall contain the following
14 information:

15 (1) a statement of the specific reasons for
16 intervention by the department or for placing the child in the
17 department's custody and a statement of the parent's ability to
18 care for the child in the parent's home without causing harm to
19 the child;

20 (2) a statement of how an intervention plan is
21 designed to achieve placement of the child in the least
22 restrictive setting available, consistent with the best
23 interests and special needs of the child, including a statement
24 of the likely harm the child may suffer as a result of being
25 removed from the parent's home, including emotional harm that

.202474.1

1 may result due to separation from the child's parents, and a
2 statement of how the intervention plan is designed to place the
3 child in close proximity to the parent's home without causing
4 harm to the child due to separation from parents, siblings or
5 any other person who may significantly affect the child's best
6 interest;

7 (3) the wishes of the child as to the child's
8 custodian;

9 (4) a statement of the efforts the department
10 has made to identify and locate all grandparents and other
11 relatives and to conduct home studies on any appropriate
12 relative expressing an interest in providing care for the
13 child, and a statement as to whether the child has a family
14 member who, subsequent to study by the department, is
15 determined to be qualified to care for the child;

16 (5) a description of services offered to the
17 child, the child's family and the child's foster care family
18 and a summary of reasonable efforts made to prevent removal of
19 the child from the child's family or reasonable efforts made to
20 reunite the child with the child's family;

21 (6) a description of the home or facility in
22 which the child is placed and the appropriateness of the
23 child's placement;

24 (7) the results of any diagnostic examination
25 or evaluation ordered at the custody hearing;

underscored material = new
[bracketed material] = delete

1 (8) a statement of the child's medical and
2 educational background;

3 (9) if the child is an Indian child, whether
4 the placement preferences set forth in the federal Indian Child
5 Welfare Act of 1978 or the placement preferences of the child's
6 Indian tribe were followed and whether the child's [~~treatment~~]
7 case plan provides for maintaining the child's cultural ties;

8 (10) a [~~treatment~~] case plan that sets forth
9 steps to ensure that the child's physical, medical,
10 psychological and educational needs are met and that sets forth
11 services to be provided to the child and the child's parents to
12 facilitate permanent placement of the child in the parent's
13 home;

14 (11) for children sixteen years of age and
15 older, a plan for developing the specific skills the child
16 requires for successful transition into independent living as
17 an adult, regardless of whether the child is returned to the
18 child's parent's home; [~~and~~]

19 (12) a [~~treatment~~] case plan that sets forth
20 steps to ensure that the child's educational needs are met and,
21 for a child fourteen years of age or older, a [~~treatment~~] case
22 plan that specifically sets forth the child's educational and
23 post-secondary goals; and

24 (13) a description of the child's foster care
25 placement and whether it is appropriate in terms of the

1 educational setting and proximity to the school the child was
2 enrolled in at the time of the placement, including plans for
3 travel for the child to remain in the school in which the child
4 was enrolled at the time of placement, if reasonable and in the
5 child's best interest.

6 C. A copy of the predisposition report shall be
7 provided by the department to counsel for all parties five days
8 before the dispositional hearing.

9 D. If the child is an adjudicated abused child, any
10 temporary custody orders shall remain in effect until the court
11 has received and considered the predispositional study at the
12 dispositional hearing."

13 SECTION 6. Section 32A-4-22 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 116, as amended) is amended to read:

15 "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED
16 CHILD.--

17 A. If not held in conjunction with the adjudicatory
18 hearing, the dispositional hearing shall be commenced within
19 thirty days after the conclusion of the adjudicatory hearing.
20 At the conclusion of the dispositional hearing, the court shall
21 make and include in the dispositional judgment its findings on
22 the following:

23 (1) the interaction and interrelationship of
24 the child with the child's parent, siblings and any other
25 person who may significantly affect the child's best interest;

1 (2) the child's adjustment to the child's
2 home, school and community;

3 (3) the mental and physical health of all
4 individuals involved;

5 (4) the wishes of the child as to the child's
6 placement;

7 (5) the wishes of the child's parent, guardian
8 or custodian as to the child's custody;

9 (6) whether reasonable efforts have been made
10 by the department to identify, locate and give notice to all
11 grandparents and other relatives and to conduct home studies on
12 any appropriate relative who expresses an interest in providing
13 care for the child. If the court finds that reasonable efforts
14 in these areas have not been made, the court may make
15 supplemental orders as necessary and may reconsider the matter
16 at the initial judicial review and subsequent periodic review
17 hearings;

18 (7) whether consideration has been given to
19 the child's familial identity and connections;

20 [~~(6)~~] (8) whether there exists a relative of
21 the child or other individual who, after study by the
22 department, is found to be qualified to receive and care for
23 the child;

24 [~~(7)~~] (9) the availability of services
25 recommended in the [~~treatment~~] case plan prepared as a part of

underscored material = new
[bracketed material] = delete

1 the predisposition study in accordance with the provisions of
2 Section 32A-4-21 NMSA 1978;

3 ~~(8)~~ (10) the ability of the parent to care
4 for the child in the home so that no harm will result to the
5 child;

6 ~~(9)~~ (11) whether reasonable efforts were
7 ~~used~~ made by the department to prevent removal of the child
8 from the home prior to placement in substitute care and whether
9 reasonable efforts were ~~used~~ made to attempt reunification of
10 the child with the natural parent;

11 ~~(10)~~ (12) whether reasonable efforts were
12 made by the department to place siblings in custody together,
13 unless such joint placement would be contrary to the safety or
14 well-being of any of the siblings in custody, and whether any
15 siblings not jointly placed have been provided reasonable
16 visitation or other ongoing interaction, unless visitation or
17 other ongoing interaction would be contrary to the safety or
18 well-being of any of the siblings; and

19 ~~(11)~~ (13) if the child is an Indian child,
20 whether the placement preferences set forth in the federal
21 Indian Child Welfare Act of 1978 or the placement preferences
22 of the child's Indian tribe have been followed and whether the
23 Indian child's ~~treatment~~ case plan provides for maintaining
24 the Indian child's cultural ties. When placement preferences
25 have not been followed, good cause for noncompliance shall be

.202474.1

underscored material = new
[bracketed material] = delete

1 clearly stated and supported.

2 B. If a child is found to be neglected or abused,
3 the court may enter its judgment making any of the following
4 dispositions to protect the welfare of the child:

5 (1) permit the child to remain with the
6 child's parent, guardian or custodian, subject to those
7 conditions and limitations the court may prescribe;

8 (2) place the child under protective
9 supervision of the department; or

10 (3) transfer legal custody of the child to
11 [~~any~~] one of the following:

12 (a) the noncustodial parent, if it is
13 found to be in the child's best interest; or

14 [~~(b) an agency responsible for the care~~
15 ~~of neglected or abused children; or~~

16 [~~(c) a child placement agency willing and~~
17 ~~able to assume responsibility for the education, care and~~
18 ~~maintenance of the child and licensed or otherwise authorized~~
19 ~~by law to receive and provide care for the child]~~

20 (b) the department.

21 C. If a child is found to be neglected or abused,
22 in its dispositional judgment the court shall also order the
23 department to implement and the child's parent, guardian or
24 custodian to cooperate with any [~~treatment~~] case plan approved
25 by the court. Reasonable efforts shall be made to preserve and

1 reunify the family, with the paramount concern being the
2 child's health and safety. The court may determine that
3 reasonable efforts are not required to be made when the court
4 finds that:

5 (1) the efforts would be futile; or

6 (2) the parent, guardian or custodian has
7 subjected the child to aggravated circumstances.

8 D. Any parent, guardian or custodian of a child who
9 is placed in the legal custody of the department or other
10 person pursuant to Subsection B of this section shall have
11 reasonable rights of visitation with the child as determined by
12 the court, unless the court finds that the best interests of
13 the child preclude any visitation.

14 E. The court may order reasonable visitation
15 between a child placed in the custody of the department and the
16 child's siblings or any other person who may significantly
17 affect the child's best interest, if the court finds the
18 visitation to be in the child's best interest.

19 F. Unless a child found to be neglected or abused
20 is also found to be delinquent, the child shall not be confined
21 in an institution established for the long-term care and
22 rehabilitation of delinquent children.

23 G. When the court vests legal custody in an agency,
24 institution or department, the court shall transmit with the
25 dispositional judgment copies of the clinical reports, the

underscoring material = new
~~[bracketed material] = delete~~

1 predisposition study and report and any other information it
2 has pertinent to the care and treatment of the child.

3 H. Prior to a child being placed in the custody or
4 protective supervision of the department, the department shall
5 be provided with reasonable oral or written notification and an
6 opportunity to be heard. At any hearing held pursuant to this
7 subsection, the department may appear as a party.

8 I. When a child is placed in the custody of the
9 department, the department shall investigate whether the child
10 is eligible for enrollment as a member of an Indian tribe and,
11 if so, the department shall pursue the enrollment on the
12 child's behalf.

13 J. When the court determines pursuant to Subsection
14 C of this section that no reasonable efforts at reunification
15 are required, the court shall conduct, within thirty days, a
16 permanency hearing as described in Section 32A-4-25.1 NMSA
17 1978. Reasonable efforts shall be made to implement and
18 finalize the permanency plan in a timely manner."

19 **SECTION 7.** Section 32A-4-25.1 NMSA 1978 (being Laws 1997,
20 Chapter 34, Section 8, as amended) is amended to read:

21 "32A-4-25.1. PERMANENCY HEARINGS--PERMANENCY REVIEW
22 HEARINGS.--

23 A. A permanency hearing shall be commenced within
24 six months of the initial judicial review of a child's
25 dispositional order or within twelve months of a child entering

.202474.1

underscored material = new
[bracketed material] = delete

1 foster care pursuant to Subsection D of this section, whichever
2 occurs first. Prior to the initial permanency hearing, all
3 parties to the hearing shall attend a mandatory meeting and
4 attempt to settle issues attendant to the permanency hearing
5 and develop a proposed [~~treatment~~] case plan that serves the
6 child's best interest. Prior to the initial permanency
7 hearing, the department shall submit a progress report
8 regarding the child to the local substitute care review board
9 for that judicial district. The local substitute care review
10 board may review the child's dispositional order, any
11 continuation of that order and the department's progress report
12 and report its findings and recommendations to the court.

13 B. At the permanency hearing, all parties shall
14 have the opportunity to present evidence and to cross-examine
15 witnesses. At the conclusion of the permanency hearing, the
16 court shall order one of the following permanency plans for the
17 child:

- 18 (1) reunification;
- 19 (2) placement for adoption after the parents'
20 rights have been relinquished or terminated or after a motion
21 has been filed to terminate parental rights;
- 22 (3) placement with a person who will be the
23 child's permanent guardian;
- 24 (4) placement in the legal custody of the
25 department with the child placed in the home of a fit and

underscored material = new
[bracketed material] = delete

1 willing relative; or

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

6 C. If the court adopts a permanency plan of
7 reunification, the court shall adopt a plan for transitioning
8 the child home within a reasonable period depending on the
9 facts and circumstances of the case, but not to exceed six
10 months, and schedule a permanency review hearing within three
11 months. If the child is reunified, the subsequent hearing may
12 be vacated.

13 ~~[D. If the court adopts a permanency plan other~~
14 ~~than reunification, the court shall determine whether the~~
15 ~~department has made reasonable efforts to identify and locate~~
16 ~~all grandparents and other relatives. The court shall also~~
17 ~~determine whether the department has made reasonable efforts to~~
18 ~~conduct home studies on any appropriate relative expressing an~~
19 ~~interest in providing permanency for the child. The court must~~
20 ~~ensure the consideration has been given to the child's familial~~
21 ~~identity and connections. If the court finds that reasonable~~
22 ~~efforts have not been made to identify or locate grandparents~~
23 ~~and other relatives or to conduct home studies on appropriate~~
24 ~~and willing relatives, the court shall schedule a permanency~~
25 ~~review within sixty days to determine whether an appropriate~~

.202474.1

underscored material = new
[bracketed material] = delete

1 ~~relative placement has been made. If a relative placement is~~
2 ~~made, the subsequent hearing may be vacated.~~

3 E.] D. At the permanency review hearing, all
4 parties and the child's guardian ad litem or attorney shall
5 have the opportunity to present evidence and cross-examine
6 witnesses. Based on the evidence, the court shall:

7 (1) change the plan from reunification to one
8 of the alternative plans provided in Subsection B of this
9 section;

10 (2) dismiss the case and return custody of the
11 child to the child's parent, guardian or custodian; [e]

12 (3) continue legal custody of the child in the
13 department to complete a transition home to the child's parent,
14 guardian or custodian and continue the case plan for not more
15 than six months, after which the case shall be dismissed unless
16 the plan is changed as provided in Paragraph (1) of this
17 subsection; or

18 [~~3~~] (4) return the child to the custody of
19 the child's parent, guardian or custodian, subject to any
20 conditions or limitations as the court may prescribe, including
21 protective supervision of the child by the department and
22 continuation of the [~~treatment~~] case plan for not more than six
23 months, after which the case shall be dismissed. The
24 department may seek removal of a child from the home by
25 obtaining an order in the pending case or by seeking emergency

.202474.1

underscored material = new
[bracketed material] = delete

1 removal under Section 32A-4-6 NMSA 1978 during the period of
2 protective supervision if the child's best interest requires
3 such action. When a child is removed in this situation, a
4 permanency hearing shall be scheduled within thirty days of the
5 child coming back into the department's legal custody.

6 ~~[F.]~~ E. The court shall hold a permanency hearing
7 and adopt a permanency plan for a child within twelve months of
8 the child entering foster care. For purposes of this section,
9 a child shall be considered to have entered foster care on the
10 earlier of:

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

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

15 ~~[G.]~~ F. The court shall hold permanency hearings
16 every twelve months when a child is in the legal custody of the
17 department.

18 ~~[H.]~~ G. The children's court attorney shall give
19 notice to all parties, including the child by and through the
20 child's guardian ad litem or attorney, the child's CASA, a
21 contractor administering the local substitute care review board
22 and the child's foster parent or substitute care provider of
23 the time, place and purpose of any permanency hearing or
24 permanency review hearing held pursuant to this section.

25 ~~[I.]~~ H. The Rules of Evidence shall not apply to

underscored material = new
[bracketed material] = delete

1 permanency hearings. The court may admit testimony by any
2 person given notice of the permanency hearing who has
3 information about the status of the child or the status of the
4 treatment plan. All testimony shall be subject to cross-
5 examination."

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

8 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

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

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

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

24 (2) court-appointed special advocates
25 appointed to the neglect or abuse proceeding;

.202474.1

underscored material = new
~~[bracketed material] = delete~~

1 (3) the child's guardian ad litem;

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

5 (5) department personnel and persons or
6 entities authorized by contract with the department to review,
7 inspect or otherwise have access to records or information in
8 the department's possession;

9 (6) any local substitute care review board or
10 any agency contracted to implement local substitute care review
11 boards;

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

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

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

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

24 (11) a foster parent, if the records are those
25 of a child currently placed with that foster parent or of a

.202474.1

underscored material = new
[bracketed material] = delete

1 child being considered for placement with that foster parent
2 and the records concern the social, medical, psychological or
3 educational needs of the child;

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

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

12 [~~(13)~~] (14) health care or mental health
13 professionals involved in the evaluation or treatment of the
14 child or of the child's parents, guardian, custodian or other
15 family members;

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

21 [~~(15)~~] (16) children's safehouse organizations
22 conducting investigatory interviews of children on behalf of a
23 law enforcement agency or the department; [~~and~~

24 ~~(16)~~] (17) representatives of the federal
25 government or their contractors authorized by federal statute

.202474.1

underscored material = new
~~[bracketed material]~~ = delete

1 or regulation to review, inspect, audit or otherwise have
2 access to records and information pertaining to neglect or
3 abuse proceedings;

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

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

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

.202474.1

