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AN ACT

RELATING TO CHILDREN; ENACTING THE INDIAN FAMILY PROTECTION ACT; CONSOLIDATING PROVISIONS SPECIFIC TO CHILD CUSTODY PROCEEDINGS INVOLVING INDIAN CHILDREN INTO THE INDIAN FAMILY PROTECTION ACT; PROVIDING ADDITIONAL REQUIREMENTS GOVERNING CHILD CUSTODY PROCEEDINGS INVOLVING INDIAN CHILDREN; PROVIDING FOR CONFIDENTIALITY OF CERTAIN RECORDS; PROVIDING A PENALTY; CREATING THE OFFICE OF TRIBAL AFFAIRS WITHIN THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; REQUIRING A CULTURAL COMPONENT IN CASE PLANS IN ABUSE AND NEGLECT PROCEEDINGS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

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

"SHORT TITLE.--Sections 1 through 42 of this act may be cited as the "Indian Family Protection Act"."

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

"DEFINITIONS.--As used in the Indian Family Protection Act:

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

B. "adoptive placement" means a permanent

1 placement of an Indian child for adoption, including an
2 action resulting in a final decree of adoption;

3 C. "child custody proceeding" means an action for
4 foster care placement, termination of parental rights,
5 permanent guardianship or adoptive placement or an action
6 pursuant to Section 32A-3A-8 NMSA 1978 or the Family in Need
7 of Court-Ordered Services Act and includes investigations and
8 other preliminary activities preceding the formal initiation
9 of an action, but does not include:

10 (1) delinquency proceedings; and

11 (2) custodial proceedings or kinship
12 guardianships pursuant to Chapter 40 NMSA 1978;

13 D. "cultural compact" means an agreement that
14 documents how an Indian child placed in an adoptive or
15 guardianship home will continue to actively participate in
16 the child's cultural learning and activities and that is
17 entered into among:

18 (1) the adoptive parents or guardians of the
19 Indian child, which parents or guardians are not members of
20 the Indian child's tribe; and

21 (2) the Indian child's tribe;

22 E. "discussion with an Indian tribe" means
23 documented good faith efforts to actively communicate and
24 work with an Indian tribe;

25 F. "extended family member" means a person who is

1 defined to be an extended family member by law or custom of
2 an Indian child's tribe or, in the absence of such law or
3 custom, means a person who is eighteen years of age or older
4 and who is an Indian child's grandparent, aunt or uncle,
5 brother or sister, brother-in-law or sister-in-law, niece or
6 nephew, first or second cousin, stepparent or godparent;

7 G. "fictive kin" means a person:

8 (1) who is not a relative or an extended
9 family member of an Indian child and who has a significant,
10 family-like relationship with the child or the child's
11 family, which relationship existed prior to the child's entry
12 into foster care;

13 (2) who meets the definition of "fictive
14 kin" as established by an Indian child's tribe's law, custom
15 or tradition; or

16 (3) chosen by an Indian child who is
17 fourteen years of age or older, regardless of when the
18 relationship between the person and the Indian child was
19 established, when it is in the best interest of the child to
20 identify that person as fictive kin; and

21 H. "foster care placement" means:

22 (1) an action pursuant to the Abuse and
23 Neglect Act removing an Indian child from the child's parent,
24 guardian or Indian custodian for temporary placement in a
25 foster home or institution or the home of a guardian where

1 the parent or Indian custodian cannot have the child returned
2 upon demand, but in which parental rights have not been
3 terminated; or

4 (2) the temporary placement of an Indian
5 child in foster care pursuant to a voluntary agreement
6 entered into between a parent, guardian or Indian custodian
7 and the department pursuant to the Family Services Act."

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

10 "INDIAN CHILD'S DOMICILE--DETERMINATION OF DOMICILE AND
11 RESIDENCE.--

12 A. In a child custody proceeding involving an
13 Indian child, the court shall determine and make an order of
14 the domicile and residence of the Indian child and whether
15 the Indian child is under the jurisdiction of a tribal court.

16 B. The department shall communicate with the
17 Indian child's tribe as necessary to assist the court in
18 making a determination pursuant to this section. If it is
19 unclear which tribe is the Indian child's tribe, the
20 department shall communicate with any tribe with which there
21 is reason to know that the Indian child may be a member or
22 eligible for membership."

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

25 "ACTIVE EFFORTS REQUIRED IN CHILD CUSTODY PROCEEDINGS,

1 INCLUDING VOLUNTARY PLACEMENT AGREEMENTS.--In a child custody
2 proceeding involving an Indian child:

3 A. active efforts to maintain or reunite an Indian
4 child with the Indian child's family shall be made pursuant
5 to the Indian Family Protection Act. Active efforts shall be
6 tailored to the facts and circumstances of each case. The
7 department shall not seek findings of futility or aggravated
8 circumstances;

9 B. the department shall, in cooperation with the
10 Indian child and the Indian child's parents, extended family
11 members, guardian, Indian custodian and Indian tribe, make
12 active efforts to maintain or reunite an Indian child with
13 the Indian child's family and tailor the active efforts to
14 the facts and circumstances of the case and shall:

15 (1) document in writing the details
16 demonstrating the quality and quantity of services and
17 assistance provided to alleviate the causes and conditions
18 leading to the child custody proceeding, on the court record;

19 (2) assist the Indian child's parent or
20 parents, guardian or Indian custodian through the steps of a
21 department case plan and with accessing or developing the
22 resources necessary to satisfy the department case plan;

23 (3) provide assistance in a manner
24 consistent with the prevailing social and cultural standards
25 and way of life of the Indian child's tribe; and

1 (4) conduct a comprehensive assessment of
2 the circumstances of an Indian child's family with a goal of
3 reunification;

4 C. the department may make active efforts to
5 maintain or reunite an Indian child with the Indian child's
6 family by:

7 (1) identifying and establishing appropriate
8 services and assisting the Indian child's parents to overcome
9 barriers to reunification, including actively assisting the
10 parents in obtaining those services;

11 (2) identifying, notifying and inviting
12 representatives of the Indian child's tribe to participate in
13 family team meetings, team decision meetings, permanency
14 planning, resolution of placement issues and providing
15 support and services to the Indian child's family;

16 (3) conducting or causing to be conducted a
17 diligent search for the Indian child's extended family
18 members and contacting and consulting with the Indian child's
19 extended family members and adult relatives to provide family
20 structure and support for the Indian child and the Indian
21 child's parents;

22 (4) offering and employing culturally
23 appropriate family preservation strategies and facilitating
24 the use of remedial and rehabilitative services provided by
25 the Indian child's tribe;

1 (5) taking steps to keep the Indian child
2 and the Indian child's siblings together whenever possible;

3 (6) supporting regular visits with the
4 Indian child's parent, guardian or Indian custodian, in the
5 most natural setting as possible, as well as trial home
6 visits during a period of removal, consistent with the need
7 to ensure the health, safety and welfare of the Indian child;

8 (7) identifying community resources,
9 including housing, financial assistance, transportation,
10 mental health services, health care, substance use prevention
11 and treatment and peer support services and actively
12 assisting the Indian child's parents, guardian or Indian
13 custodian or, when appropriate, the Indian child's family and
14 extended family members, in using and accessing those
15 resources;

16 (8) monitoring progress and participation of
17 the Indian child's parents, guardian, Indian custodian or
18 extended family members if the services described in
19 Paragraphs (1), (2), (4) and (7) of this subsection are not
20 available and considering alternative ways to address the
21 needs of the Indian child's parents, guardian, Indian
22 custodian and, where appropriate, the family, if the optimum
23 services do not exist or are not available;

24 (9) providing post-reunification services
25 and monitoring for the duration of the court's jurisdiction;

1 (10) allowing the Indian child to
2 participate in customs and traditions, including attending
3 and participating in traditional ceremonies centered around
4 the Indian child and the Indian child's family; or

5 (11) any other efforts that are appropriate
6 to the Indian child's circumstances;

7 D. prior to accepting an Indian child for
8 voluntary placement, the department shall document the active
9 efforts:

10 (1) made by the department to provide or
11 arrange services by other public or private agencies that
12 would be affordable to the family; and

13 (2) that would alleviate the conditions
14 leading to the placement request;

15 E. the department shall record all efforts made
16 toward active efforts and report them to the court; and

17 F. the court shall make a written determination at
18 the conclusion of every proceeding as to whether the
19 department has made active efforts to maintain or reunite the
20 Indian child with the Indian child's family. The court shall
21 make a written determination based on evidence on the record
22 as to whether the department has made active efforts to
23 provide services and support to preserve and reunify the
24 family."

25 SECTION 5. A new section of the Children's Code is

1 enacted to read:

2 "NOTICE TO INDIAN TRIBES.--

3 A. In a child custody proceeding when the court
4 knows or has reason to know that an Indian child is involved,
5 the department shall notify the parent, guardian or Indian
6 custodian and the Indian child's tribe, by certified mail
7 with return receipt requested, of:

8 (1) the pending proceedings;

9 (2) the right of the Indian child's parent,
10 guardian, Indian custodian and Indian child's tribe to:

11 (a) intervention; and

12 (b) petition the court to transfer the
13 proceeding to the tribal court;

14 (3) the right of the Indian child's parent,
15 guardian or Indian custodian to court-appointed counsel if
16 the court determines that person is unable to afford counsel;
17 and

18 (4) the right of the Indian child's tribe to
19 participate in the child custody proceeding whether or not
20 the Indian child's tribe intervenes.

21 B. In the event that the department attempts to
22 enter into discussion with an Indian tribe and the tribe does
23 not respond within the time frame provided for in the Indian
24 Family Protection Act, the department may proceed; provided
25 that the absence of a tribal response does not:

1 (1) eliminate other requirements of future
2 communication and work with the Indian tribe concerning the
3 child; or

4 (2) affect the Indian tribe's ability to
5 respond to an action that has not yet been taken."

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

8 "TRIBAL MEMBERSHIP--DEPARTMENT ASSISTANCE.--When an
9 Indian child is placed in the custody of the department, the
10 department shall work with the parent, the guardian, the
11 Indian custodian or the Indian child's tribe to establish
12 membership, at the direction of the parent or the Indian
13 tribe. The department shall not determine tribal membership.
14 An Indian tribe shall have the sole right to determine
15 membership and membership eligibility, as defined by the
16 Indian tribe's law, custom, tradition and practice. The
17 department shall provide records to assist with determining
18 membership eligibility at the request of the parent or the
19 Indian child's tribe."

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

22 "INDIAN CHILD CUSTODY PROCEEDINGS--JURISDICTION--
23 TRANSFER.--

24 A. An Indian tribe has exclusive jurisdiction over
25 a child custody proceeding involving an Indian child who

1 resides or is domiciled within the reservation of the Indian
2 tribe, except when jurisdiction is otherwise vested in the
3 state by federal law or pursuant to a tribal-state agreement.
4 When an Indian child is under the jurisdiction of the tribal
5 court, the Indian tribe shall retain exclusive jurisdiction,
6 notwithstanding the residence or domicile of the child.

7 B. In a child custody proceeding involving an
8 Indian child not domiciled or residing within the reservation
9 of the Indian child's tribe, the court and the tribal court
10 have concurrent jurisdiction.

11 C. At the inception of a child custody proceeding
12 involving an Indian child not domiciled or residing within
13 the reservation of the Indian child's tribe, or upon a motion
14 for transfer at any stage of the proceeding, the department
15 shall, without delay, ask the Indian child's tribe in writing
16 whether the Indian child's tribe will accept jurisdiction
17 over the child custody proceeding.

18 D. If the Indian child's tribe declines to accept
19 jurisdiction, the court retains jurisdiction. A parent,
20 guardian, Indian custodian or the Indian child's tribe
21 retains the right to move the court to transfer the
22 proceeding to the tribal court at any stage of the
23 proceeding. A transfer motion may be made orally on the
24 record or in writing.

25 E. If the Indian child's tribe accepts

1 jurisdiction in writing provided to the court, the court
2 shall transfer the child custody proceeding to the tribal
3 court unless:

4 (1) either parent of the Indian child
5 objects to the transfer; or

6 (2) good cause exists to deny the transfer.

7 F. If any party asserts that good cause to deny
8 the transfer exists, the reasons for that belief or assertion
9 shall be placed on the record in a written motion, and the
10 motion shall be served on the parties and the Indian child's
11 tribe. The court shall hold a hearing on the record in
12 which:

13 (1) all parties and the Indian child's
14 tribe, even if the tribe has not formally intervened in the
15 case, have an opportunity to present facts and legal
16 arguments;

17 (2) the burden to establish good cause is on
18 the party opposing the transfer; and

19 (3) good cause shall be established by clear
20 and convincing evidence.

21 G. For the purpose of transferring a case, a
22 finding of good cause shall not be based on:

23 (1) the advanced stage of a child custody
24 proceeding if the parent, guardian, Indian custodian or
25 Indian child's tribe did not receive notice of the proceeding

1 until an advanced stage;

2 (2) the timing of the tribe's intervention;

3 (3) whether there have been prior
4 proceedings in the court involving the Indian child for which
5 no petition to transfer was filed;

6 (4) predictions of whether the transfer
7 could result in a change in the placement of the Indian
8 child;

9 (5) the Indian child's cultural connections
10 with the Indian tribe or its reservation;

11 (6) consideration of any perceived
12 inadequacy of an Indian tribe's judicial systems;

13 (7) consideration of the perceived
14 socioeconomic conditions within an Indian tribe or
15 reservation; or

16 (8) a delay in placing an Indian child with
17 the Indian child's extended family members or adult
18 relatives, regardless of the stage of the child custody
19 proceeding.

20 H. If the court denies the transfer for good
21 cause, the basis for the decision shall be stated orally on
22 the record and in a written order.

23 I. When a court authorizes transfer, the court:

24 (1) retains jurisdiction and shall not
25 dismiss the case until the tribal court exercises

1 jurisdiction and confirms that the tribe has received all
2 information required by this section;

3 (2) shall expeditiously transfer to the
4 tribal court all records related to the proceeding, including
5 all pleadings and the court record; and

6 (3) shall direct the department to:

7 (a) coordinate with the tribal court
8 and the Indian child's tribe to ensure that the transfer is
9 accomplished with minimal disruption of services to the
10 Indian child and the Indian child's family; and

11 (b) expeditiously provide at no cost to
12 the appropriate tribal agency: 1) all records and original
13 documents related to the Indian child in the department's
14 possession, including a birth certificate, social security
15 card, certificate of Indian birth and similar documents; 2)
16 documentation related to the Indian child's eligibility for
17 state and federal assistance; and 3) the entire case record
18 in the possession of the department."

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

21 "TRIBAL-STATE AGREEMENTS.--

22 A. The department shall make a good faith effort
23 to enter into a tribal-state agreement for the coordination
24 of care and custody of Indian children with each Indian tribe
25 within the borders of this state.

1 B. The department may enter into a tribal-state
2 agreement with any Indian tribe outside of this state if
3 there are children residing in this state who are members of
4 or are eligible to become members of that Indian tribe.

5 C. Any state services requiring a tribal-state
6 agreement based on a funding source shall be negotiated and
7 entered into to meet the provisions of this section.

8 D. A tribal-state agreement may include an
9 agreement regarding:

10 (1) whether a case needs to be filed, and
11 whether the case would be filed by the department in court or
12 by the appropriate tribal agency in tribal court;

13 (2) exclusive jurisdiction over cases filed
14 by the department in which the court and tribal court would
15 otherwise have concurrent jurisdiction;

16 (3) the process to transfer cases between a
17 court and tribal court; and

18 (4) procedures for the assessment, removal,
19 placement and custody of Indian children.

20 E. A tribal-state agreement shall:

21 (1) provide for cooperative delivery of
22 child welfare services to Indian children in this state,
23 including the use, to the extent available, of services
24 provided by the Indian tribe; and

25 (2) if services provided by the Indian tribe

1 are unavailable, provide for the department's use of
2 community services and resources developed specifically for
3 Indian families and that have demonstrated experience and
4 capacity to provide culturally relevant and effective
5 services to children.

6 F. The department shall review the tribal-state
7 agreement every five years and invite the tribe to propose
8 updates to the tribal-state agreement."

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

11 "FULL FAITH AND CREDIT.--The state shall recognize and
12 give full faith and credit to public acts, records and
13 judicial proceedings regarding parentage, nonparentage,
14 adoption and custody decided in an Indian tribe's
15 jurisdiction."

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

18 "RIGHT TO SERVICES.--An Indian child residing on or off
19 a reservation, as a resident of this state, shall have the
20 same right to services that are available to other children
21 of this state. The cost of the services provided to an
22 Indian child or the Indian child's parents, guardian or
23 Indian custodian shall be determined and provided for in the
24 same manner as services are made to other children of the
25 state, using tribal, state and federal funds."

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

3 "TEMPORARY EMERGENCY JURISDICTION.--

4 A. The department shall file a petition for
5 temporary emergency removal where the department demonstrates
6 that an Indian child is a resident of or domiciled on a
7 reservation but temporarily located off a reservation. The
8 department shall provide notice and request receipt of notice
9 to the Indian child's tribe, parents, guardian and Indian
10 custodian within twenty-four hours of the filing of the
11 petition.

12 B. A court of this state has temporary emergency
13 jurisdiction if the Indian child is present in this state but
14 is domiciled on a reservation and the Indian child has been
15 abandoned or it is necessary in an emergency to protect the
16 Indian child because the Indian child, or a sibling or parent
17 of the Indian child, is subjected to or threatened with abuse
18 or neglect.

19 C. A child custody determination made under this
20 section remains in effect until an order is obtained from a
21 tribal court. If a child custody proceeding has not been or
22 is not commenced in tribal court, the department may file a
23 petition alleging abuse and neglect.

24 D. A court of this state that has been asked to
25 make a temporary emergency order for temporary jurisdiction,

1 upon being informed that a child custody proceeding has been
2 commenced in, or a child custody determination has been made
3 by, a tribal court having jurisdiction shall immediately
4 communicate with that tribal court to resolve the emergency,
5 protect the safety of the parties and the Indian child and
6 determine a period for the duration of the temporary order."

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

9 "INVESTIGATIONS.--

10 A. Within twenty-four hours of initiating an
11 investigation that involves an Indian child, the department
12 shall notify the Indian child's tribe of:

13 (1) the investigation;

14 (2) the involvement of the Indian child;

15 (3) the department's obligation to
16 collaborate with the Indian child's tribe to identify a
17 potential qualified expert witness or witnesses to
18 participate in the proceeding if the investigation results in
19 a child custody proceeding; and

20 (4) the department's obligation to identify
21 a potential qualified expert witness or witnesses no later
22 than thirty days prior to a child custody or termination
23 proceeding.

24 B. During an investigation that involves an Indian
25 child, the department shall:

1 (1) coordinate services with the Indian
2 child's tribe to prevent taking the child into custody;

3 (2) provide culturally appropriate remedial
4 services designed to prevent the breakup of the Indian
5 family; and

6 (3) make active efforts to identify extended
7 family members and fictive kin able to be alternative care
8 providers or to ensure the safety of the child.

9 C. The department's active efforts to coordinate
10 services to prevent taking the Indian child into custody
11 shall be documented in any subsequent action that may result
12 in the child coming into the department's custody.

13 D. Before filing a petition related to an Indian
14 child, the department shall notify the Indian child's tribe
15 of the results of the investigation, including the active
16 efforts that have been made to provide remedial services and
17 rehabilitative programs designed to prevent the breakup of
18 the Indian family and that these efforts have proved
19 unsuccessful, resulting in the department's intention to file
20 the petition."

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

23 "PENDING COURT PROCEEDINGS--NOTICE--STANDARDS OF
24 EVIDENCE--DOCUMENTATION OF APPLICABILITY AND COMPLIANCE.--

25 A. The court shall not make findings of futility

1 or aggravated circumstances in the child custody proceeding.

2 B. The standards of evidence of the following
3 child custody proceedings are as follows:

4 (1) the court shall not order a foster care
5 placement of an Indian child at adjudication unless clear and
6 convincing evidence is presented, including the testimony of
7 one or more qualified expert witnesses, demonstrating that
8 the child's continued custody by the child's parent, guardian
9 or Indian custodian is likely to result in serious emotional
10 or physical damage to the child;

11 (2) the court shall not order a termination
12 of parental rights for an Indian child unless evidence beyond
13 a reasonable doubt is presented, including the testimony of
14 one or more qualified expert witnesses, demonstrating that
15 the child's continued custody by the child's parent, guardian
16 or Indian custodian is likely to result in serious emotional
17 or physical damage to the child;

18 (3) for a foster care placement at
19 adjudication or termination of parental rights, the evidence
20 shall show a causal relationship between the particular
21 conditions in the home and the likelihood that continued
22 custody of the child will result in serious emotional or
23 physical damage to the particular child who is the subject of
24 the child custody proceeding; and

25 (4) without a causal relationship identified

1 in Paragraph (3) of this subsection, evidence that shows only
2 the existence of community or family poverty, isolation,
3 single parenthood, custodian age, crowded or inadequate
4 housing, substance abuse or nonconforming social behavior
5 shall not by itself constitute clear and convincing evidence
6 or evidence beyond a reasonable doubt that continued custody
7 is likely to result in serious emotional or physical damage
8 to the child.

9 C. If there is a reason to know that the Indian
10 child's parent, guardian or Indian custodian has limited
11 English proficiency and may not understand the contents of
12 the notice pursuant to Subsection A of this section, the
13 court shall provide language access services as required by
14 Title 6 of the federal Civil Rights Act of 1964 and other
15 applicable federal and state laws. If the court is unable to
16 secure translation or interpretation support, the court shall
17 contact or direct a party to contact the Indian child's tribe
18 or the local office of the United States department of the
19 interior bureau of Indian affairs for assistance identifying
20 a qualified translator or interpreter.

21 D. If the identity or location of the parent,
22 guardian or Indian custodian and the Indian tribe cannot be
23 determined, a notice shall be given to the secretary in the
24 same manner as provided in Subsection A of this section. The
25 secretary shall have fifteen days after receipt of the notice

1 to provide the same notice to the parent, guardian or Indian
2 custodian and the Indian tribe.

3 E. A foster care placement or termination of
4 parental rights proceeding shall not be held until at least
5 ten days after receipt of notice by the parent, guardian or
6 Indian custodian and the Indian tribe or the secretary
7 pursuant to this section; provided that the parent, guardian
8 or Indian custodian or the Indian tribe shall, upon request,
9 be granted up to twenty additional days to prepare for that
10 proceeding.

11 F. Nothing in this section prevents a court from
12 reviewing a removal of an Indian child from the child's
13 parent, guardian or Indian custodian at an emergency custody
14 proceeding before the expiration of the waiting periods
15 provided in Subsections D and E of this section to determine
16 the appropriateness of the removal and potential return of
17 the child."

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

20 "INTERVENTION.--

21 A. An Indian child's tribe has the right to
22 intervene at any point in a child custody proceeding.

23 B. In any court proceeding subject to the Indian
24 Family Protection Act for the foster care placement,
25 guardianship placement, adoptive placement of or termination

1 of parental rights to an Indian child, the Indian child's
2 relative or extended family member, the guardian, the Indian
3 custodian or a foster parent with whom the child has resided
4 for at least twelve months may file a motion to intervene at
5 any point in the proceeding.

6 C. When determining whether a person described in
7 Subsection B of this section should be permitted to
8 intervene, the court shall consider:

9 (1) the person's rationale for the proposed
10 intervention; and

11 (2) whether intervention is in the best
12 interest of the Indian child.

13 D. When the court determines that the Indian
14 child's best interest will be served as a result of
15 intervention by a person described in Subsection B of this
16 section, the court may permit intervention unless the party
17 opposing intervention can demonstrate that a viable plan for
18 reunification with the respondents is in progress and that
19 intervention could impede the progress of the reunification
20 plan."

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

23 "PETITION--FORM AND CONTENT.--In a petition initiating a
24 child custody proceeding, the department shall include a
25 statement as to whether the child who is the subject of the

1 child custody proceeding is an Indian child and shall include
2 information about:

3 A. the Indian child's tribe;

4 B. the tribal affiliations of the Indian child's
5 parents;

6 C. active efforts made to provide remedial
7 services and rehabilitative programs designed to prevent the
8 breakup of the Indian family and that these efforts were
9 proven to be unsuccessful and the reasons these efforts were
10 unsuccessful, if known;

11 D. active efforts made to comply with the notice
12 requirements pursuant to the Indian Family Protection Act,
13 including results of the contact and the names, addresses,
14 titles and telephone numbers of the persons contacted.

15 Copies of any correspondence with the Indian child's tribe
16 shall be attached as exhibits to the petition; and

17 E. active efforts made to comply with the
18 placement preferences set forth in the Indian Family
19 Protection Act or the placement preferences of the Indian
20 child's tribe."

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

23 "RECORD OF INDIAN CHILD'S TRIBE--INDIAN TRIBE'S RIGHT TO
24 PARTICIPATE.--

25 A. The department shall keep a record of:

1 (1) an Indian tribe of which the Indian
2 child is a member or eligible for membership, as determined
3 by the Indian child's tribe;

4 (2) whether the Indian child is a member of
5 one Indian tribe but is eligible for membership in one or
6 more other Indian tribes;

7 (3) the Indian tribe designated by agreement
8 between one or more Indian tribes if the Indian child is not
9 a member of each of those Indian tribes but is eligible for
10 membership in each of those Indian tribes; or

11 (4) the Indian tribe recorded by the court
12 pursuant to Subsection D of this section if the Indian child
13 is eligible for membership in each of those Indian tribes and
14 the Indian tribes cannot agree on the designation of the
15 Indian child's tribe.

16 B. If the department files a petition, the
17 department shall inform the court on the record of the Indian
18 tribe or tribes of which the Indian child is a member or
19 eligible for membership.

20 C. If there is no dispute, the court shall make a
21 record of the Indian child's tribe.

22 D. If there is a dispute as to which Indian tribe
23 is the Indian child's tribe, the court shall, after a
24 hearing, record the Indian tribe with which the Indian child
25 has more significant contacts, taking into consideration:

1 (1) the preference of each of the Indian
2 child's parents;

3 (2) the duration of the Indian child's
4 current or prior domicile or residence on or near the
5 reservation of each Indian tribe;

6 (3) the tribal membership of the Indian
7 child's custodial parent or Indian custodian;

8 (4) the interests asserted by each Indian
9 tribe;

10 (5) whether the Indian tribe has previously
11 adjudicated a case involving an Indian child;

12 (6) the Indian tribe's custom and tradition;
13 and

14 (7) if the court determines that the Indian
15 child is of sufficient age and capacity to meaningfully self-
16 identify the Indian child's tribe, the self-identification of
17 the Indian child.

18 E. If an Indian child is a member of or is
19 eligible for membership in more than one Indian tribe, the
20 court shall permit an Indian tribe, in addition to the Indian
21 child's tribe as determined pursuant to Subsection D of this
22 section, to participate in the child custody proceeding as an
23 intervenor.

24 F. In a child custody proceeding involving an
25 Indian child, the Indian child's tribe may be present and may

1 participate at a closed hearing regardless of whether the
2 Indian child's tribe has intervened.

3 G. The Indian child's tribe or any Indian tribe
4 claiming the Indian child as a member, whether or not the
5 Indian tribe has intervened, shall have the right to examine
6 all reports or other documents filed with the court upon
7 which a decision with respect to the action may be based."

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

10 "QUALIFIED EXPERT WITNESS.--

11 A. The court shall receive testimony from one or
12 more qualified expert witnesses in all adjudicatory hearings
13 pursuant to the Abuse and Neglect Act and all hearings to
14 terminate parental rights. The court shall receive testimony
15 from a qualified expert witness regardless of whether the
16 parties to the proceeding have stipulated to a finding of
17 abuse or neglect.

18 B. A person may be qualified by the court to serve
19 as a qualified expert witness if the court finds that the
20 person is:

21 (1) knowledgeable about the prevailing
22 social and cultural standards of the tribe and is familiar
23 with the family and child-rearing practices of the Indian
24 child's tribe;

25 (2) able to testify regarding whether the

1 Indian child's continued custody by the parent, guardian or
2 Indian custodian is likely to result in serious emotional or
3 physical damage to the child; and

4 (3) a member of the Indian child's tribe; or

5 (4) a person recommended by the Indian
6 child's tribe.

7 C. When the department notifies an Indian child's
8 tribe of the pendency of an investigation involving an Indian
9 child from that Indian tribe, the department shall request in
10 writing that the Indian child's tribe designate a qualified
11 expert witness to testify in any child custody or termination
12 proceedings that may result from the investigation. The
13 department shall make active efforts to collaborate with the
14 Indian tribe to identify a person to serve as a qualified
15 expert witness.

16 D. If, after active efforts and in no case later
17 than fifteen days after filing the petition, the department
18 does not receive a designation from the Indian tribe or if
19 the department, after good faith efforts, is unable to retain
20 the Indian tribe's designated qualified expert witness, the
21 department may identify a qualified expert witness who meets
22 the requirements provided in Paragraph (1) of Subsection B of
23 this section from a list of qualified expert witnesses
24 compiled through cooperation among the Indian tribes in the
25 state and the department.

1 E. If, thirty days after filing the petition, the
2 department has not identified a qualified expert witness to
3 testify as required by the Indian Family Protection Act, in
4 considering a motion by the department for a continuance, the
5 court shall consider whether it is in the best interest of
6 the Indian child to remain in the department's custody for
7 additional time.

8 F. At least thirty days prior to an adjudicatory
9 hearing pursuant to the Abuse and Neglect Act and a hearing
10 to terminate parental rights, the department shall disclose
11 to the Indian child's tribe the name of the qualified expert
12 witness designated by the department to testify at the
13 hearing.

14 G. An Indian child's tribe shall have the
15 opportunity to question a qualified expert witness in all
16 hearings involving an Indian child in which the qualified
17 expert witness testifies, regardless of whether the Indian
18 child's tribe has intervened. An Indian child's tribe may
19 designate a qualified expert witness to testify in addition
20 to any qualified expert witness designated by the department.

21 H. An employee of the department shall not serve
22 as a qualified expert witness pursuant to this section."

23 **SECTION 18.** A new section of the Children's Code is
24 enacted to read:

25 "VOLUNTARY PLACEMENT AGREEMENTS--PARENTAL RIGHTS--

1 CONSENT--WITHDRAWAL--FRAUD OR DURESS.--

2 A. Prior to entering any voluntary placement
3 agreement, the department shall make active efforts to
4 prevent the breakup of the Indian family pursuant to the
5 Indian Family Protection Act.

6 B. In a voluntary foster care placement involving
7 an Indian child, an Indian child's parent or guardian may
8 enter into a voluntary placement agreement with the
9 department. An Indian child's parent's or guardian's consent
10 is voidable unless it is executed in writing and recorded
11 before the court.

12 C. The department shall notify the Indian child's
13 tribe by certified mail, with return receipt requested, of
14 the pending voluntary placement agreement and of the Indian
15 child's tribe's right to intervene.

16 D. Before approving a voluntary placement
17 agreement, the court shall ensure that the voluntary
18 placement agreement is executed in writing. The court shall
19 certify on the record that:

20 (1) the terms and consequences of the
21 consent were fully explained in detail and in a manner that
22 is understandable to the parent or guardian;

23 (2) the Indian child's parent or guardian
24 fully understands the English language or that the voluntary
25 placement agreement was interpreted into the primary language

1 of the Indian child's parent or guardian;

2 (3) the child is an Indian child;

3 (4) there is no pending child abuse or
4 neglect investigation involving the Indian child;

5 (5) the Indian child's parent or guardian is
6 voluntarily entering into the voluntary placement without any
7 threat of removal of the Indian child by the department;

8 (6) the department provided notice to the
9 Indian child's tribe via certified or registered mail with
10 return receipt requested;

11 (7) confidentiality has been requested or
12 indicated and execution of consent was made in a closed court
13 proceeding not open to the public;

14 (8) if not represented, the Indian child's
15 parent or guardian is proceeding without an attorney and has
16 the right to consult with an attorney of the Indian child's
17 parent's or guardian's own choosing; and

18 (9) the Indian child's parent or guardian is
19 of sound mind and judgment.

20 E. The request for voluntary placement shall be
21 initiated in writing by the Indian child's parent or
22 guardian, and if good cause is shown and the requirements of
23 Subsection D of this section are met, the department may
24 accept temporary custody or placement and care
25 responsibility. Placement and care responsibility means that

1 the department is legally accountable for the day-to-day care
2 and protection of the Indian child in foster care.

3 Responsibility for placement and care allows the department
4 to make placement decisions about the Indian child, such as
5 where the child is placed and the type of placement that is
6 most appropriate for the Indian child.

7 F. During voluntary placement, the department
8 shall make active efforts to provide tailored case planning
9 to alleviate the causes and conditions leading to the
10 voluntary placement agreement.

11 G. Any consent to a foster care placement that is
12 given prior to or within ten days after birth of an Indian
13 child is voidable.

14 H. An Indian child's parent or guardian may
15 withdraw consent to a voluntary foster care placement of an
16 Indian child pursuant to the Children's Code at any time.
17 Upon receipt of a request to withdraw, the Indian child shall
18 be returned to the Indian child's parent or guardian. The
19 department shall have up to forty-eight hours after
20 withdrawal of consent to allow for transition arrangements to
21 be made for the Indian child's return to the Indian child's
22 parent or guardian.

23 I. An Indian child shall not remain in voluntary
24 placement for longer than one hundred eighty consecutive days
25 or for more than one hundred eighty days in a calendar year;

1 provided that a child may remain in voluntary placement up to
2 an additional one hundred eighty consecutive days upon order
3 of the court. If the Indian child's parent or guardian seeks
4 to extend the voluntary placement, the department shall file
5 a petition for an extension of voluntary placement prior to
6 the expiration of the initial one-hundred-eighty-day period.
7 The court shall hold a hearing and make a finding within the
8 initial one-hundred-eighty-day period that the extension of
9 voluntary placement is in the best interest of the Indian
10 child.

11 J. If a request for an extension is not filed with
12 the court prior to the initial one-hundred-eighty-day period,
13 the agreement expires. No later than thirty days before the
14 expiration of the initial agreement, the court shall hold a
15 review hearing to determine if the voluntary placement should
16 be extended.

17 K. In no event shall an Indian child remain in
18 voluntary placement for a period in excess of three hundred
19 sixty-five days in any two-year period.

20 L. Any voluntary placement pursuant to this
21 section shall not be considered abandonment, neglect or abuse
22 by an Indian child's parent, guardian or extended family
23 member.

24 M. The parent or guardian whose Indian child is in
25 voluntary placement pursuant to this section shall have the

1 following rights to:

2 (1) have visitation with the child;

3 (2) be informed of changes in the Indian
4 child's school or of changes in the child's placement by the
5 department;

6 (3) authorize decisions regarding medical
7 and dental care and behavioral health services, including
8 decisions that affect the daily care, support, safety and
9 well-being of the child;

10 (4) permit the department to consent to
11 emergency services to ensure the safety and well-being of the
12 Indian child, including medical, dental or behavioral health
13 treatment, if the department is unable to make immediate
14 prior contact with the parent or guardian. The department
15 shall notify the parent or guardian within two hours of
16 making emergency decisions due to inability to make prior
17 contact;

18 (5) consent to all non-emergency and non-
19 routine medical care provided for the child;

20 (6) make decisions regarding participation
21 and attendance in cultural and religious events, including
22 traditional and cultural events offered by the Indian child's
23 tribe; and

24 (7) make decisions of substantial legal
25 significance.

1 N. If new safety concerns are identified during
2 the voluntary placement, the department shall not extend a
3 voluntary placement agreement, but instead shall make a new
4 report of suspected abuse or neglect to be screened for
5 determination of a new department investigation.

6 O. The voluntary placement shall adhere to and be
7 in accordance with the placement preferences set forth in the
8 Indian Family Protection Act.

9 P. All records or information concerning the
10 voluntary placement shall be confidential in accordance with
11 the confidentiality provision of the Indian Family Protection
12 Act."

13 **SECTION 19.** A new section of the Children's Code is
14 enacted to read:

15 "TERMINATION OF PARENTAL RIGHTS.--

16 A. In a termination of parental rights proceeding,
17 with respect to an Indian child, the court shall consider
18 whether an alternative to termination of parental rights,
19 including permanent guardianship of the child, would best
20 support the Indian child.

21 B. In a termination of parental rights proceeding
22 in court, when the court knows an Indian child is involved,
23 the party seeking to effectuate the termination of parental
24 rights shall notify the Indian child's tribe by certified
25 mail, with return receipt requested, of the pending

1 proceedings and of its right to intervene. The court shall
2 not order a termination of parental rights proceeding until
3 the department files documentation with the court that the
4 Indian child's tribe received notice of the proceeding.

5 C. In a termination of parental rights proceeding,
6 bonding between the Indian child and the Indian child's
7 foster parent shall not be considered as a factor in
8 terminating parental rights.

9 D. In a termination of parental rights proceeding,
10 a termination shall not be ordered unless:

11 (1) the Indian child's tribe was provided
12 timely notice of the proceeding in accordance with the Indian
13 Family Protection Act and provided an opportunity to state
14 whether it opposes the termination; and

15 (2) the Indian child's tribe proposes an
16 alternate permanency plan, unless the department can show
17 good cause supported by clear and convincing evidence why the
18 alternate permanency plan should not be ordered.

19 E. In a proceeding involving an Indian child, the
20 grounds for any attempted termination shall be proved beyond
21 a reasonable doubt and shall meet the requirements set forth
22 in the Indian Family Protection Act.

23 F. In a termination proceeding involving an Indian
24 child, the court shall, in any termination order, make
25 specific findings of all active efforts and ensure that all

1 of the requirements of the Indian Family Protection Act have
2 been met.

3 G. After the entry of a final decree of adoption
4 of an Indian child in a court that is made pursuant to the
5 Adoption Act, the parent may withdraw consent to the adoption
6 upon the grounds that consent was obtained through fraud or
7 duress and may petition the court to vacate the decree. Upon
8 a finding that the consent was obtained through fraud or
9 duress, the court shall vacate the decree and return the
10 Indian child to the parent. An adoption that has been in
11 effect for at least two years shall not be invalidated except
12 as otherwise provided by law.

13 H. In an adoption proceeding involving a child who
14 is an Indian child, the court-ordered mediation pursuant to
15 Section 32A-4-29 NMSA 1978 shall not be waived and the Indian
16 child's tribe shall be allowed to participate, whether or not
17 the Indian child's tribe intervenes."

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

20 "PETITION TO COURT TO INVALIDATE ACTION.--An Indian
21 child who is the subject of a child custody proceeding, a
22 parent, guardian or Indian custodian from whose custody the
23 child was removed or the Indian child's tribe may petition
24 the court to invalidate that action upon a showing that the
25 action violated any provision of Section 4, 5, 7, 9, 12, 13,

1 14, 16, 17, 18, 19, 21, 28, 34 or 35 of the Indian Family
2 Protection Act."

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

5 "PLACEMENT PREFERENCES--FOSTER CARE PLACEMENT--
6 ADOPTION--GUARDIANSHIP--PLACEMENT OF INDIAN CHILDREN.--

7 A. In the case of a foster care placement of an
8 Indian child, except as provided in Subsection C of this
9 section, the child shall be placed in the least restrictive
10 setting that:

11 (1) most closely approximates a family,
12 taking into consideration the Indian child's sibling
13 attachment;

14 (2) allows the Indian child's special needs,
15 if any, to be met;

16 (3) is in reasonable geographic proximity to
17 the Indian child's home, extended family members or siblings;
18 and

19 (4) is in accordance with the order of
20 preference established by the Indian child's tribe by any
21 means, or, if that Indian tribe has not established placement
22 preferences, preference shall be given in accordance with the
23 following order of preference:

24 (a) an extended family member of the
25 Indian child;

1 (b) a foster home licensed, approved or
2 specified by the Indian child's tribe; or

3 (c) a foster home licensed or approved
4 by a licensing authority in New Mexico and in which one or
5 more of the licensed or approved foster parents is an Indian.

6 B. Under no circumstances shall an Indian child
7 under three months of age be placed outside of the placement
8 preferences provided in this section.

9 C. If an Indian child is placed in a foster care
10 placement that is contrary to the placement preferences
11 provided in this section, a secondary permanency plan shall
12 not be simultaneously permitted, and before the child's
13 placement may be changed to an adoptive or other permanent
14 placement, the department shall:

15 (1) conduct monitoring at least every thirty
16 days to determine whether a placement that comports with the
17 placement preferences provided in this section is available;

18 (2) at the inception of the case and
19 periodically through the pendency of the case, make active
20 efforts to identify a placement that aligns with the
21 placement preferences as soon as practicable; and

22 (3) at the inception of the case and
23 periodically through the pendency of the case, document all
24 active efforts made to identify a placement that aligns with
25 the placement preferences. At minimum, this shall include:

- 1 (a) contacting the Indian child's
2 tribe;
- 3 (b) conducting a relative search;
4 (c) interviewing relatives throughout
5 the case;
- 6 (d) making ongoing active efforts to
7 search for and identify relatives to the Indian child
8 throughout the case;
- 9 (e) providing the Indian child's tribe
10 with all information regarding family members;
- 11 (f) offering relatives an expedited
12 foster care license;
- 13 (g) assisting relatives with practical
14 supports through the licensing process and actively
15 supporting relatives in overcoming barriers for licensure;
- 16 (h) conducting timely home studies when
17 identifying a placement that aligns with the placement
18 preference;
- 19 (i) providing continued contact,
20 including visitation; and
- 21 (j) providing access to culturally
22 appropriate interventions.

23 D. If the Indian child is in a foster care
24 placement that is not a preferred placement, the court shall
25 hold hearings no less than every six months. The department

1 shall continue to bear the burden of establishing why good
2 cause continues to exist for the current placement or why the
3 Indian child is not in a preferred placement.

4 E. Whenever there is any change in placement of an
5 Indian child, the department shall file a notice of placement
6 change with the court. The department shall also notify the
7 Indian child's tribe, by certified mail with return receipt
8 requested.

9 F. If there is a voluntary placement agreement in
10 which the Indian child at first was not determined to be an
11 Indian child and was later determined to be an Indian child,
12 the agreement is voided.

13 G. If the Indian child's tribe has established a
14 different order of preference than that specified in the
15 Indian Family Protection Act, the Indian child's tribe's
16 placement preferences shall apply.

17 H. In determining whether good cause exists, the
18 court shall not permit departure from the placement
19 preferences based on:

20 (1) the socioeconomic status of the
21 placement;

22 (2) a home environment that does not impact
23 the safety and well-being of the Indian child;

24 (3) ordinary bonding or attachment that
25 occurred from time spent in a non-preferred placement that

1 was made in violation of the Indian Family Protection Act; or

2 (4) the extent of the participation of the
3 parents or the Indian child in tribal, cultural, social,
4 religious or political activities.

5 I. In the case of a foster care placement,
6 adoptive placement or guardianship of an Indian child
7 pursuant to the Children's Code, if the Indian child's tribe
8 establishes a different order of preference, the adoption
9 agency or court effecting the placement shall follow the
10 order of preference established by the Indian child's tribe.
11 When appropriate, the preference of the Indian child or
12 parent may be considered; provided that the court has not
13 terminated the parental rights of the Indian child's parent.

14 J. The department shall support and not delay the
15 placement of the Indian child with the Indian child's
16 extended family members and adult relatives regardless of the
17 stage of the case in the child custody proceedings.

18 K. Whenever there is any change in the placement
19 of an Indian child, the department shall file notice of the
20 placement change with the court.

21 L. If the court finds there was a delay in
22 placement with the Indian child's extended family members or
23 adult relatives pursuant to Paragraph (3) of Subsection C of
24 Section 4 of the Indian Family Protection Act, this factor
25 shall not be used in a finding for good cause to deviate from

1 the placement preferences of this section or the placement
2 preferences of the Indian child's tribe.

3 M. An Indian child shall be placed in accordance
4 with the placement preferences unless there is good cause to
5 depart from the placement preferences as determined by the
6 court after a hearing; provided that:

7 (1) the party that asserts good cause exists
8 not to follow the placement preferences shall state the
9 reasons for this assertion in writing to the court. The
10 court shall make a record. The party making the assertion
11 shall provide all parties to the case and the Indian child's
12 tribe with a copy;

13 (2) the party seeking the departure from the
14 placement preferences has the burden of proving by clear and
15 convincing evidence that there is good cause to depart from
16 the preferences; and

17 (3) a court's determination of good cause to
18 depart from the placement preferences shall be made in
19 writing and be based on the considerations set forth by the
20 Indian Family Protection Act."

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

23 "INDIAN FAMILY PROTECTION ACT RESPONSIVENESS TRAINING.--

24 A. The administrative office of the courts in
25 collaboration with the department shall develop and deliver

1 annual mandatory training to all children's court judges,
2 district court judges, attorneys, guardians ad litem and
3 youth attorneys who are court appointed. The training shall
4 include information on:

5 (1) the Indian Family Protection Act,
6 including cultural compacts; and

7 (2) the Indian tribes geographically located
8 within the state.

9 B. The training required in this section shall be
10 required at least annually or no less than every fifteen
11 months. The training shall be open for attorneys or other
12 professionals to attend.

13 C. If an Indian child is placed in a household
14 that does not include a foster parent or guardian who is a
15 member of the Indian child's tribe, upon placement and at
16 least annually thereafter, the department shall provide
17 mandatory training to the foster parent. Training shall
18 address conditions on foster care placements under federal,
19 state and tribal law. The department shall work with each
20 Indian tribe in New Mexico to develop the training required
21 in this section."

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

24 "ADOPTIVE AND GUARDIANSHIP PLACEMENTS--MAINTENANCE OF
25 CULTURE--CULTURAL COMPACTS.--To ensure that the Indian Family

1 Protection Act is fully implemented and that all Indian
2 children have the opportunity to maintain strong connections
3 to their culture, if the household into which an Indian child
4 is placed for adoption or guardianship does not include a
5 parent who is a member of the Indian child's tribe, the court
6 shall require the parties to the adoption to enter a cultural
7 compact, at the discretion of the Indian child's tribe, that
8 documents the parties' agreement regarding how the Indian
9 child will continue to actively participate in the Indian
10 child's cultural learning and activities and engagement with
11 family members. Each cultural compact shall be specific to
12 the Indian child and shall articulate the Indian child's
13 understanding as the Indian child grows and matures. The
14 cultural compact shall become part of the court record, shall
15 be enforced by the court and shall be included in the
16 adoption decree."

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

19 "TRANSITION SERVICES.--

20 A. Prior to an Indian child's reaching seventeen
21 years of age, the department shall meet with the Indian
22 child, the Indian child's tribe, the Indian child's attorney
23 and others of the Indian child's choosing, including
24 biological family members, to develop a transition plan. The
25 department shall assist the Indian child in identifying and

1 planning to meet the Indian child's needs after the Indian
2 child's eighteenth birthday, including maintenance of
3 culture, housing, education, employment or income, health and
4 mental health, local opportunities for mentors and continuing
5 support services.

6 B. The Indian child's tribe shall be included in
7 developing the transition plan and shall be provided a copy
8 of the transition plan prior to the presentation of the plan
9 to the court pursuant to the Indian Family Protection Act."

10 SECTION 25. A new section of the Children's Code is
11 enacted to read:

12 "DISCHARGE HEARING.--

13 A. At the last review or permanency hearing held
14 prior to the Indian child's eighteenth birthday, the court
15 shall determine whether documentation of the Indian child's
16 tribal membership and any information regarding the Indian
17 child's tribal affiliation have been provided to the Indian
18 child.

19 B. If the court finds that the department has not
20 made active efforts to meet all of the requirements of
21 Section 32A-4-25.3 NMSA 1978 and of Subsection A of this
22 section and that termination of jurisdiction would be harmful
23 to the Indian child, the court may continue to exercise its
24 jurisdiction. The court may dismiss the case at any time
25 after the Indian child's eighteenth birthday for good cause."

1 SECTION 26. A new section of the Children's Code is
2 enacted to read:

3 "ABUSE OR NEGLECT PREDISPOSITION STUDIES--REPORTS AND
4 EXAMINATIONS.--If the child is an Indian child, all
5 predispositional studies and reports shall follow the
6 requirements listed in Section 32A-4-21 NMSA 1978 and shall
7 also document:

8 A. whether the placement preferences set forth in
9 the Indian Family Protection Act or the placement preferences
10 of the Indian child's tribe were followed;

11 B. whether the Indian child's case plan provides
12 for maintaining the Indian child's cultural ties as well as
13 the plan detailing how the department shall establish and
14 maintain the Indian child's cultural connections, in
15 conjunction with the Indian child's tribe and family;

16 C. whether active efforts were made by the
17 department to prevent removal of the Indian child from the
18 home prior to placement in substitute care and whether active
19 efforts were made to attempt reunification of the Indian
20 child with the natural parent;

21 D. whether active efforts were made by the
22 department to place siblings in custody together, unless such
23 joint placement would be contrary to the safety or well-being
24 of any of the siblings in custody, and whether any siblings
25 not jointly placed have been provided reasonable visitation

1 or other ongoing interaction, unless visitation or other
2 ongoing interaction would be contrary to the safety or
3 well-being of any of the siblings; and

4 E. whether the department has provided
5 notification to the Indian child's tribe consistent with the
6 requirements of the Indian Family Protection Act."

7 SECTION 27. A new section of the Children's Code is
8 enacted to read:

9 "PERMANENCY HEARINGS--PERMANENCY REVIEW HEARINGS.--

10 A. The department shall submit a copy of any
11 continuation of the dispositional order and notice of any
12 permanency and permanency review hearings to the Indian
13 child's tribe pursuant to notice requirements of the Indian
14 Family Protection Act.

15 B. The department shall submit a progress report
16 that documents:

17 (1) that the Indian child's tribe has been
18 invited to attend the pre-permanency meeting and is included
19 in any attempt to settle issues attendant to the permanency
20 hearing and has the opportunity to participate in developing
21 a proposed treatment plan that serves the Indian child's best
22 interest;

23 (2) that active efforts were conducted to
24 prevent the breakup of the Indian family or to reunify the
25 Indian family;

1 (3) that the placement preferences set forth
2 in the Indian Family Protection Act or the placement
3 preferences of the Indian child's tribe were followed. When
4 placement preferences have not been followed, good cause for
5 noncompliance shall be clearly stated and supported by clear
6 and convincing evidence;

7 (4) the active efforts made pursuant to the
8 Indian Family Protection Act to implement the Indian child's
9 cultural maintenance plan in conjunction with the Indian
10 child's tribe and family;

11 (5) the inclusion of the Indian child's
12 tribe in the department's active efforts for case planning
13 and documentation of the Indian tribe's input; and

14 (6) that all requirements pursuant to the
15 Indian Family Protection Act were followed."

16 SECTION 28. A new section of the Children's Code is
17 enacted to read:

18 "DISPOSITIONAL JUDGMENTS--COURT FINDINGS.--

19 A. At the conclusion of a dispositional hearing in
20 a child custody proceeding involving an Indian child, in
21 addition to other requirements for a court's findings
22 pursuant to the Children's Code, when the judgment is made in
23 a child custody proceeding held pursuant to the Family in
24 Need of Court-Ordered Services Act or the Abuse and Neglect
25 Act, a court shall include findings of:

1 (1) whether the placement preferences set
2 forth in the Indian Family Protection Act have been
3 incorporated into a plan for family services made pursuant to
4 Section 32A-3B-15 NMSA 1978 or in a case plan as described in
5 Section 32A-4-21 NMSA 1978; provided that if those placement
6 preferences are not incorporated into the plan for family
7 services or the case plan, good cause for noncompliance shall
8 be clearly stated and supported by clear and convincing
9 evidence;

10 (2) whether the plan for family services or
11 the case plan provides for maintenance of the Indian child's
12 cultural ties;

13 (3) how the Indian child's cultural needs
14 are considered and how, when reasonable, access to cultural
15 practices and traditional treatment will be provided to the
16 child; and

17 (4) whether the Indian child's tribe was
18 included in developing the case plan for the Indian child and
19 was provided a copy of the transition plan prior to the
20 presentation of the plan to the court.

21 B. The court shall determine during a review of a
22 dispositional judgment involving an Indian child pursuant to
23 Section 32A-4-25 NMSA 1978 whether the judgment complies with
24 the placement preferences set forth in the Indian Family
25 Protection Act or the placement preferences of the Indian

1 child's tribe and whether the child's case plan as described
2 in Section 32A-4-21 NMSA 1978 provides for maintaining the
3 Indian child's cultural ties. When placement preferences are
4 not followed, good cause for noncompliance shall be clearly
5 stated and supported by clear and convincing evidence. A
6 court's determination of good cause shall be made on the
7 record or in writing and shall be based on the considerations
8 set forth in the federal regulations or other factors
9 authorized by federal and state law.

10 C. The court shall make findings determining that
11 the department made active efforts pursuant to the Indian
12 Family Protection Act to meet the requirements of this
13 section and may continue to exercise its jurisdiction for a
14 period not to exceed one year from the Indian child's
15 eighteenth birthday. The young adult must consent to
16 continued jurisdiction of the court. Additionally, the
17 Indian child may volunteer to participate in the fostering
18 connections program through the department. The court may
19 dismiss the case at any time after the Indian child's
20 eighteenth birthday for good cause.

21 D. When the child is an Indian child, the court
22 shall determine during review of a dispositional order
23 whether all requirements pursuant to Section 27 of the Indian
24 Family Protection Act were followed."

25 SECTION 29. A new section of the Children's Code is

1 enacted to read:

2 "PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS.--

3 A. The initial judicial review shall be held
4 within sixty days of the dispositional judgment. At the
5 initial judicial review:

6 (1) the parties shall demonstrate to the
7 court the active efforts made to implement the treatment plan
8 approved by the court in its dispositional order; and

9 (2) the court shall determine the extent to
10 which the treatment plan has been implemented and make
11 supplemental orders as necessary to ensure compliance with
12 the treatment plan and the safety of the Indian child.

13 B. The court shall determine during review of a
14 dispositional order whether the placement preferences set
15 forth in the Indian Family Protection Act or the placement
16 preferences of the Indian child's tribe were followed and
17 whether the department has made active efforts pursuant to
18 the Indian Family Protection Act to implement the Indian
19 child's treatment plan and reunify the Indian family.

20 C. The children's court attorney shall give notice
21 to the Indian child's tribe of the time, place and purpose of
22 any judicial review hearing held pursuant to the Indian
23 Family Protection Act.

24 D. At any subsequent judicial review hearing held
25 pursuant to Section 32A-4-25 NMSA 1978, the department shall

1 show that it has made active efforts to implement any
2 treatment plan approved by the court in its dispositional
3 order and shall present a treatment plan consistent with the
4 purposes of the Children's Code for any period of extension
5 of the dispositional order."

6 SECTION 30. A new section of the Children's Code is
7 enacted to read:

8 "PERMANENT GUARDIANSHIP.--

9 A. A motion for permanent guardianship shall set
10 forth:

11 (1) the tribal affiliations of the Indian
12 child's parents;

13 (2) the specific actions taken by the
14 petitioner to notify the parents' Indian tribe and the
15 results of the contacts, including the names, addresses,
16 titles and telephone numbers of the persons contacted.

17 Copies of any correspondence with the Indian tribes shall be
18 attached as exhibits to the petition;

19 (3) the specific active efforts made to
20 comply with the placement preferences set forth in the Indian
21 Family Protection Act or the placement preferences of the
22 appropriate Indian tribes and any additional requirements for
23 that motion as provided pursuant to the Indian Family
24 Protection Act; and

25 (4) that notice has been sent by certified

1 mail, with return receipt requested, to the Indian child's
2 tribe and to any Indian custodian pursuant to the Indian
3 Family Protection Act.

4 B. The grounds for permanent guardianship shall be
5 proved beyond a reasonable doubt and meet the requirements of
6 the Indian Family Protection Act."

7 SECTION 31. A new section of the Children's Code is
8 enacted to read:

9 "INDEPENDENT ADOPTIONS--PRE-PLACEMENT STUDIES.--To be
10 certified to conduct pre-placement studies for the adoption
11 of an Indian child, a person shall meet the standards adopted
12 by the department."

13 SECTION 32. A new section of the Children's Code is
14 enacted to read:

15 "TERMINATION PROCEDURES IN INDEPENDENT ADOPTIONS--NOTICE
16 OF PETITION--BURDEN OF PROOF--REQUIRED FINDINGS.--

17 A. In addition to the requirements of the Adoption
18 Act, a petition for termination of parental rights involving
19 an Indian child shall set forth:

20 (1) the tribal affiliations of the Indian
21 child's parents;

22 (2) the specific actions taken by the moving
23 party to notify the parents' Indian tribe and the results of
24 the contacts, including the names, addresses, titles and
25 telephone numbers of the persons contacted. Copies of any

1 correspondence with the Indian tribe shall be attached as
2 exhibits to the petition; and

3 (3) the specific active efforts made to
4 comply with the placement preferences of the Indian Family
5 Protection Act.

6 B. Notice of the filing of the petition,
7 accompanied by a copy of the petition, shall be served by the
8 petitioner by certified or registered mail with return
9 receipt requested on the Indian child's tribe and on the
10 Indian child's parents or guardians.

11 C. The grounds for any termination shall be proved
12 beyond a reasonable doubt.

13 D. A judgment of the court terminating parental
14 rights shall include findings establishing that each
15 requirement of the Indian Family Protection Act was met."

16 SECTION 33. A new section of the Children's Code is
17 enacted to read:

18 "PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE REQUIRED
19 IN AN INDEPENDENT ADOPTION.--In an independent adoption,
20 consent from the parent or guardian of an Indian child to
21 adoption by the petitioner or relinquishment of parental
22 rights shall be obtained in the manner required by the Indian
23 Family Protection Act."

24 SECTION 34. A new section of the Children's Code is
25 enacted to read:

1 "ADJUDICATION--DISPOSITION--DECREE OF
2 ADOPTION--INVALIDATION.--

3 A. The court shall grant a decree of adoption if
4 it finds that:

5 (1) the petitioner has proved by clear and
6 convincing evidence that the placement preferences set forth
7 in the Indian Family Protection Act, or the placement
8 preferences established by the Indian child's tribe, have
9 been followed or, if not followed, good cause for
10 noncompliance has been proved by clear and convincing
11 evidence; and

12 (2) provision has been made to ensure that
13 the Indian child's cultural ties to the Indian child's tribe
14 are protected and fostered.

15 B. In any adoption involving an Indian child, the
16 clerk of the court shall provide the secretary with a copy of
17 the final decree of adoption or adoptive placement order.

18 C. A parent may withdraw consent to a voluntary
19 adoption of the Indian child at any time before entry of the
20 final decree of adoption.

21 D. Within two years after a final decree of
22 adoption of an Indian child, the court may invalidate a
23 voluntary adoption upon finding that the parent's consent was
24 obtained by fraud or duress.

25 E. Upon filing of a petition to vacate the final

1 decree of adoption of the parent's Indian child, the
2 petitioner shall give notice to all parties to the adoption
3 proceedings and the Indian child's tribe, and the court shall
4 hold a hearing on the petition.

5 F. Where the court finds that the parent's consent
6 was obtained through fraud or duress, the court shall vacate
7 the final decree of adoption, order the consent revoked and
8 order that the child be returned to the parent."

9 SECTION 35. A new section of the Children's Code is
10 enacted to read:

11 "RETURN OF CUSTODY.--Whenever an Indian child has been
12 adopted and the relationship between the adoptive parent and
13 the Indian child has been severed for any reason, a
14 biological parent, guardian or prior Indian custodian may
15 petition for return of custody, and there shall be a
16 presumption that the Indian child shall be returned to the
17 biological parent, guardian or prior Indian custodian, unless
18 the return of custody is not in the best interests of the
19 Indian child. The provisions of this section shall not be
20 deemed to conflict with other provisions pertaining to return
21 of custody in the Indian Family Protection Act."

22 SECTION 36. A new section of the Children's Code is
23 enacted to read:

24 "BEST INTERESTS OF INDIAN CHILD.--When making a
25 determination regarding the best interests of an Indian child

1 pursuant to the Indian Family Protection Act, a court shall,
2 after allowing testimony from all parties and the Indian
3 child's tribe, consider the following relevant factors:

4 A. the prioritization of placement of the Indian
5 child in accordance with the placement preferences provided
6 by the Indian Family Protection Act;

7 B. the prevention of unnecessary out-of-home
8 placement of the Indian child;

9 C. the critical importance to the Indian child of
10 establishing, developing or maintaining a political,
11 cultural, social and spiritual relationship with the Indian
12 child's tribe and tribal community and with familial ties
13 such as clanship and family with unique cultural
14 characteristics;

15 D. the importance to the Indian child of the
16 ability of the Indian child's tribe to maintain its existence
17 and integrity in promotion of the stability and security of
18 Indian children and families; and

19 E. the protection, safety and well-being of the
20 Indian child."

21 SECTION 37. A new section of the Children's Code is
22 enacted to read:

23 "ACCESS TO POST-DECREE ADOPTION RECORDS--TRIBAL
24 AFFILIATION AND OTHER INFORMATION.--

25 A. Pursuant to the Indian Family Protection Act,

1 an Indian tribe shall have access to the post-decree adoption
2 records that involve an Indian child who is a member or
3 eligible for membership in the Indian tribe.

4 B. Upon application by an Indian person who has
5 reached the age of eighteen and who was the subject of an
6 adoptive placement in this state prior to the enactment of
7 the Indian Family Protection Act, the court that entered the
8 final decree shall inform that Indian person of the tribal
9 affiliation, if any, of the Indian person's biological
10 parents and provide any other information necessary to
11 protect any rights flowing from the Indian person's tribal
12 relationship.

13 C. If the adoption predated enactment of the
14 federal Indian Child Welfare Act of 1978, the court shall
15 attempt to find information related to the adoption and may
16 order the department to assist. If the adoption of an Indian
17 person was completed after enactment of the federal Indian
18 Child Welfare Act of 1978, the Indian person may contact the
19 secretary for necessary information regarding the Indian
20 person's adoption. If the secretary certifies that the
21 secretary does not have that information, the state court
22 shall attempt to find the information and may order the
23 department to assist.

24 D. If an Indian person does not know the court
25 that issued the adoption decree, the Indian person may

1 request that information from the department. The department
2 shall provide to the Indian person the name and location of
3 the court that entered the final decree, if known."

4 SECTION 38. A new section of the Children's Code is
5 enacted to read:

6 "ADOPTION DECREES--INFORMATION AVAILABILITY.--

7 A. The clerk of a court entering a final decree or
8 order in an adoptive placement of an Indian child shall
9 provide the secretary with a copy of that decree, adoptive
10 placement order and any other information necessary to show:

11 (1) the birth name and birthdate of the
12 Indian child;

13 (2) any information relating to tribal
14 membership or eligibility for membership of the adopted
15 Indian child;

16 (3) the tribal affiliation and name of the
17 Indian child after adoption;

18 (4) the names and addresses of the
19 biological parents;

20 (5) the names and addresses of the adoptive
21 parents;

22 (6) the name and contact information of any
23 agency having files or information relating to the adoption;
24 and

25 (7) any affidavit signed by the biological

1 parent or parents asking that their identity remain
2 confidential.

3 B. The attorney for the prospective adoptive
4 parent shall provide to the clerk of the court a copy of the
5 decree of adoption, an adoptive placement order or any other
6 information required by the Indian Family Protection Act and
7 a stamped envelope addressed to the secretary marked
8 "Confidential".

9 SECTION 39. A new section of the Children's Code is
10 enacted to read:

11 "CONFIDENTIALITY--RECORDS--PENALTY.--

12 A. All records or information, whether on file
13 with the court, an agency, the department, an attorney or
14 other provider of professional services, concerning a party
15 to any proceedings pursuant to the Indian Family Protection
16 Act, including social records, diagnostic evaluations,
17 psychiatric or psychological reports, videotapes, transcripts
18 and audio recordings of an Indian child's statement of abuse
19 or medical reports incident to or obtained as a result of an
20 investigation or proceeding pursuant to the Indian Family
21 Protection Act or that were produced or obtained during an
22 investigation in anticipation of or incident to any
23 proceeding pursuant to the Indian Family Protection Act,
24 shall be confidential and closed to the public.

25 B. The records described in Subsection A of this

1 section shall be disclosed only to the parties and:

2 (1) court personnel and persons or entities
3 authorized by contract with the court to review, inspect or
4 otherwise have access to records or information in the
5 court's possession;

6 (2) court-appointed special advocates
7 appointed to the Indian child in a child custody proceeding;

8 (3) the Indian child's guardian ad litem;

9 (4) the attorney, including a public
10 defender, representing the Indian child in any child custody
11 proceeding pursuant to the Indian Family Protection Act;

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

16 (6) any local substitute care review board
17 or any agency contracted to implement local substitute care
18 review boards;

19 (7) law enforcement officials, except when
20 use immunity is granted pursuant to Section 32A-4-11 NMSA
21 1978;

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

24 (9) any state social services agency in any
25 state or when, in the opinion of the department it is in the

1 best interest of the Indian child, a governmental social
2 services agency of another country;

3 (10) an Indian child's tribe;

4 (11) a foster parent, if the records are
5 those of an Indian child currently placed with that foster
6 parent or of an Indian child being considered for placement
7 with that foster parent and the records concern the cultural,
8 social, medical, psychological or educational needs of the
9 Indian child;

10 (12) school personnel involved with the
11 Indian child if the records concern the Indian child's
12 cultural, social or educational needs;

13 (13) a grandparent, parent of a sibling,
14 relative or fictive kin, if the records or information
15 pertain to an Indian child being considered for placement
16 with that grandparent, parent of a sibling, relative or
17 fictive kin and the records or information concern the
18 cultural, social, medical, psychological or educational needs
19 of the Indian child;

20 (14) health care or mental health
21 professionals involved in the evaluation or treatment of the
22 Indian child or of the Indian child's parents or guardian, or
23 other family members;

24 (15) protection and advocacy representatives
25 pursuant to the federal Developmental Disabilities Assistance

1 and Bill of Rights Act and the federal Protection and
2 Advocacy for Mentally Ill Individuals Amendments Act of 1991;

3 (16) children's safehouse organizations
4 conducting investigatory interviews of children on behalf of
5 a law enforcement agency or the department;

6 (17) representatives of the federal
7 government or their contractors authorized by federal statute
8 or regulation to review, inspect, audit or otherwise have
9 access to records and information pertaining to neglect or
10 abuse proceedings;

11 (18) any person or entity attending a
12 meeting arranged by the department to discuss the safety,
13 well-being and permanency of an Indian child, when the parent
14 or child, or parent or guardian on behalf of a child younger
15 than fourteen years of age, has consented to the disclosure;
16 and

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

20 C. A parent or guardian whose Indian child has
21 been the subject of an investigation of abuse or neglect
22 where no petition has been filed shall have the right to
23 inspect any medical report, psychological evaluation, law
24 enforcement reports or other investigative or diagnostic
25 evaluation; provided that any identifying information related

1 to the reporting party or any other party providing
2 information shall be deleted. The parent or guardian shall
3 also have the right to the results of the investigation and
4 the right to petition the court for full access to all
5 department records and information except those records and
6 information the department finds would be likely to endanger
7 the life or safety of any person providing information to the
8 department.

9 D. In an adoption proceeding, all hearings held
10 pursuant to the Indian Family Protection Act shall be
11 confidential and shall be held in closed court without
12 admittance of any person other than parties and their counsel
13 and the Indian child's tribe.

14 E. In an adoption proceeding, unless the
15 petitioner agrees to be contacted or agrees to the release of
16 the petitioner's identity to the parent and the parent agrees
17 to be contacted or agrees to the release of the parent's
18 identity to the petitioner, the attorneys, the court, the
19 adoption agency and the department shall maintain
20 confidentiality regarding the names of the parties, unless
21 the information is already otherwise known. After the
22 petition is filed and prior to the entry of the decree, the
23 records in adoption proceedings shall be open to inspection
24 only by the attorney for the petitioner, the department or
25 the adoption agency, any attorney appointed as a guardian ad

1 litem or attorney for the adoptee, the Indian child's tribe,
2 any attorney retained by the adoptee or other persons upon
3 order of the court for good cause shown.

4 F. In an adoption proceeding, all information and
5 documentation provided for the purpose of full disclosure is
6 confidential. Documentation provided for the purpose of full
7 disclosure shall remain the property of the person making
8 full disclosure when a prospective adoptive parent decides
9 not to accept a placement. Immediately upon refusal of the
10 placement, the prospective adoptive parent shall return all
11 full disclosure documentation to the person providing full
12 disclosure. A prospective adoptive parent shall not disclose
13 any confidential information received during the full
14 disclosure process, except as necessary to make a placement
15 decision or to provide information to an Indian child's
16 guardian ad litem or attorney or the court.

17 G. In an adoption proceeding, prior to the entry
18 of the decree of adoption, the parent consenting to the
19 adoption or relinquishing parental rights to an agency or the
20 department shall execute an affidavit stating whether the
21 parent will permit contact or the disclosure of the parent's
22 identity to the adoptee or the adoptee's prospective adoptive
23 parents.

24 H. Whoever intentionally and unlawfully releases
25 any information or records closed to the public pursuant to

1 the Indian Family Protection Act or releases or makes other
2 unlawful use of records in violation of that act is guilty of
3 a petty misdemeanor and shall be sentenced pursuant to the
4 provisions of Section 31-19-1 NMSA 1978.

5 I. The department shall promulgate rules for
6 implementing disclosure of records pursuant to the Indian
7 Family Protection Act and in compliance with state and
8 federal law and the Children's Court Rules."

9 SECTION 40. A new section of the Children's Code is
10 enacted to read:

11 "INDIAN FAMILY PROTECTION ACT SUPPLEMENTAL TO OTHER
12 PROVISIONS OF LAW--CONFLICT OF LAWS.--

13 A. To the greatest extent possible, the Indian
14 Family Protection Act shall be read as in harmony with the
15 federal Indian Child Welfare Act of 1978.

16 B. The provisions of the Children's Code are
17 supplemental to and in harmony with the Indian Family
18 Protection Act. The provisions of the Indian Family
19 Protection Act govern child custody proceedings involving
20 Indian children. To the extent the provisions of those acts
21 or any provision of New Mexico state law conflicts with the
22 provisions of the Indian Family Protection Act, the
23 provisions of the Indian Family Protection Act shall apply."

24 SECTION 41. A new section of the Children's Code is
25 enacted to read:

1 "OFFICE OF TRIBAL AFFAIRS--CREATION.--The "office of
2 tribal affairs" is created in the department. The office
3 shall be dedicated to ensuring the department's compliance
4 with and full implementation of the Indian Family Protection
5 Act."

6 SECTION 42. A new section of the Children's Code is
7 enacted to read:

8 "INDIAN CHILD WELFARE RULES.--The department, through
9 discussion with the Indian nations, tribes and pueblos of the
10 state, shall promulgate rules to implement the provisions of
11 the Indian Family Protection Act. The administrative office
12 of the courts shall also discuss with the Indian nations,
13 tribes and pueblos of the state the recommendation of court
14 rules for potential adoption by the courts of the state."

15 SECTION 43. A new section of Chapter 32A, Article 1
16 NMSA 1978 is enacted to read:

17 "DETERMINATION OF WHETHER A CHILD IS AN INDIAN CHILD.--

18 A. If a child is taken into custody by the
19 department, the department shall make active efforts to
20 determine whether there is reason to know the child is an
21 Indian child.

22 B. At the beginning of every proceeding under the
23 Children's Code, the court shall make a written determination
24 as to whether the Indian Family Protection Act applies to the
25 case.

1 C. At the commencement of any hearing in a child
2 custody proceeding, the court shall determine whether the
3 child is an Indian child by asking, on the record, each
4 individual present on the matter whether the individual knows
5 or has reason to know that the child is an Indian child. If
6 no individual present at the hearing knows or has reason to
7 know that the child is an Indian child, the court shall
8 instruct each party to inform the court immediately if the
9 individual later receives information that provides reason to
10 know that the child is an Indian child.

11 D. A court has reason to know that a child is an
12 Indian child if:

13 (1) an Indian tribe asserts that the child
14 may be eligible for membership;

15 (2) any party in the proceeding, officer of
16 the court involved in the proceeding or an Indian
17 organization informs the court that the child is an Indian
18 child;

19 (3) any party at the hearing, officer of the
20 court present at the hearing, Indian tribe or Indian
21 organization informs the court that information has been
22 discovered indicating that the child is an Indian child;

23 (4) the child indicates to the court that
24 the child is an Indian child;

25 (5) the court is informed that the domicile

1 or residence of the child, the child's parent, the child's
2 guardian or the child's Indian custodian is on a reservation
3 or in an Alaska native village;

4 (6) the court is informed that the child is
5 or has been under the jurisdiction of a tribal court;

6 (7) the court is informed that the child or
7 the child's parent possesses an identification card or other
8 record indicating membership in an Indian tribe;

9 (8) testimony or documents presented to the
10 court indicate that the child may be an Indian child; or

11 (9) any other indicia provided to the court
12 or within the court's knowledge indicate that the child is an
13 Indian child.

14 E. If a court has reason to know that a child is
15 an Indian child but does not have sufficient evidence to
16 determine whether the child is an Indian child, the court
17 shall:

18 (1) treat the child as an Indian child until
19 the court determines, on the record, that the child is not an
20 Indian child; and

21 (2) require the department or another party
22 to submit a report, declaration or testimony on the record
23 that the department or other party made active efforts to
24 identify and work with all of the Indian tribes of which
25 there is reason to know the child may be a member or be

1 eligible for membership to verify whether the child is an
2 Indian child.

3 F. As used in this section, "Indian organization"
4 means a group, association, partnership, corporation or other
5 legal entity owned or controlled by Indians, or a majority of
6 whose members are Indians."

7 SECTION 44. Section 32A-1-4 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 13, as amended) is amended to read:

9 "32A-1-4. DEFINITIONS.--As used in the Children's Code:

10 A. "active efforts" means efforts that are
11 affirmative, active, thorough and timely and that represent a
12 higher standard of conduct than reasonable efforts;

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

15 C. "child" means a person who is less than
16 eighteen years old;

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

19 E. "court", when used without further
20 qualification, means the children's court division of the
21 district court and includes the judge, special master or
22 commissioner appointed pursuant to the provisions of the
23 Children's Code or supreme court rule;

24 F. "court-appointed special advocate" means a
25 person appointed pursuant to the provisions of the Children's

1 Court Rules to assist the court in determining the best
2 interests of the child by investigating the case and
3 submitting a report to the court;

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

6 H. "department" means the children, youth and
7 families department, unless otherwise specified;

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

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

15 K. "foster parent" means a person, including a
16 relative of the child, licensed or certified by the
17 department or a child placement agency to provide care for
18 children in the custody of the department or agency;

19 L. "guardian" means a person appointed as a
20 guardian by a court or Indian tribal authority or a person
21 authorized to care for the child by a parental power of
22 attorney as permitted by law;

23 M. "guardian ad litem" means an attorney appointed
24 by the children's court to represent and protect the best
25 interests of the child in a case; provided that no party or

1 employee or representative of a party to the case shall be
2 appointed to serve as a guardian ad litem;

3 N. "Indian" means, whether an adult or child, a
4 person who is:

5 (1) a member of an Indian tribe; or

6 (2) eligible for membership in an Indian
7 tribe;

8 O. "Indian child" means an Indian person, or a
9 person whom there is reason to know is an Indian person,
10 under eighteen years of age, who is neither:

11 (1) married; or

12 (2) emancipated;

13 P. "Indian child's tribe" means:

14 (1) the Indian tribe in which an Indian
15 child is a member or eligible for membership; or

16 (2) in the case of an Indian child who is a
17 member or eligible for membership in more than one tribe, the
18 Indian tribe with which the Indian child has more significant
19 contacts;

20 Q. "Indian custodian" means an Indian who,
21 pursuant to tribal law or custom or pursuant to state law:

22 (1) is an adult with legal custody of an
23 Indian child; or

24 (2) has been transferred temporary physical
25 care, custody and control by the parent of the Indian child;

1 R. "Indian tribe" means an Indian nation, tribe,
2 pueblo or other band, organized group or community of Indians
3 recognized as eligible for the services provided to Indians
4 by the secretary because of their status as Indians,
5 including an Alaska native village as defined in 43 U.S.C.
6 Section 1602(c) or a regional corporation as defined in 43
7 U.S.C. Section 1606. For the purposes of notification to and
8 communication with a tribe as required in the Indian Family
9 Protection Act, "Indian tribe" also includes those tribal
10 officials and staff who are responsible for child welfare and
11 social services matters;

12 S. "judge", when used without further
13 qualification, means the judge of the court;

14 T. "legal custody" means a legal status created by
15 order of the court or other court of competent jurisdiction
16 or by operation of statute that vests in a person, department
17 or agency the right to determine where and with whom a child
18 shall live; the right and duty to protect, train and
19 discipline the child and to provide the child with food,
20 shelter, personal care, education and ordinary and emergency
21 medical care; the right to consent to major medical,
22 psychiatric, psychological and surgical treatment and to the
23 administration of legally prescribed psychotropic medications
24 pursuant to the Children's Mental Health and Developmental
25 Disabilities Act; and the right to consent to the child's

1 enlistment in the armed forces of the United States;

2 U. "member" or "membership" means a determination
3 made by an Indian tribe that a person is a member of or
4 eligible for membership in that Indian tribe;

5 V. "parent" or "parents" means a biological or
6 adoptive parent if the biological or adoptive parent has a
7 constitutionally protected liberty interest in the care and
8 custody of the child or a person who has lawfully adopted an
9 Indian child pursuant to state law or tribal law or tribal
10 custom;

11 W. "permanency plan" means a determination by the
12 court that the child's interest will be served best by:

13 (1) reunification;

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

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

19 (4) placement in the legal custody of the
20 department with the child placed in the home of a fit and
21 willing relative; or

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

24 X. "person" means an individual or any other form
25 of entity recognized by law;

1 Y. "plan of care" means a plan created by a health
2 care professional intended to ensure the safety and well-
3 being of a substance-exposed newborn by addressing the
4 treatment needs of the child and any of the child's parents,
5 relatives, guardians, family members or caregivers to the
6 extent those treatment needs are relevant to the safety of
7 the child;

8 Z. "preadoptive parent" means a person with whom a
9 child has been placed for adoption;

10 AA. "protective supervision" means the right to
11 visit the child in the home where the child is residing,
12 inspect the home, transport the child to court-ordered
13 diagnostic examinations and evaluations and obtain
14 information and records concerning the child;

15 BB. "relative" means a person related to another
16 person:

17 (1) by blood within the fifth degree of
18 consanguinity or through marriage by the fifth degree of
19 affinity; or

20 (2) with respect to an Indian child, as
21 established or defined by the Indian child's tribe's custom
22 or law;

23 CC. "reservation" means:

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

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

4 (3) any lands held by an Indian tribe or
5 individual subject to a restriction by the United States
6 against alienation;

7 DD. "reunification" means either a return of the
8 child to the parent or to the home from which the child was
9 removed or a return to the noncustodial parent;

10 EE. "secretary" means the United States secretary
11 of the interior;

12 FF. "tribal court" means a court with jurisdiction
13 over child custody proceedings that is either a court of
14 Indian offenses, a court established and operated under the
15 law or custom of an Indian tribe or any other administrative
16 body that is vested by an Indian tribe with authority over
17 child custody proceedings;

18 GG. "tribal court order" means a document issued
19 by a tribal court that is signed by an appropriate authority,
20 including a judge, governor or tribal council member, and
21 that orders an action that is within the tribal court's
22 jurisdiction; and

23 HH. "tribunal" means any judicial forum other than
24 the court."

25 SECTION 45. Section 32A-1-8 NMSA 1978 (being Laws 1993,

1 Chapter 77, Section 17, as amended) is amended to read:

2 "32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT
3 JURISDICTION--EXCEPTION.--

4 A. The court has exclusive original jurisdiction
5 of all proceedings under the Children's Code in which a
6 person is eighteen years of age or older and was a child at
7 the time the alleged act in question was committed or is a
8 child alleged to be:

9 (1) a delinquent child;

10 (2) a child of a family in need of
11 court-ordered services or a child in need of services
12 pursuant to the Family in Need of Court-Ordered Services Act;

13 (3) a neglected child;

14 (4) an abused child;

15 (5) a child subject to adoption; or

16 (6) a child subject to placement for a
17 developmental disability or a mental disorder.

18 B. The court has exclusive original jurisdiction
19 to emancipate a minor.

20 C. The provisions of the Indian Family Protection
21 Act govern child custody proceedings involving Indian
22 children. To the extent the provisions of the Indian Family
23 Protection Act conflict with the Children's Code, the
24 provisions of the Indian Family Protection Act shall apply.

25 D. During abuse or neglect proceedings in which

1 New Mexico is the home state, pursuant to the provisions of
2 the Uniform Child-Custody Jurisdiction and Enforcement Act,
3 the court shall have jurisdiction over both parents to
4 determine the best interest of the child and to decide all
5 matters incident to the court proceedings.

6 E. The court may acquire jurisdiction over a Motor
7 Vehicle Code or municipal traffic code violation as set forth
8 in Section 32A-2-29 NMSA 1978."

9 SECTION 46. Section 32A-1-11 NMSA 1978 (being Laws
10 1993, Chapter 77, Section 20, as amended) is amended to read:

11 "32A-1-11. PETITION--FORM AND CONTENT.--A petition
12 initiating proceedings pursuant to the provisions of Chapter
13 32A, Article 2, 3B, 4 or 6 NMSA 1978 shall be entitled, "In
14 the Matter of, a child", and shall set forth
15 with specificity:

16 A. the facts necessary to invoke the jurisdiction
17 of the court;

18 B. if violation of a criminal statute or other law
19 or ordinance is alleged, the citation to the appropriate law;

20 C. the name, birth date and residence address of
21 the child;

22 D. the name and residence address of the parents,
23 guardian, custodian or spouse, if any, of the child; and if
24 no parent, guardian, custodian or spouse, if any, resides or
25 can be found within the state or if a residence address is

1 unknown, the name of any known adult relative residing within
2 the state or, if there be none, the known adult relative
3 residing nearest to the court;

4 E. whether the child is in custody or detention
5 pursuant to the Delinquency Act and, if so, the place of
6 custody or detention and the time the child was taken into
7 custody;

8 F. whether the child is an Indian child and, if
9 so, any additional information required pursuant to the
10 Indian Family Protection Act; and

11 G. if any of the matters required to be set forth
12 by this section are not known, a statement of those matters
13 and the fact that they are not known."

14 **SECTION 47.** Section 32A-3B-16 NMSA 1978 (being Laws
15 1993, Chapter 77, Section 88, as amended) is amended to read:

16 "32A-3B-16. DISPOSITIONAL JUDGMENT.--

17 A. At the conclusion of the dispositional hearing,
18 the court shall set forth its findings on the following
19 issues in the dispositional judgment:

20 (1) the ability of the parent and child to
21 share a residence;

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

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

3 (4) whether the child's educational needs
4 are being met;

5 (5) the mental and physical health of all
6 individuals involved;

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

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

11 (8) whether there exists a relative of the
12 child or any other individual who, after study by the
13 department, is found to be qualified to receive and care for
14 the child;

15 (9) the availability of services recommended
16 in the treatment plan;

17 (10) the department's efforts to work with
18 the parent and child in the home and a description of the in-
19 home treatment programs that the department has considered
20 and rejected; and

21 (11) when the child is an undocumented
22 immigrant child, whether the family services plan included
23 referral to nongovernmental agencies that may be able to
24 assist the child, and family when appropriate, in addressing
25 immigration status.

1 B. When there is an adjudication regarding a
2 family in need of court-ordered services, the court shall
3 enter judgment and make any of the following dispositions:

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

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

9 (3) transfer legal custody of the child to:

10 (a) the department;

11 (b) an agency responsible for the care
12 of neglected or abused children; or

13 (c) the child's noncustodial parent, if
14 that is found to be in the child's best interests; or

15 (4) if the evidence indicates that the
16 child's educational needs are not being met, the local
17 education agency may be joined as a party and directed to
18 assess the child's needs within forty-five days, attempt to
19 meet the child's educational needs and document its efforts
20 to meet the child's educational needs.

21 C. Unless a child of an adjudicated family in need
22 of court-ordered services is also found to be a delinquent
23 child, the child shall not be confined in an institution
24 established for the long-term care and rehabilitation of
25 delinquent children or in a facility for the detention of

1 alleged delinquent children."

2 SECTION 48. Section 32A-4-6 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 100, as amended) is amended to read:

4 "32A-4-6. TAKING INTO CUSTODY--PENALTY.--

5 A. A child may be held or taken into custody:

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

16 (a) the child's parent, guardian or
17 custodian has attempted, conspired to cause or caused great
18 bodily harm to the child or great bodily harm or death to the
19 child's sibling;

20 (b) the child's parent, guardian or
21 custodian has attempted, conspired to cause or caused great
22 bodily harm or death to another parent, guardian or custodian
23 of the child;

24 (c) the child has been abandoned;

25 (d) the child is in need of emergency

1 medical care;

2 (e) the department is not available to
3 conduct a safety assessment in a timely manner; or

4 (f) the child is in imminent risk of
5 abuse; or

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

14 B. A child shall not be taken into protective
15 custody solely on the grounds that the child's parent,
16 guardian or custodian refuses to consent to the
17 administration of a psychotropic medication to the child.

18 C. When a child is taken into custody by law
19 enforcement, the department is not compelled to place the
20 child in an out-of-home placement and may release the child
21 to the child's parent, guardian or custodian.

22 D. When a child is taken into custody, the
23 department shall make active efforts to determine whether the
24 child is an Indian child as required pursuant to the Indian
25 Family Protection Act.

1 E. Any person who intentionally interferes with
2 protection of a child, as provided by Subsection A of this
3 section, is guilty of a petty misdemeanor."

4 SECTION 49. Section 32A-4-18 NMSA 1978 (being Laws
5 1993, Chapter 77, Section 112, as amended) is amended to
6 read:

7 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
8 PROBABLE CAUSE.--

9 A. When a child alleged to be neglected or abused
10 has been placed in the legal custody of the department or the
11 department has petitioned the court for temporary custody, a
12 custody hearing shall be held within ten days from the date
13 the petition is filed to determine if the child should remain
14 in or be placed in the department's custody pending
15 adjudication. Upon written request of the respondent, the
16 hearing may be held earlier, but in no event shall the
17 hearing be held sooner than two days after the date the
18 petition was filed.

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

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

25 (1) the child is suffering from an illness

1 or injury, and the parent, guardian or custodian is not
2 providing adequate care for the child;

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

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

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

10 (5) the parent, guardian or custodian is not
11 able or willing to provide adequate supervision and care for
12 the child.

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

16 (1) return legal custody of the child to the
17 child's parent, guardian or custodian upon such conditions as
18 will reasonably ensure the safety and well-being of the
19 child, including protective supervision or maintenance at
20 home by the department or participation in programs or
21 services aimed at addressing the underlying causative factors
22 that impact the safety or well-being of the child; or

23 (2) award legal custody of the child to the
24 department.

25 E. Reasonable efforts shall be made to preserve

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

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

13 (1) retain jurisdiction and, unless the
14 court permits otherwise, order that the respondent and child
15 remain in the jurisdiction of the court pending the
16 adjudication;

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

20 (3) order that the child's parent, guardian
21 or custodian allow the child necessary contact with the
22 child's guardian ad litem or attorney.

23 G. At the conclusion of the custody hearing, the
24 court may order the respondent or the child alleged to be
25 neglected or abused, or both, to undergo appropriate

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

12 H. The Rules of Evidence shall not apply to
13 custody hearings.

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

24 **SECTION 50.** Section 32A-4-21 NMSA 1978 (being Laws
25 1993, Chapter 77, Section 115, as amended) is amended to

1 read:

2 "32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,
3 REPORTS AND EXAMINATIONS.--

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

7 B. The predisposition study required pursuant to
8 Subsection A of this section shall contain the following
9 information:

10 (1) a statement of the specific reasons for
11 intervention by the department or for placing the child in
12 the department's custody and a statement of the parent's
13 ability to care for the child in the parent's home without
14 causing harm to the child;

15 (2) a statement of how an intervention plan
16 is designed to achieve placement of the child in the least
17 restrictive setting available, consistent with the best
18 interests and special needs of the child, including a
19 statement of the likely harm the child may suffer as a result
20 of being removed from the parent's home, including emotional
21 harm that may result due to separation from the child's
22 parents, and a statement of how the intervention plan is
23 designed to place the child in close proximity to the
24 parent's home without causing harm to the child due to
25 separation from parents, siblings or any other person who may

1 significantly affect the child's best interest;

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

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

11 (5) a description of services offered to the
12 child, the child's family and the child's foster care family
13 and a summary of reasonable efforts made to prevent removal
14 of the child from the child's family or reasonable efforts
15 made to reunite the child with the child's family;

16 (6) a description of the home or facility in
17 which the child is placed and the appropriateness of the
18 child's placement;

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

21 (8) a statement of the child's medical and
22 educational background;

23 (9) a case plan that sets forth steps to
24 ensure that the child's physical, medical, cultural,
25 psychological and educational needs are met and that sets

1 forth services to be provided to the child and the child's
2 parents to facilitate permanent placement of the child in the
3 parent's home;

4 (10) for children sixteen years of age and
5 older, a plan for developing the specific skills the child
6 requires for successful transition into independent living as
7 an adult, regardless of whether the child is returned to the
8 child's parent's home;

9 (11) a case plan that sets forth steps to
10 ensure that the child's educational needs are met and, for a
11 child fourteen years of age or older, a case plan that
12 specifically sets forth the child's educational and post-
13 secondary goals; and

14 (12) a description of the child's foster
15 care placement and whether it is appropriate in terms of the
16 educational setting and proximity to the school the child was
17 enrolled in at the time of the placement, including plans for
18 travel for the child to remain in the school in which the
19 child was enrolled at the time of placement, if reasonable
20 and in the child's best interest.

21 C. A copy of the predisposition report shall be
22 provided by the department to counsel for all parties five
23 days before the dispositional hearing.

24 D. If the child is an adjudicated abused child,
25 any temporary custody orders shall remain in effect until the

1 court has received and considered the predispositional study
2 at the dispositional hearing."

3 SECTION 51. Section 32A-4-22 NMSA 1978 (being Laws
4 1993, Chapter 77, Section 116, as amended) is amended to
5 read:

6 "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR
7 NEGLECTED CHILD.--

8 A. If not held in conjunction with the
9 adjudicatory hearing, the dispositional hearing shall be
10 commenced within thirty days after the conclusion of the
11 adjudicatory hearing. At the conclusion of the dispositional
12 hearing, the court shall make and include in the
13 dispositional judgment its findings on the following:

14 (1) the interaction and interrelationship of
15 the child with the child's parent, siblings and any other
16 person who may significantly affect the child's best
17 interest;

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

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

22 (4) the wishes of the child as to the
23 child's placement;

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

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

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

12 (8) whether there exists a relative of the
13 child or other individual who, after study by the department,
14 is found to be qualified to receive and care for the child;

15 (9) the availability of services recommended
16 in the case plan prepared as a part of the predisposition
17 study in accordance with the provisions of Section 32A-4-21
18 NMSA 1978;

19 (10) the ability of the parent to care for
20 the child in the home so that no harm will result to the
21 child;

22 (11) whether reasonable efforts were made by
23 the department to prevent removal of the child from the home
24 prior to placement in substitute care and whether reasonable
25 efforts were made to attempt reunification of the child with

1 the natural parent; and

2 (12) whether reasonable efforts were made by
3 the department to place siblings in custody together, unless
4 such joint placement would be contrary to the safety or well-
5 being of any of the siblings in custody, and whether any
6 siblings not jointly placed have been provided reasonable
7 visitation or other ongoing interaction, unless visitation or
8 other ongoing interaction would be contrary to the safety or
9 well-being of any of the siblings.

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

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

16 (2) place the child under protective
17 supervision of the department; or

18 (3) transfer legal custody of the child to
19 one of the following:

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

22 (b) the department.

23 C. If a child is found to be neglected or abused,
24 in its dispositional judgment the court shall also order the
25 department to implement and the child's parent, guardian or

1 custodian to cooperate with any case plan approved by the
2 court. Reasonable efforts shall be made to preserve and
3 reunify the family, with the paramount concern being the
4 child's health and safety. The court may determine that
5 reasonable efforts are not required to be made when the court
6 finds that:

7 (1) the efforts would be futile; or

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

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

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

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

25 G. When the court vests legal custody in an

1 agency, institution or department, the court shall transmit
2 with the dispositional judgment copies of the clinical
3 reports, the predisposition study and report and any other
4 information it has pertinent to the care and treatment of the
5 child.

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

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

19 **SECTION 52.** Section 32A-4-25 NMSA 1978 (being Laws
20 1993, Chapter 77, Section 119, as amended) is amended to
21 read:

22 "32A-4-25. PERIODIC JUDICIAL REVIEW OF DISPOSITIONAL
23 JUDGMENTS.--

24 A. The initial judicial review shall be held
25 within sixty days of the disposition. At the initial

1 judicial review, the parties shall demonstrate to the court
2 efforts made to implement the treatment plan approved by the
3 court in its dispositional order. The court shall determine
4 the extent to which the treatment plan has been implemented
5 and make supplemental orders as necessary to ensure
6 compliance with the treatment plan and the safety of the
7 child. Prior to the initial judicial review, the department
8 shall submit a copy of the adjudicatory order, the
9 dispositional order and notice of the initial judicial review
10 to the council. The staff of the council, or an entity
11 contracting with the council, shall review the case. If the
12 staff or contracting entity determines that the case meets
13 the criteria established in council rules, the staff or
14 contracting entity shall designate the case for review by a
15 substitute care review board. A representative of the
16 substitute care review board, if designated, shall be
17 permitted to attend and comment to the court.

18 B. The court shall conduct subsequent periodic
19 judicial reviews of the dispositional order within six months
20 of the conclusion of the permanency hearing or, if a motion
21 has been filed for termination of parental rights or
22 permanent guardianship, within six months of the decision on
23 that motion and every six months thereafter. Prior to a
24 subsequent periodic judicial review, the department shall
25 submit a progress report to the council or any designated

1 substitute care review board. Prior to any judicial review
2 by the court pursuant to this section, the substitute care
3 review board may review the dispositional order or the
4 continuation of the order and the department's progress
5 report and report its findings and recommendations to the
6 court.

7 C. Judicial review pursuant to this section may be
8 carried out by either of the following:

9 (1) a judicial review hearing conducted by
10 the court; or

11 (2) a judicial review hearing conducted by a
12 special master appointed by the court; provided, however,
13 that the court approve any findings made by the special
14 master.

15 D. The children's court attorney shall give notice
16 of the time, place and purpose of any judicial review hearing
17 held pursuant to Subsection A, B or C of this section to:

18 (1) all parties, including:

19 (a) the child alleged to be neglected
20 or abused or in need of court-ordered services, by and
21 through the child's guardian ad litem or attorney;

22 (b) the child's parent, guardian or
23 custodian, who has allegedly neglected or abused the child or
24 is in need of court-ordered services; and

25 (c) any other person made a party by

1 the court;

2 (2) the child's foster parent or substitute
3 care provider;

4 (3) the child's court-appointed special
5 advocate; and

6 (4) if designated by the council, the
7 substitute care review board.

8 E. At any subsequent judicial review hearing held
9 pursuant to Subsection B of this section, the department and
10 all parties given notice pursuant to Subsection D of this
11 section shall have the opportunity to present evidence and to
12 cross-examine witnesses. At the hearing, the department
13 shall show that it has made reasonable effort to implement
14 any treatment plan approved by the court in its dispositional
15 order and shall present a treatment plan consistent with the
16 purposes of the Children's Code for any period of extension
17 of the dispositional order. The respondent shall demonstrate
18 to the court that efforts to comply with the treatment plan
19 approved by the court in its dispositional order and efforts
20 to maintain contact with the child were diligent and made in
21 good faith. The court shall determine the extent of
22 compliance with the treatment plan and whether progress is
23 being made toward establishing a stable and permanent
24 placement for the child.

25 F. The Rules of Evidence shall not apply to

1 hearings held pursuant to this section. The court may admit
2 testimony by any person given notice of the hearing who has
3 information about the status of the child or the status of
4 the treatment plan.

5 G. At the conclusion of any hearing held pursuant
6 to this section, the court shall make findings of fact and
7 conclusions of law.

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

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

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

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

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

25 (a) the noncustodial parent, if that is

1 found to be in the child's best interests;

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

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

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

17 (a) the efforts would be futile; or

18 (b) the parent, guardian or custodian
19 has subjected the child to aggravated circumstances;

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

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

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

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

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

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

23 **SECTION 53.** Section 32A-4-27 NMSA 1978 (being Laws
24 1993, Chapter 77, Section 121, as amended) is amended to
25 read:

1 "32A-4-27. INTERVENTION--PERSONS PERMITTED TO
2 INTERVENE.--

3 A. At any stage of an abuse or neglect proceeding,
4 a person described in this subsection may be permitted to
5 intervene as a party with a motion for affirmative relief:

6 (1) a foster parent with whom the child has
7 resided for at least six months;

8 (2) a relative within the fifth degree of
9 consanguinity with whom the child has resided;

10 (3) a stepparent with whom the child has
11 resided; or

12 (4) a person who wishes to become the
13 child's permanent guardian.

14 B. When determining whether a person described in
15 Subsection A of this section should be permitted to
16 intervene, the court shall consider:

17 (1) the person's rationale for the proposed
18 intervention; and

19 (2) whether intervention is in the best
20 interest of the child.

21 C. When the court determines that the child's best
22 interest will be served as a result of intervention by a
23 person described in Subsection A of this section, the court
24 may permit intervention unless the party opposing
25 intervention can demonstrate that a viable plan for

1 reunification with the respondents is in progress and that
2 intervention could impede the progress of the reunification
3 plan.

4 D. A parent of the child who is not named in the
5 petition alleging abuse or neglect shall be permitted to
6 intervene during any stage of an abuse or neglect proceeding.

7 E. The foster parent shall be permitted to
8 intervene when:

9 (1) the foster parent desires to adopt the
10 child;

11 (2) the child has resided with the foster
12 parent for at least six months within the year prior to the
13 termination of parental rights;

14 (3) a motion for termination of parental
15 rights has been filed by a person other than the foster
16 parent; and

17 (4) bonding between the child and the
18 child's foster parent is alleged as a reason for terminating
19 parental rights in the motion for termination of parental
20 rights.

21 F. The foster parent, preadoptive parent or
22 relative providing care for the child shall be given notice
23 of, and an opportunity to be heard in, any review or hearing
24 with respect to the child, except that this subsection shall
25 not be construed to require that any foster parent,

1 preadoptive parent or relative providing care for the child
2 be made a party to such a review or hearing solely on the
3 basis of the notice and opportunity to be heard."

4 SECTION 54. Section 32A-4-28 NMSA 1978 (being Laws
5 1993, Chapter 77, Section 122, as amended) is amended to
6 read:

7 "32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION
8 DECREE.--

9 A. In proceedings to terminate parental rights,
10 the court shall give primary consideration to the physical,
11 mental and emotional welfare and needs of the child,
12 including the likelihood of the child being adopted if
13 parental rights are terminated.

14 B. The court shall terminate parental rights with
15 respect to a child when:

16 (1) there has been an abandonment of the
17 child by the child's parents;

18 (2) the child has been a neglected or abused
19 child as defined in the Abuse and Neglect Act and the court
20 finds that the conditions and causes of the neglect and abuse
21 are unlikely to change in the foreseeable future despite
22 reasonable efforts by the department or other appropriate
23 agency to assist the parent in adjusting the conditions that
24 render the parent unable to properly care for the child. The
25 court may find in some cases that efforts by the department

1 or another agency are unnecessary, when:

2 (a) there is a clear showing that the
3 efforts would be futile; or

4 (b) the parent has subjected the child
5 to aggravated circumstances; or

6 (3) the child has been placed in the care of
7 others, including care by other relatives, either by a court
8 order or otherwise and the following conditions exist:

9 (a) the child has lived in the home of
10 others for an extended period of time;

11 (b) the parent-child relationship has
12 disintegrated;

13 (c) a psychological parent-child
14 relationship has developed between the substitute family and
15 the child;

16 (d) if the court deems the child of
17 sufficient capacity to express a preference, the child no
18 longer prefers to live with the natural parent;

19 (e) the substitute family desires to
20 adopt the child; and

21 (f) a presumption of abandonment
22 created by the conditions described in Subparagraphs (a)
23 through (e) of this paragraph has not been rebutted.

24 C. A finding by the court that all of the
25 conditions set forth in Subparagraphs (a) through (f) of

1 Paragraph (3) of Subsection B of this section exist shall
2 create a rebuttable presumption of abandonment.

3 D. The department shall not file a motion, and
4 shall not join a motion filed by another party, to terminate
5 parental rights:

6 (1) when the sole factual basis for the
7 motion is that a child's parent is or was formerly
8 incarcerated; or

9 (2) if the motion is based, to any extent,
10 on the fact that the child is an Indian child or that the
11 child's parent or parents are Indian.

12 E. If the court finds that parental rights should
13 be terminated; that the requirements for the adoption of a
14 child have been satisfied; that the prospective adoptive
15 parent is a party to the action; and that good cause exists
16 to waive the filing of a separate petition for adoption, the
17 court may proceed to grant adoption of the child, absent an
18 appeal of the termination of parental rights. The court
19 shall not waive any time requirements set forth in the
20 Adoption Act unless the termination of parental rights
21 occurred pursuant to the provisions of Paragraph (3) of
22 Subsection B of this section. The court may enter a decree
23 of adoption only after finding that the party seeking to
24 adopt the child has satisfied all of the requirements set
25 forth in the Adoption Act. Unless otherwise stipulated by

1 all parties, an adoption decree shall take effect sixty days
2 after the termination of parental rights, to allow the
3 department sufficient time to provide counseling for the
4 child and otherwise prepare the child for the adoption. The
5 adoption decree shall conform to the requirements of the
6 Adoption Act and shall have the same force and effect as
7 other adoption decrees entered pursuant to that act. The
8 court clerk shall assign an adoption case number to the
9 adoption decree."

10 SECTION 55. Section 32A-4-29 NMSA 1978 (being Laws
11 1993, Chapter 77, Section 123, as amended) is amended to
12 read:

13 "32A-4-29. TERMINATION PROCEDURE.--

14 A. A motion to terminate parental rights may be
15 filed at any stage of the abuse or neglect proceeding by a
16 party to the proceeding.

17 B. The motion for termination of parental rights
18 shall set forth:

19 (1) the date, place of birth and marital
20 status of the child, if known;

21 (2) the grounds for termination and the
22 facts and circumstances supporting the grounds for
23 termination;

24 (3) the names and addresses of the persons
25 or authorized agency or agency officer to whom legal custody

1 might be transferred;

2 (4) whether the child resides or has resided
3 with a foster parent who desires to adopt the child;

4 (5) whether the motion is in contemplation
5 of adoption;

6 (6) the relationship or legitimate interest
7 of the moving party to the child; and

8 (7) whether the child is subject to the
9 Indian Family Protection Act.

10 C. Notice of the filing of the motion, accompanied
11 by a copy of the motion, shall be served by the moving party
12 on all other parties, the foster parent, preadoptive parent
13 or relative providing care for the child with whom the child
14 is residing, foster parents with whom the child has resided
15 for six months within the previous twelve months, the
16 custodian of the child, any person appointed to represent any
17 party and any other person the court orders. Service shall
18 be in accordance with the Children's Court Rules for the
19 service of motions, except that foster parents and attorneys
20 of record in this proceeding shall be served by certified
21 mail. The notice shall state specifically that the person
22 served shall file a written response to the motion within
23 twenty days if the person intends to contest the termination.
24 Further notice shall not be required on a parent who has been
25 provided notice previously pursuant to Section 32A-4-17 NMSA

1 1978 and who failed to make an appearance.

2 D. When a motion to terminate parental rights is
3 filed, the moving party shall request a hearing on the
4 motion. The hearing date shall be at least thirty days, but
5 no more than sixty days, after service is effected upon the
6 parties entitled to service under this section. The moving
7 party shall also file a motion for court-ordered mediation
8 between the parent and any prospective adoptive parent to
9 discuss an open adoption agreement. If an open adoption
10 agreement is reached at any time before termination of
11 parental rights, it shall be made a part of the court record.

12 E. In any action for the termination of parental
13 rights brought by a party other than the department and
14 involving a child in the legal custody of the department, the
15 department may:

16 (1) litigate a motion for the termination of
17 parental rights that was initially filed by another party; or

18 (2) move that the motion for the termination
19 of parental rights be found premature and denied.

20 F. When a motion to terminate parental rights is
21 filed, the department shall perform concurrent planning.

22 G. When a child has been in foster care for not
23 less than fifteen of the previous twenty-two months, the
24 department shall file a motion to terminate parental rights,
25 unless:

1 (1) a parent has made substantial progress
2 toward eliminating the problem that caused the child's
3 placement in foster care; it is likely that the child will be
4 able to safely return to the parent's home within three
5 months; and the child's return to the parent's home will be
6 in the child's best interests;

7 (2) the child has a close and positive
8 relationship with a parent and a permanent plan that does not
9 include termination of parental rights will provide the most
10 secure and appropriate placement for the child;

11 (3) the child is fourteen years of age or
12 older, is firmly opposed to termination of parental rights
13 and is likely to disrupt an attempt to place the child with
14 an adoptive family;

15 (4) a parent is terminally ill, but in
16 remission, and does not want parental rights to be
17 terminated; provided that the parent has designated a
18 guardian for the child;

19 (5) the child is not capable of functioning
20 if placed in a family setting. In such a case, the court
21 shall reevaluate the status of the child every ninety days
22 unless there is a final court determination that the child
23 cannot be placed in a family setting;

24 (6) grounds do not exist for termination of
25 parental rights;

1 (7) the child is an unaccompanied, refugee
2 minor and the situation regarding the child involves
3 international legal issues or compelling foreign policy
4 issues;

5 (8) adoption is not an appropriate plan for
6 the child; or

7 (9) the parent's incarceration or
8 participation in a court-ordered residential substance abuse
9 treatment program constitutes the primary factor in the
10 child's placement in substitute care and termination of
11 parental rights is not in the child's best interest.

12 H. For purposes of this section, a child shall be
13 considered to have entered foster care on the earlier of:

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

16 (2) the date that is sixty days after the
17 date on which the child was removed from the home.

18 I. The grounds for any attempted termination shall
19 be proved by clear and convincing evidence.

20 J. When the court terminates parental rights, it
21 shall appoint a custodian for the child and fix
22 responsibility for the child's support.

23 K. A judgment of the court terminating parental
24 rights divests the parent of all legal rights and privileges
25 and dispenses with both the necessity for the consent to or

1 receipt of notice of any subsequent adoption proceeding
2 concerning the child. A judgment of the court terminating
3 parental rights shall not affect the child's rights of
4 inheritance from and through the child's biological parents.

5 L. When the court denies a motion to terminate
6 parental rights, the court shall issue appropriate orders
7 immediately. The court shall direct the parties to file a
8 stipulated order and interim plan or a request for hearing
9 within thirty days of the date of the hearing denying the
10 termination of parental rights."

11 SECTION 56. Section 32A-4-32 NMSA 1978 (being Laws
12 1993, Chapter 77, Section 126, as amended) is amended to
13 read:

14 "32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE.--

15 A. A motion for permanent guardianship may be
16 filed by any party.

17 B. A motion for permanent guardianship shall set
18 forth:

19 (1) the date, place of birth and marital
20 status of the child, if known;

21 (2) the facts and circumstances supporting
22 the grounds for permanent guardianship;

23 (3) the name and address of the prospective
24 guardian and a statement that the person agrees to accept the
25 duties and responsibilities of guardianship;

1 (4) the basis for the court's jurisdiction;

2 (5) the relationship of the child to the
3 petitioner and the prospective guardian; and

4 (6) whether the child is subject to the
5 Indian Family Protection Act and, if so, any additional
6 requirements for that motion as provided pursuant to the
7 Indian Family Protection Act.

8 C. If the motion is not filed by the prospective
9 guardian, the motion shall be verified by the prospective
10 guardian.

11 D. Notice of the filing of the motion, accompanied
12 by a copy of the motion, shall be served by the moving party
13 on any parent who has not previously been made a party to the
14 proceeding, the parents of the child, foster parents with
15 whom the child is residing, the foster parent, preadoptive
16 parent or relative providing care for the child with whom the
17 child has resided for six months, the child's custodian, the
18 department, any person appointed to represent any party,
19 including the child's guardian ad litem, and any other person
20 the court orders provided with notice. Service shall be in
21 accordance with the Children's Court Rules for the service of
22 motions. Further notice shall not be required to a parent
23 who has been provided notice previously pursuant to Section
24 32A-4-17 NMSA 1978 and who failed to make an appearance.

25 E. The grounds for permanent guardianship shall be

1 proved by clear and convincing evidence.

2 F. A judgment of the court vesting permanent
3 guardianship with an individual divests the biological or
4 adoptive parent of legal custody or guardianship of the
5 child, but is not a termination of the parent's rights. A
6 child's inheritance rights from and through the child's
7 biological or adoptive parents are not affected by this
8 proceeding.

9 G. Upon a finding that grounds exist for a
10 permanent guardianship, the court may incorporate into the
11 final order provisions for visitation with the natural
12 parents, siblings or other relatives of the child and any
13 other provision necessary to rehabilitate the child or
14 provide for the child's continuing safety and well-being.

15 H. The court shall retain jurisdiction to enforce
16 its judgment of permanent guardianship.

17 I. Any party may make a motion for revocation of
18 the order granting guardianship when there is a significant
19 change of circumstances, including:

20 (1) the child's parent is able and willing
21 to properly care for the child; or

22 (2) the child's guardian is unable to
23 properly care for the child.

24 J. The court shall appoint a guardian ad litem for
25 the child in all proceedings for the revocation of permanent

1 guardianship if the child is under the age of fourteen. The
2 court shall appoint an attorney for the child in all
3 proceedings for the revocation of permanent guardianship if
4 the child is fourteen years of age or older at the inception
5 of the proceedings.

6 K. The court may revoke the order granting
7 guardianship when a significant change of circumstances has
8 been proven by clear and convincing evidence and it is in the
9 child's best interests to revoke the order granting
10 guardianship."

11 SECTION 57. Section 32A-4-33 NMSA 1978 (being Laws
12 1993, Chapter 77, Section 127, as amended) is amended to
13 read:

14 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

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

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

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

5 (2) court-appointed special advocates
6 appointed to the neglect or abuse proceeding;

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

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

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

15 (6) any local substitute care review board
16 or any agency contracted to implement local substitute care
17 review boards;

18 (7) law enforcement officials, except when
19 use immunity is granted pursuant to Section 32A-4-11 NMSA
20 1978;

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

23 (9) any state government or tribal
24 government social services agency in any state or when, in
25 the opinion of the department it is in the best interest of

1 the child, a governmental social services agency of another
2 country;

3 (10) a foster parent, if the records are
4 those of a child currently placed with that foster parent or
5 of a child being considered for placement with that foster
6 parent and the records concern the social, medical,
7 psychological or educational needs of the child;

8 (11) school personnel involved with the
9 child if the records concern the child's social or
10 educational needs;

11 (12) a grandparent, parent of a sibling,
12 relative or fictive kin, if the records or information
13 pertain to a child being considered for placement with that
14 grandparent, parent of a sibling, relative or fictive kin and
15 the records or information concern the social, medical,
16 psychological or educational needs of the child;

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

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

25 (15) children's safehouse organizations

1 conducting investigatory interviews of children on behalf of
2 a law enforcement agency or the department;

3 (16) representatives of the federal
4 government or their contractors authorized by federal statute
5 or regulation to review, inspect, audit or otherwise have
6 access to records and information pertaining to neglect or
7 abuse proceedings;

8 (17) any person or entity attending a
9 meeting arranged by the department to discuss the safety,
10 well-being and permanency of a child, when the parent or
11 child, or parent or legal custodian on behalf of a child
12 younger than fourteen years of age, has consented to the
13 disclosure; and

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

17 C. A parent, guardian or legal custodian whose
18 child has been the subject of an investigation of abuse or
19 neglect where no petition has been filed shall have the right
20 to inspect any medical report, psychological evaluation, law
21 enforcement reports or other investigative or diagnostic
22 evaluation; provided that any identifying information related
23 to the reporting party or any other party providing
24 information shall be deleted. The parent, guardian or legal
25 custodian shall also have the right to the results of the

1 investigation and the right to petition the court for full
2 access to all department records and information except those
3 records and information the department finds would be likely
4 to endanger the life or safety of any person providing
5 information to the department.

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

12 E. The department shall promulgate rules for
13 implementing disclosure of records pursuant to this section
14 and in compliance with state and federal law and the
15 Children's Court Rules."

16 SECTION 58. Section 32A-5-7 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 134, as amended) is amended to read:

18 "32A-5-7. CLERK OF THE COURT--DUTIES.--

19 A. The clerk of the court shall file pleadings
20 captioned pursuant to the provisions of Section 32A-5-9 NMSA
21 1978. The clerk of the court shall not file incorrectly
22 captioned pleadings.

23 B. The clerk of the court shall mail a copy of the
24 request for placement to the department within one working
25 day of the request for placement being filed with the court.

1 The attorney for the person requesting placement shall
2 provide to the clerk of the court a copy of the request for
3 placement and a stamped envelope addressed to the department
4 as specified in department rules.

5 C. The clerk of the court shall mail a copy of the
6 petition for adoption within one working day of the petition
7 for adoption being filed with the court. The attorney for
8 the petitioner shall provide to the clerk of the court a copy
9 of the petition for adoption and a stamped envelope addressed
10 to the department as specified in department rules.

11 D. The clerk of the court shall mail a copy of the
12 decree of adoption to the department within one working day
13 of the entry of the decree of adoption. The attorney for the
14 petitioner shall provide to the clerk of the court a copy of
15 the decree of adoption and a stamped envelope addressed to
16 the department as specified in department rules.

17 E. The clerk of the court shall provide a
18 certificate of adoption with an adoptee's new name.

19 F. The attorney for the petitioner shall forward
20 the certificate of adoption provided for in Subsection E of
21 this section as follows:

22 (1) for a person born in the United States,
23 to the appropriate vital statistics office of the place, if
24 known, where the adoptee was born; or

25 (2) for all other persons, to the state

1 registrar of vital statistics."

2 SECTION 59. Section 32A-5-13 NMSA 1978 (being Laws
3 1993, Chapter 77, Section 140, as amended) is amended to
4 read:

5 "32A-5-13. INDEPENDENT ADOPTIONS--REQUEST FOR
6 PLACEMENT--PLACEMENT ORDER--CERTIFICATION.--

7 A. When a placement order is required, the
8 petitioner shall file a request with the court to allow the
9 placement. An order permitting the placement shall be
10 obtained prior to actual placement.

11 B. Only a pre-placement study that has been
12 prepared or updated within one year immediately prior to the
13 date of placement, approving the petitioner as an appropriate
14 adoptive parent, shall be filed with the court prior to
15 issuance of a placement order, except as provided in
16 Subsection C of Section 32A-5-12 NMSA 1978.

17 C. In order for a person to be certified to
18 conduct pre-placement studies, the person shall meet the
19 standards promulgated by the department.

20 D. The pre-placement study shall be conducted by
21 an agency or a person certified by the department to conduct
22 the study. A person or agency that wants to be certified to
23 perform pre-placement studies shall file documents verifying
24 their qualifications with the department. The department
25 shall publish a list of persons or agencies certified to

1 conduct a pre-placement study. If necessary to defray
2 additional costs associated with compiling the list, the
3 department may assess and charge a reasonable administrative
4 fee to the person or agency listed.

5 E. When a person or agency that wants to be
6 certified to perform pre-placement studies files false
7 documentation with the department, the person or agency shall
8 be subject to the provisions of Section 32A-5-42 NMSA 1978.

9 F. A request for placement shall be filed and
10 verified by the petitioner and shall allege:

11 (1) the full name, age and place and
12 duration of residence of the petitioner and, if married, the
13 place and date of marriage;

14 (2) the date and place of birth of the
15 adoptee, if known, or the anticipated date and place of birth
16 of the adoptee;

17 (3) a detailed statement of the
18 circumstances and persons involved in the proposed placement;

19 (4) if the adoptee has been born, the
20 address where the adoptee is residing at the time of the
21 request for placement;

22 (5) if the adoptee has been born, the places
23 where the adoptee has lived within the past three years and
24 the names and addresses of the persons with whom the adoptee
25 has lived. If the adoptee is in the custody of an agency or

1 the department, the address shall be the address of the
2 agency or the county office of the department from which the
3 child was placed;

4 (6) the existence of any court orders that
5 are known to the petitioner and that regulate custody,
6 visitation or access to the adoptee, copies of which shall be
7 attached to the request for placement as exhibits; if copies
8 of any such court orders are unavailable at the time of
9 filing the request for placement, the copies shall be filed
10 prior to the issuance of the order of placement;

11 (7) that the petitioner desires to establish
12 a parent and child relationship between the petitioner and
13 the adoptee and that the petitioner is a fit and proper
14 person able to care and provide for the adoptee's welfare;

15 (8) the relationship, if any, of the
16 petitioner to the adoptee;

17 (9) whether the adoptee is subject to the
18 Indian Family Protection Act, and, if so, the petition shall
19 allege the actions taken to comply with the Indian Family
20 Protection Act and all other allegations required pursuant to
21 that act;

22 (10) whether the adoption is subject to the
23 Interstate Compact on the Placement of Children and what
24 specific actions have been taken to comply with the
25 Interstate Compact on the Placement of Children; and

1 (11) the name, address and telephone number
2 of the agency or investigator who has agreed to do the
3 pre-placement study.

4 G. The request for placement shall be served on
5 all parties entitled to receive notice of the filing of a
6 petition for adoption, as provided in Section 32A-5-27 NMSA
7 1978. An order allowing placement may be entered prior to
8 service of the request for placement.

9 H. A hearing and the court decision on the request
10 for placement shall occur within thirty days of the filing of
11 the request.

12 I. As part of any court order authorizing
13 placement under this section, the court shall find whether
14 the pre-placement study complies with Section 32A-5-14 NMSA
15 1978 and that the time requirements concerning placement set
16 forth in this section have been met."

17 **SECTION 60.** Section 32A-5-15 NMSA 1978 (being Laws
18 1993, Chapter 77, Section 142, as amended) is amended to
19 read:

20 "32A-5-15. TERMINATION OF PARENTAL RIGHTS.--

21 A. The physical, mental and emotional welfare and
22 needs of the child shall be the primary consideration for the
23 termination of parental rights. The court may terminate the
24 rights of the child's parents as provided by the Adoption
25 Act.

1 B. The court shall terminate parental rights with
2 respect to a child when:

3 (1) the child has been abandoned by the
4 parents;

5 (2) the child has been a neglected or abused
6 child and the court finds that the conditions and causes of
7 the neglect and abuse are unlikely to change in the
8 foreseeable future; or

9 (3) the child has been placed in the care of
10 others, including care by other relatives, either by a court
11 order or otherwise, and the following conditions exist:

12 (a) the child has lived in the home of
13 others for an extended period of time;

14 (b) the parent-child relationship has
15 disintegrated;

16 (c) a psychological parent-child
17 relationship has developed between the substitute family and
18 the child;

19 (d) if the court deems the child of
20 sufficient capacity to express a preference, the child no
21 longer prefers to live with the natural parent;

22 (e) the substitute family desires to
23 adopt the child; and

24 (f) a presumption of abandonment
25 created by the conditions described in Subparagraphs (a)

1 through (e) of this paragraph has not been rebutted.

2 C. A finding by the court that all of the
3 conditions set forth in Subparagraphs (a) through (e) of
4 Paragraph (3) of Subsection B of this section exist shall
5 create a rebuttable presumption of abandonment."

6 SECTION 61. Section 32A-5-16 NMSA 1978 (being Laws
7 1993, Chapter 77, Section 143, as amended) is amended to
8 read:

9 "32A-5-16. TERMINATION PROCEDURES.--

10 A. A proceeding to terminate parental rights may
11 be initiated in connection with or prior to an adoption
12 proceeding. Venue shall be in the court for the county in
13 which the child is physically present or in the county from
14 which the child was placed. The proceeding may be initiated
15 by any of the following:

16 (1) the department;
17 (2) an agency; or
18 (3) any other person having a legitimate
19 interest in the matter, including a petitioner for adoption,
20 the child's guardian, the child's guardian ad litem or
21 attorney in another action, a foster parent, a relative of
22 the child or the child.

23 B. A petition for termination of parental rights
24 shall be signed and verified by the petitioner, be filed with
25 the court and set forth:

1 (1) the date, place of birth and marital
2 status of the child, if known;

3 (2) the grounds for termination and the
4 facts and circumstances supporting the grounds for
5 termination;

6 (3) the names and addresses of the person,
7 authorized agency or agency officer to whom custody might be
8 transferred;

9 (4) the basis for the court's jurisdiction;

10 (5) that the petition is in contemplation of
11 adoption;

12 (6) the relationship or legitimate interest
13 of the applicant to the child; and

14 (7) whether the child is an Indian child.

15 C. Notice of the filing of the petition,
16 accompanied by a copy of the petition, shall be served by the
17 petitioner on the parents of the child, the child's guardian,
18 the legal custodian of the child, the person with whom the
19 child is residing, the individuals with whom the child has
20 resided within the past six months and the department.

21 Service shall be in accordance with the Rules of Civil
22 Procedure for the District Courts for the service of process
23 in a civil action in this state, with the exception that the
24 department may be served by certified mail. The notice shall
25 state specifically that the person served shall file a

1 written response to the petition within twenty days if the
2 person intends to contest the termination.

3 D. If the identification or whereabouts of a
4 parent is unknown, the petitioner shall file a motion for an
5 order granting service by publication or an order stating
6 that service by publication is not required. A motion for an
7 order granting service by publication shall be supported by
8 the affidavit of the petitioner, the agency or the
9 petitioner's attorney detailing the efforts made to locate
10 the parent. Upon being satisfied that reasonable efforts to
11 locate the parent have been made and that information as to
12 the identity or whereabouts of the parent is still
13 insufficient to effect service in accordance with SCRA, Rule
14 1-004, the court shall order service by publication or order
15 that publication is not required because the parent's consent
16 is not required pursuant to the provisions of Section
17 32A-5-19 NMSA 1978.

18 E. The court shall, upon request, appoint counsel
19 for an indigent parent who is unable to obtain counsel or if,
20 in the court's discretion, appointment of counsel for an
21 indigent parent is required in the interest of justice.
22 Payment for the appointed counsel shall be made by the
23 petitioner pursuant to the rate determined by the supreme
24 court of New Mexico for court-appointed attorneys.

25 F. The court shall appoint a guardian ad litem for

1 the child in all contested proceedings for termination of
2 parental rights. If the child is fourteen years of age or
3 older and in the custody of the department, the child's
4 attorney appointed pursuant to the Abuse and Neglect Act
5 shall represent the child in any proceedings for termination
6 of parental rights under this section.

7 G. Within thirty days after the filing of a
8 petition to terminate parental rights, the petitioner shall
9 request a hearing on the petition. The hearing date shall be
10 at least thirty days after service is effected upon the
11 parent of the child or completion of publication.

12 H. The grounds for any attempted termination shall
13 be proved by clear and convincing evidence.

14 I. If the court terminates parental rights, it
15 shall appoint a custodian for the child. Upon entering an
16 order terminating the parental rights of a parent, the court
17 may commit the child to the custody of the department, the
18 petitioner or an agency willing to accept custody for the
19 purpose of placing the child for adoption.

20 J. A judgment of the court terminating parental
21 rights divests the parent of all legal rights. Termination
22 of parental rights shall not affect the child's right of
23 inheritance through the former parent."

24 SECTION 62. Section 32A-5-17 NMSA 1978 (being Laws
25 1993, Chapter 77, Section 144, as amended) is amended to

1 read:

2 "32A-5-17. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS
3 ARE REQUIRED.--

4 A. Consent to adoption or relinquishment of
5 parental rights to the department or an agency licensed by
6 the state of New Mexico shall be required of the following:

7 (1) the adoptee, if fourteen years of age or
8 older, except when the court finds that the adoptee does not
9 have the mental capacity to give consent;

10 (2) the adoptee's mother;

11 (3) the adoptee's proposed adoptive parent;

12 (4) the presumed father of the adoptee;

13 (5) the adoptee's acknowledged father;

14 (6) the department or the agency to whom the
15 adoptee has been relinquished that has placed the adoptee for
16 adoption or the department or the agency that has custody of
17 the adoptee; provided, however, that the court may grant the
18 adoption without the consent of the department or the agency
19 if the court finds the adoption is in the best interests of
20 the adoptee and that the withholding of consent by the
21 department or the agency is unreasonable; and

22 (7) the guardian of the adoptee's parent
23 when, pursuant to provisions of the Uniform Probate Code,
24 that guardian has express authority to consent to adoption.

25 B. A consent or relinquishment executed by a

1 parent who is a minor shall not be subject to avoidance or
2 revocation solely by reason of the parent's minority."

3 SECTION 63. Section 32A-5-21 NMSA 1978 (being Laws
4 1993, Chapter 77, Section 148, as amended) is amended to
5 read:

6 "32A-5-21. FORM OF CONSENT OR RELINQUISHMENT.--

7 A. Except when consent or relinquishment is
8 implied, a consent or relinquishment by a parent shall be in
9 writing, signed by the parent consenting or relinquishing and
10 shall state the following:

11 (1) the date, place and time of execution;

12 (2) the date and place of birth of the
13 adoptee and any names by which the adoptee has been known;

14 (3) if a consent to adoption is being
15 executed, the identity of the petitioner, if known, or when
16 the adoption is an independent adoption and the identity of
17 the petitioner is unknown, how the petitioner was selected by
18 the consenting parent;

19 (4) if a relinquishment of parental rights
20 is being executed, the name and address of the agency or the
21 department;

22 (5) that the person executing the consent or
23 relinquishment has been counseled, as provided in Section
24 32A-5-22 NMSA 1978, by a certified counselor of the person's
25 choice and with this knowledge the person is voluntarily and

1 unequivocally consenting to the adoption of the named
2 adoptee;

3 (6) that the consenting party has been
4 advised of the legal consequences of the relinquishment or
5 consent either by independent legal counsel or a judge;

6 (7) if the adoption is closed, that all
7 parties understand that the court will not enforce any
8 contact, regardless of any informal agreements that have made
9 between the parties;

10 (8) that the consent to or relinquishment
11 for adoption cannot be withdrawn;

12 (9) that the person executing the consent or
13 relinquishment has received or been offered a copy of the
14 consent or relinquishment;

15 (10) that a counseling narrative has been
16 prepared pursuant to department rules and is attached to the
17 consent or relinquishment;

18 (11) that the person who performed the
19 counseling meets the requirements set forth in the Adoption
20 Act; and

21 (12) that the person executing the consent
22 or relinquishment waives further notice of the adoption
23 proceedings.

24 B. The consent of an adoptee, if fourteen years of
25 age or older, shall be in writing, signed by the adoptee,

1 consenting to the adoption and shall state the following:

2 (1) the date, place and time of execution;

3 (2) the date and place of birth of the
4 adoptee and any names by which the adoptee has been known;

5 (3) the name of the petitioner;

6 (4) that the adoptee has been counseled
7 regarding the consent pursuant to department rules;

8 (5) that the adoptee has been advised of the
9 legal consequences of the consent;

10 (6) that the adoptee is voluntarily and
11 unequivocally consenting to the adoption;

12 (7) that the consent or relinquishment
13 cannot be withdrawn;

14 (8) that a counseling narrative has been
15 prepared pursuant to department rules and is attached to the
16 consent; and

17 (9) that the person who performed the
18 counseling meets the requirements set forth in the Adoption
19 Act.

20 C. In cases when the consent or relinquishment is
21 in English and English is not the first language of the
22 consenting or relinquishing person, the person taking the
23 consent or relinquishment shall certify in writing that the
24 document has been read and explained to the person whose
25 consent or relinquishment is being taken in that person's

1 first language, by whom the document was so read and
2 explained and that the meaning and implications of the
3 document are fully understood by the person giving the
4 consent or relinquishment.

5 D. Unconditional consents or relinquishments are
6 preferred, and, therefore, conditional consents or
7 relinquishments shall be for good cause and approved by the
8 court. However, if the condition is for a specific
9 petitioner or the condition requires the other parent to
10 consent before the decree of adoption is entered, the
11 condition shall be deemed for good cause. In any event, all
12 conditions permitted under this subsection shall be met
13 within one hundred eighty days of the execution of the
14 conditional consent or relinquishment or the conclusion of
15 any litigation concerning the petition for adoption. The
16 court may grant an extension of this time for good cause.

17 E. Agency or department consents required pursuant
18 to the provisions of Section 32A-5-17 NMSA 1978 shall state
19 the following:

- 20 (1) the date, place and time of execution;
21 (2) the date and place of birth of the
22 adoptee and any names by which the adoptee has been known;
23 (3) the name of the petitioner; and
24 (4) the consent of the agency or department.

25 F. A consent or relinquishment taken by an

1 individual appointed to take consents or relinquishments by
2 an agency shall be notarized, except that a consent or
3 relinquishment signed in the presence of a judge need not be
4 notarized. A hearing before the court for the purpose of
5 taking a consent or relinquishment shall be heard by the
6 court within seven days of request for setting.

7 G. No consent to adoption or relinquishment of
8 parental rights shall be valid if executed within forty-eight
9 hours after the adoptee's birth.

10 H. A consent to or relinquishment for adoption
11 shall not be withdrawn prior to the entry of a decree of
12 adoption unless the court finds, after notice and opportunity
13 to be heard is afforded to the petitioner, to the person
14 seeking the withdrawal and to the agency placing a child for
15 adoption, that the consent or relinquishment was obtained by
16 fraud. In no event shall a consent or relinquishment be
17 withdrawn after the entry of a decree of adoption."

18 SECTION 64. Section 32A-5-26 NMSA 1978 (being Laws
19 1993, Chapter 77, Section 153, as amended by Laws 2003,
20 Chapter 294, Section 4 and by Laws 2003, Chapter 321, Section
21 4) is amended to read:

22 "32A-5-26. PETITION--CONTENT.--A petition for adoption
23 shall be filed and verified by the petitioner and shall
24 allege:

25 A. the full name, age and place and duration of

1 residence of the petitioner and, if married, the place and
2 date of marriage; the date and place of any prior marriage,
3 separation or divorce; and the name of any present or prior
4 spouse;

5 B. the date and place of birth of the adoptee, if
6 known;

7 C. the places where the adoptee has lived within
8 the past three years and the names and addresses of the
9 persons with whom the adoptee has lived, unless the adoptee
10 is in the custody of an agency or the department, in which
11 case the petitioner shall state the name and address of the
12 agency or the department's county office from which the child
13 was placed;

14 D. the birth name of the adoptee, any other names
15 by which the adoptee has been known and the adoptee's
16 proposed new name; provided that in the case of an agency
17 adoption, if the petitioner and the biological parents have
18 not agreed to the release of the adoptee's identity to the
19 other person, the birth name and any other names by which the
20 adoptee has been known shall be filed with the court as
21 separate documents at the time the petition is filed;

22 E. where the adoptee is residing at the time of
23 the filing of the petition and, if the adoptee is not living
24 with the petitioner, when the adoptee will commence living
25 with the petitioner;

1 F. that the petitioner desires to establish a
2 parent and child relationship with the adoptee and that the
3 petitioner is a fit and proper person able to care and
4 provide for the adoptee's welfare;

5 G. the existence of any court orders, including
6 placement orders, that are known to the petitioner and that
7 regulate custody, visitation or access to the adoptee, copies
8 of which shall accompany and be attached to the petition as
9 exhibits;

10 H. the relationship, if any, of the petitioner to
11 the adoptee;

12 I. the name and address of the placing agency, if
13 any;

14 J. the names and addresses of all persons from
15 whom consents or relinquishments are required, attaching
16 copies of those obtained and alleging the facts that excuse
17 or imply the consents or relinquishments of the others;
18 provided that if the petitioner has not agreed to the release
19 of the petitioner's identity to the parent or if the parent
20 has not agreed to the release of the parent's identity to the
21 petitioner, the names and addresses of all persons from whom
22 consents or relinquishments are required shall be filed with
23 the court as separate documents at the time the petition for
24 adoption is filed;

25 K. whether the adoption will be an open adoption,

1 pursuant to the provisions of Section 32A-5-35 NMSA 1978;

2 L. when consent of the child's father is alleged
3 to be unnecessary, the results of a search of the putative
4 father registry;

5 M. whether the adoptee is an Indian child;

6 N. whether the adoption is subject to the
7 Interstate Compact on the Placement of Children and, if so, a
8 copy of the interstate compact form indicating approval shall
9 be attached as an exhibit to the petition;

10 O. whether the adoptee is foreign-born and, if so,
11 copies of the child's passport and United States visa and of
12 all documents demonstrating that the adoptee is legally free
13 for adoption, including a certificate from the United States
14 secretary of state that certifies that the adoption is a
15 convention adoption;

16 P. whether the adoption is a convention adoption
17 and, if so, the petition shall allege:

18 (1) that the country in which the child has
19 been residing is a party to the Hague Convention on
20 Protection of Children and Co-operation in Respect of
21 Intercountry Adoption;

22 (2) that the agency or person who is
23 providing the adoption service has been approved as an
24 accrediting entity; and

25 (3) that the certificate issued by the

1 United States secretary of state that certifies the adoption
2 as a convention adoption has been filed with the court; and

3 Q. the name, address and telephone number of the
4 agency or individual who has agreed to conduct the post-
5 placement report in accordance with Section 32A-5-31 NMSA
6 1978, if different than the agency or individual who prepared
7 the pre-placement study in accordance with Section 32A-5-13
8 NMSA 1978."

9 SECTION 65. Section 32A-5-27 NMSA 1978 (being Laws
10 1993, Chapter 77, Section 154, as amended) is amended to
11 read:

12 "32A-5-27. NOTICE OF PETITION--FORM OF SERVICE--
13 WAIVER.--

14 A. The petition for adoption shall be served by
15 the petitioner on the following, unless it has been
16 previously waived in writing:

17 (1) the department, by providing a copy to
18 the court clerk for service pursuant to Section 32A-5-7 NMSA
19 1978;

20 (2) any person, agency or institution whose
21 consent or relinquishment is required by Section 32A-5-17
22 NMSA 1978, unless the notice has been previously waived;

23 (3) any acknowledged father of the adoptee;

24 (4) the legally appointed custodian or
25 guardian of the adoptee;

1 (5) the spouse of any petitioner who has not
2 joined in the petition;

3 (6) the spouse of the adoptee;

4 (7) the surviving parent of a deceased
5 parent of the adoptee;

6 (8) any person known to the petitioner
7 having custody of or visitation with the adoptee under a
8 court order;

9 (9) any person in whose home the child has
10 resided for at least two months within the preceding six
11 months;

12 (10) the agency or individual authorized to
13 investigate the adoption under Section 32A-5-13 NMSA 1978;
14 and

15 (11) any other person designated by the
16 court.

17 B. Notice shall not be served on the following:

18 (1) an alleged father; and

19 (2) a person whose parental rights have been
20 relinquished or terminated.

21 C. The petitioner shall provide the clerk of the
22 court with a copy of the petition for adoption, to be mailed
23 to the department pursuant to the provisions of Section
24 32A-5-7 NMSA 1978.

25 D. The notice shall state that the person served

1 shall respond to the petition within twenty days if the
2 person intends to contest the adoption and shall state that
3 the failure to so respond shall be treated as a default and
4 the person's consent to the adoption shall not be required.
5 Provided, however, that this provision shall not apply to an
6 agency, the department or an investigator preparing the post-
7 placement report pursuant to Section 32A-5-31 NMSA 1978. If
8 an agency, the department or an investigator preparing the
9 post-placement report wants to contest the adoption, it shall
10 notify the court within twenty days after completion of the
11 post-placement report.

12 E. Service shall be made pursuant to the Rules of
13 Civil Procedure for the District Courts. If the whereabouts
14 of a parent whose consent is required is unknown, the
15 investigator, department or agency charged with investigating
16 the adoption under Section 32A-5-13 NMSA 1978 shall
17 investigate the whereabouts of the parent and shall file by
18 affidavit the results of the investigation with the court.
19 Upon a finding by the court that information as to the
20 whereabouts of a parent has been sufficiently investigated
21 and is still insufficient to effect service in accordance
22 with the Rules of Civil Procedure for the District Courts,
23 the court shall issue an order providing for service by
24 publication.

25 F. As to any other person for whom notice is

1 required under Subsection A of this section, service by
2 certified mail, return receipt requested, shall be
3 sufficient. If the service cannot be completed after two
4 attempts, the court shall issue an order providing for
5 service by publication.

6 G. The notice required by this section may be
7 waived in writing by the person entitled to notice.

8 H. Proof of service of the notice on all persons
9 for whom notice is required by this section shall be filed
10 with the court before any hearing adjudicating the rights of
11 the persons."

12 SECTION 66. Section 32A-5-28 NMSA 1978 (being Laws
13 1993, Chapter 77, Section 155) is amended to read:

14 "32A-5-28. RESPONSE TO PETITION.--

15 A. Any person responding to a notice of a petition
16 for adoption shall file a verified response to the petition
17 within the time limits specified in Section 32A-5-25 NMSA
18 1978.

19 B. The verified response shall follow the Rules of
20 Civil Procedure for the District Courts and shall allege:

21 (1) the existence of any court orders known
22 to the respondent that regulate custody, visitation or access
23 to the adoptee but have not been filed with the court at the
24 time the response is filed and copies of which shall be
25 attached to the response;

1 (2) the relationship, if any, of the
2 respondent to the adoptee;

3 (3) whether the adoptee is an Indian child;

4 (4) whether the adoption is subject to the
5 Interstate Compact on the Placement of Children; and

6 (5) whether the adoption is an open
7 adoption."

8 SECTION 67. Section 32A-5-36 NMSA 1978 (being Laws
9 1993, Chapter 77, Section 133, as amended by Laws 2003,
10 Chapter 294, Section 5 and by Laws 2003, Chapter 321, Section
11 5) is amended to read:

12 "32A-5-36. ADJUDICATION--DISPOSITION--DECREE OF
13 ADOPTION.--

14 A. The court shall conduct hearings on the
15 petition for adoption so as to determine the rights of the
16 parties in a manner that protects confidentiality. The
17 petitioner and the adoptee shall attend the hearing unless
18 the court for good cause waives a party's appearance. Good
19 cause may include burdensome travel requirements.

20 B. The petitioner shall file all documents
21 required pursuant to the Adoption Act and serve the
22 department with copies of the documents simultaneously with
23 the request for hearing on the petition for adoption.

24 C. If any person who claims to be the biological
25 father of the adoptee has appeared before the court and filed

1 a written petition or response seeking custody and assuming
2 financial responsibility of the adoptee, the court shall hear
3 evidence as to the merits of the petition. If the court
4 determines by a preponderance of the evidence that the person
5 is not the biological father of the adoptee or that the child
6 was conceived through an act of rape or incest, the petition
7 shall be dismissed and the person shall no longer be a party
8 to the adoption. If the court determines that the person is
9 the biological father of the adoptee, the court shall further
10 determine whether the person qualifies as a presumed or
11 acknowledged father whose consent is necessary for adoption,
12 pursuant to Section 32A-5-17 NMSA 1978. If the court
13 determines that the person is the biological father, but does
14 not qualify as a presumed or acknowledged father, the court
15 shall adjudicate the person's rights pursuant to the
16 provisions of the Adoption Act.

17 D. If the mother or father of the adoptee has
18 appeared before the court and filed a written petition that
19 alleges the invalidity of the mother's or father's own
20 consent or relinquishment for adoption previously filed in
21 the adoption proceeding, the court shall hear evidence as to
22 the merits of the petition. If the court determines that the
23 allegations have not been proved by a preponderance of the
24 evidence, the petition shall be dismissed. If the court
25 determines that the allegations of the petition are true, the

1 consent or relinquishment for adoption shall be held invalid,
2 and the court shall determine, in the best interests of the
3 adoptee, the person who shall have custody of the child.

4 E. The petitioner shall present and prove each
5 allegation set forth in the petition for adoption by clear
6 and convincing evidence.

7 F. The court shall grant a decree of adoption if
8 it finds that the petitioner has proved by clear and
9 convincing evidence that:

10 (1) the court has jurisdiction to enter a
11 decree of adoption affecting the adoptee;

12 (2) the adoptee has been placed with the
13 petitioner for a period of ninety days if the adoptee is
14 under the age of one year at the time of placement or for a
15 period of one hundred eighty days if the adoptee is one year
16 of age or older at the time of placement, unless, for good
17 cause shown, the requirement is waived by the court;

18 (3) all necessary consents, relinquishments,
19 terminations or waivers have been obtained;

20 (4) the post-placement report required by
21 Section 32A-5-31 NMSA 1978 has been filed with the court;

22 (5) service of the petition for adoption has
23 been made or dispensed with as to all persons entitled to
24 notice pursuant to provisions of Section 32A-5-27 NMSA 1978;

25 (6) at least ninety days have passed since

1 the filing of the petition for adoption, except the court may
2 shorten or waive this period of time in cases in which the
3 child is being adopted by a stepparent, a relative or a
4 person named in the child's deceased parent's will pursuant
5 to provisions of Section 32A-5-12 NMSA 1978;

6 (7) the petitioner is a suitable adoptive
7 parent and the best interests of the adoptee are served by
8 the adoption;

9 (8) if visitation between the biological
10 family and the adoptee is contemplated, that the visitation
11 is in the child's best interests;

12 (9) if the adoptee is foreign-born, the
13 child is legally free for adoption and a certificate issued
14 by the United States secretary of state that certifies the
15 adoption as a convention adoption has been filed with the
16 court;

17 (10) the results of the criminal records
18 check required pursuant to provisions of the Adoption Act
19 have been received and considered; and

20 (11) if the adoption involves the interstate
21 placement of the adoptee, the requirements of the Interstate
22 Compact on the Placement of Children have been met.

23 G. In addition to the findings required by
24 Subsection F of this section, the court in any decree of
25 adoption shall make findings with respect to each allegation

1 of the petition.

2 H. If the court determines that any of the
3 requirements for a decree of adoption pursuant to provisions
4 of Subsections E and F of this section have not been met or
5 that the adoption is not in the best interests of the
6 adoptee, the court shall deny the petition and determine, in
7 the best interests of the adoptee, the person who shall have
8 custody of the child.

9 I. The decree of adoption shall include the new
10 name of the adoptee and shall not include any other name by
11 which the adoptee has been known or the names of the former
12 parents. The decree of adoption shall order that from the
13 date of the decree, the adoptee shall be the child of the
14 petitioner and accorded the status set forth in Section
15 32A-5-37 NMSA 1978.

16 J. A decree of adoption shall be entered within
17 six months of the filing of the petition if the adoptee is
18 under the age of one year at the time of placement or twelve
19 months if the adoptee is one year of age or older at the time
20 of placement, except that the time may be extended by the
21 court upon request of any of the parties or upon the court's
22 own motion for good cause shown.

23 K. A decree of adoption may not be attacked upon
24 the expiration of one year from the entry of the decree."

25 **SECTION 68.** Section 32A-5-40 NMSA 1978 (being Laws

1 1993, Chapter 77, Section 167, as amended) is amended to
2 read:

3 "32A-5-40. POST-DECREE OF ADOPTION ACCESS TO RECORDS.--

4 A. After the decree of adoption has been entered,
5 all court files containing records of judicial proceedings
6 conducted pursuant to the provisions of the Adoption Act and
7 records submitted to the court in the proceedings shall be
8 kept in separate locked files withheld from public
9 inspection. Upon application to the clerk of the court, the
10 records shall be open to inspection by a former parent if the
11 adoptee is eighteen years of age or older, by an adoptee if
12 the adoptee is eighteen years of age or older at the time
13 application is made for inspection, by the adoptive parent if
14 the adoptee is under eighteen years of age at the time
15 application is made for inspection, by the attorney of any
16 party, by any agency that has exercised guardianship over or
17 legal custody of a child who was the adoptee in the
18 particular proceeding, by the department or by an adoptee's
19 sibling; provided that the identity of the former parents and
20 of the adoptee shall be kept confidential unless the former
21 parents and the adoptee have consented to the release of
22 identity. In the absence of consent to release identity, the
23 inspection shall be limited to the following nonidentifying
24 information:

25 (1) the health and medical histories of the

1 adoptee's biological parents;

2 (2) the health and medical history of the
3 adoptee;

4 (3) the adoptee's general family background,
5 including ancestral information, without name references or
6 geographical designations;

7 (4) physical descriptions; and

8 (5) the length of time the adoptee was in
9 the care and custody of persons other than the petitioner.

10 B. After the entry of the decree of adoption, at
11 any time, a former parent may file with the court, with the
12 placing agency or with the department:

13 (1) a consent or refusal or an amended
14 consent or refusal to be contacted;

15 (2) a release of the former parent's
16 identity to the adoptee if the adoptee is eighteen years of
17 age or older or to the adoptive parent if the adoptee is
18 under eighteen years of age; or

19 (3) information regarding the former
20 parent's location or changes in background information.

21 C. Any changes to post-adoption access to records
22 referred to in Subsection B of this section shall be filed
23 with the court, the placing agency and the department.

24 D. The consent or refusal referred to in
25 Subsection B of this section shall be honored by the court,

1 the placing agency or the department unless for good cause
2 the court orders to the contrary.

3 E. At any time, an adoptee who is eighteen years
4 of age or older may file with the court, a placing agency or
5 the department:

6 (1) information regarding the adoptee's
7 location; or

8 (2) a consent or refusal regarding opening
9 of the adoptee's adoption file to the adoptee's former
10 parents.

11 F. If mutual authorizations for release of
12 identifying information by the parties are not available, an
13 adoptee who is eighteen years of age or older, the biological
14 parents if the adoptee is eighteen years of age or older or
15 the adoptive parents if the adoptee is under the age of
16 eighteen years may file a motion with the court to obtain the
17 release of identifying information for good cause shown.

18 When hearing the motion, the court shall give primary
19 consideration to the best interests of the adoptee, but shall
20 also give due consideration to the interests of the members
21 of the adoptee's former and adoptive families. In
22 determining whether good cause exists for the release of
23 identifying information, the court shall consider:

24 (1) the reason the information is sought;

25 (2) any procedure available for satisfying

1 the petitioner's request without disclosing the name or
2 identity of another individual, including appointment of a
3 confidential intermediary to contact the individual and
4 request specific information;

5 (3) whether the individual about whom
6 identifying information is sought is alive;

7 (4) the preference, to the extent known, of
8 the adoptee, the adoptive parents, the former parents and
9 other members of the adoptee's former and adoptive families
10 and the likely effect of disclosure on those individuals;

11 (5) the age, maturity and expressed needs of
12 the adoptee;

13 (6) the report or recommendation of any
14 individual appointed by the court to assess the request for
15 identifying information; and

16 (7) any other factor relevant to an
17 assessment of whether the benefit to the adoptee of releasing
18 the information sought will be greater than the benefit to
19 any other individual of not releasing the information."

20 **SECTION 69.** Section 40-10B-5 NMSA 1978 (being Laws
21 2001, Chapter 167, Section 5, as amended) is amended to read:

22 "40-10B-5. PETITION--WHO MAY FILE--CONTENTS.--

23 A. A petition seeking the appointment of a
24 guardian pursuant to the Kinship Guardianship Act may be
25 filed only by:

1 (1) a kinship caregiver;

2 (2) a caregiver, who has reached the age of
3 twenty-one, with whom no kinship with the child exists and
4 who has been nominated to be guardian of the child by the
5 child, and the child has reached the age of fourteen; or

6 (3) a caregiver designated formally or
7 informally by a parent in writing if the designation
8 indicates on its face that the parent signing understands:

9 (a) the purpose and effect of the
10 guardianship;

11 (b) that the parent has the right to be
12 served with the petition and notices of hearings in the
13 action; and

14 (c) that the parent may appear in court
15 to contest the guardianship.

16 B. A petition seeking the appointment of a
17 guardian shall be verified by the petitioner and allege the
18 following with respect to the child:

19 (1) facts that, if proved, will meet the
20 requirements of Subsection B of Section 40-10B-8 NMSA 1978;

21 (2) the date and place of birth of the
22 child, if known, and if not known, the reason for the lack of
23 knowledge;

24 (3) the legal residence of the child and the
25 place where the child resides, if different from the legal

1 residence;

2 (4) the name and address of the petitioner;

3 (5) the kinship, if any, between the
4 petitioner and the child;

5 (6) the names and addresses of the parents
6 of the child;

7 (7) the names and addresses of persons
8 having legal custody of the child;

9 (8) the existence of any matters pending
10 involving the custody of the child;

11 (9) a statement that the petitioner agrees
12 to accept the duties and responsibilities of guardianship;

13 (10) the existence of any matters pending
14 pursuant to the provisions of Chapter 32A, Article 4 NMSA
15 1978 and, if so, a statement that the children, youth and
16 families department consents to the relief requested in the
17 petition;

18 (11) whether the child is an Indian child or
19 there is reason to know that the child is an Indian child,
20 and subject to provisions of the Indian Family Protection Act
21 and, if so:

22 (a) the tribal affiliations of the
23 child's parents; and

24 (b) the specific actions taken by the
25 petitioner to notify the parents' tribes and the results of

1 the contacts, including the names, addresses, titles and
2 telephone numbers of the persons contacted, and copies of
3 correspondence with the tribe; and

4 (12) other facts in support of the
5 guardianship sought."

6 SECTION 70. Section 40-10B-6 NMSA 1978 (being Laws
7 2001, Chapter 167, Section 6, as amended) is amended to read:

8 "40-10B-6. SERVICE OF PETITION--NOTICE--PARTIES.--

9 A. The court shall set a date for hearing on the
10 petition, which date shall be no less than thirty and no more
11 than ninety days from the date of filing the petition.

12 B. The petition and a notice of the hearing shall
13 be served upon:

14 (1) the children, youth and families
15 department if there is any pending matter relating to the
16 child pursuant to the provisions of Chapter 32A, Article 4
17 NMSA 1978;

18 (2) the child if the child has reached the
19 age of fourteen;

20 (3) the parents of the child;

21 (4) a person having custody of the child or
22 visitation rights pursuant to a court order; and

23 (5) if the child is an Indian child or there
24 is reason to know the child is an Indian child as defined in
25 the Children's Code, the Indian tribe and the child's parent

1 or "Indian custodian", together with a notice of pendency of
2 the guardianship proceedings.

3 C. Service of process required by Subsection A of
4 this section shall be made in accordance with the
5 requirements for giving notice of a hearing pursuant to
6 Subsection A of Section 45-1-401 NMSA 1978.

7 D. The persons required to be served pursuant to
8 Subsection B of this section have a right to file a response
9 as parties to this action. Other persons may intervene
10 pursuant to Rule 1-024 NMRA."

11 SECTION 71. REPEAL.--Sections 32A-1-14 and 32A-3B-6.1
12 NMSA 1978 (being Laws 1993, Chapter 77, Section 23 and Laws
13 2005, Chapter 189, Section 37, as amended) are repealed.

14 SECTION 72. SEVERABILITY.--If any provision of the
15 Indian Family Protection Act, related provisions in other
16 sections of New Mexico law or the application of such laws to
17 any person or circumstances is held invalid for any reason in
18 a court of competent jurisdiction, the invalidity does not
19 affect other provisions of the Indian Family Protection Act
20 and related laws.

21 SECTION 73. APPLICABILITY.--

22 A. The provisions of this act apply to all cases
23 filed on or after July 1, 2022.

24 B. The provisions of Section 8 of this act apply
25 to tribal-state agreements that become effective on or after

1 July 1, 2022.

2 SECTION 74. EFFECTIVE DATE.--

3 A. The effective date of the provisions of
4 Sections 1 through 21 and 23 through 73 of this act is July
5 1, 2022.

6 B. The effective date of the provisions of Section
7 22 of this act is July 1, 2023. _____

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