

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 198

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO CHILDREN; PROVIDING THAT CHILDREN PLACED IN OUT-OF-HOME CARE SHALL BE PERMITTED TO PARTICIPATE IN AGE-APPROPRIATE ACTIVITIES; AMENDING THE ABUSE AND NEGLECT ACT TO PROVIDE THAT A CHILD SHALL BE PERMITTED TO PARTICIPATE IN DEVELOPMENT OF THE CHILD'S TRANSITION PLAN AS DEVELOPMENTALLY APPROPRIATE.

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

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

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

A. "adult" means a person who is eighteen years of age or older;

B. "caregiver" means a person with whom the child is placed in out-of-home care, including a foster parent, treatment foster parent or designated official for a group

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underscored material = new
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1 home, shelter care facility or other facility licensed by the
2 department pursuant to the Public Health Act;

3 ~~[B.]~~ C. "child" means a person who is less than
4 eighteen years old;

5 ~~[C.]~~ D. "court", when used without further
6 qualification, means the children's court division of the
7 district court and includes the judge, special master or
8 commissioner appointed pursuant to the provisions of the
9 Children's Code or supreme court rule;

10 ~~[D.]~~ E. "court-appointed special advocate" or
11 "CASA" means a person appointed as a CASA, pursuant to the
12 provisions of the Children's Court Rules, who assists the court
13 in determining the best interests of the child by investigating
14 the case and submitting a report to the court;

15 ~~[E.]~~ F. "custodian" means an adult with whom the
16 child lives who is not a parent or guardian of the child;

17 ~~[F.]~~ G. "department" means the children, youth and
18 families department, unless otherwise specified;

19 ~~[G.]~~ H. "disproportionate minority contact" means
20 the involvement of a racial or ethnic group with the criminal
21 or juvenile justice system at a proportion either higher or
22 lower than that group's proportion in the general population;

23 ~~[H.]~~ I. "foster parent" means a person, including a
24 relative of the child, licensed or certified by the department
25 or a child placement agency to provide care for children in the

1 custody of the department or agency;

2 ~~[F.]~~ J. "guardian" means a person appointed as a
3 guardian by a court or Indian tribal authority or a person
4 authorized to care for the child by a parental power of
5 attorney as permitted by law;

6 ~~[G.]~~ K. "guardian ad litem" means an attorney
7 appointed by the children's court to represent and protect the
8 best interests of the child in a court proceeding; provided
9 that no party or employee or representative of a party to the
10 proceeding shall be appointed to serve as a guardian ad litem;

11 ~~[K.]~~ L. "Indian child" means an unmarried person
12 who is:

13 (1) less than eighteen years old;

14 (2) a member of an Indian tribe or is eligible
15 for membership in an Indian tribe; and

16 (3) the biological child of a member of an
17 Indian tribe;

18 ~~[L.]~~ M. "Indian child's tribe" means:

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

21 (2) in the case of an Indian child who is a
22 member or eligible for membership in more than one tribe, the
23 Indian tribe with which the Indian child has more significant
24 contacts;

25 ~~[M.]~~ N. "Indian tribe" means a federally recognized

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1 Indian tribe, community or group pursuant to 25 U.S.C. Section
2 1903(1);

3 ~~[N.]~~ O. "judge", when used without further
4 qualification, means the judge of the court;

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

18 ~~[P.]~~ Q. "parent" or "parents" includes a biological
19 or adoptive parent if the biological or adoptive parent has a
20 constitutionally protected liberty interest in the care and
21 custody of the child;

22 ~~[Q.]~~ R. "permanency plan" means a determination by
23 the court that the child's interest will be served best by:

24 (1) reunification;

25 (2) placement for adoption after the parents'

1 rights have been relinquished or terminated or after a motion
2 has been filed to terminate parental rights;

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

5 (4) placement in the legal custody of the
6 department with the child placed in the home of a fit and
7 willing relative; or

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

10 [~~R.~~] S. "person" means an individual or any other
11 form of entity recognized by law;

12 [~~S.~~] T. "preadoptive parent" means a person with
13 whom a child has been placed for adoption;

14 [~~T.~~] U. "protective supervision" means the right to
15 visit the child in the home where the child is residing,
16 inspect the home, transport the child to court-ordered
17 diagnostic examinations and evaluations and obtain information
18 and records concerning the child;

19 V. "reasonable and prudent parent standard" means
20 the standard of care characterized by careful, nurturing and
21 thoughtful parental decision-making that maintains a child's
22 health, safety, culture and best interest while encouraging the
23 child's emotional, social and developmental growth;

24 [~~U.~~] W. "reunification" means either a return of
25 the child to the parent or to the home from which the child was

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1 removed or a return to the noncustodial parent;

2 ~~[V-]~~ X. "tribal court" means:

3 (1) a court established and operated pursuant
4 to a code or custom of an Indian tribe; or

5 (2) any administrative body of an Indian tribe
6 that is vested with judicial authority;

7 ~~[W-]~~ Y. "tribal court order" means a document
8 issued by a tribal court that is signed by an appropriate
9 authority, including a judge, governor or tribal council
10 member, and that orders an action that is within the tribal
11 court's jurisdiction; and

12 ~~[X-]~~ Z. "tribunal" means any judicial forum other
13 than the court."

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

16 "[NEW MATERIAL] OUT-OF-HOME PLACEMENT--ACCESS TO AGE-
17 APPROPRIATE ACTIVITIES.--

18 A. A child who has been placed in out-of-home care
19 pursuant to the provisions of the Abuse and Neglect Act, the
20 Family Services Act or the Family in Need of Court-Ordered
21 Services Act shall be permitted to participate in age-
22 appropriate activities when such activities are approved by a
23 caregiver pursuant to Subsection D of this section, unless such
24 activities are limited in the child's court-ordered treatment
25 plan after an individualized determination of the factors in

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1 Subsection D of this section.

2 B. The department shall make efforts to normalize
3 the lives of children in the department's custody and to
4 empower caregivers to approve a child's participation in
5 activities, based on the caregiver's own assessment using a
6 reasonable and prudent parent standard, without prior approval
7 of the department.

8 C. If a child is placed in an aggregate care
9 setting, the department shall designate an individual to make
10 decisions concerning participation in age-appropriate
11 activities. An individual designated by the department
12 pursuant to this subsection shall have the same rights and
13 responsibilities as a caregiver for the purpose of this
14 section.

15 D. A caregiver shall use a reasonable and prudent
16 parent standard in determining whether to permit a child to
17 participate in an activity. The caregiver shall consider:

- 18 (1) the desires of the child;
19 (2) the child's age, maturity and
20 developmental level to maintain the overall health and safety
21 of the child;
22 (3) potential risk factors and the
23 appropriateness of the activity;
24 (4) the best interest of the child based on
25 the caregiver's knowledge of the child;

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1 (5) the importance of encouraging the child's
2 emotional and developmental growth;

3 (6) the importance of providing the child with
4 the most safe and affirming family-like and culturally relevant
5 living experience possible;

6 (7) the behavior of the child and the child's
7 ability to safely participate in the proposed activity; and

8 (8) the preferences of the child's biological
9 parent or parents.

10 E. The department shall verify that caregivers:

11 (1) promote and protect the ability of a child
12 to participate in age-appropriate activities; and

13 (2) implement policies consistent with this
14 section.

15 F. The department may promulgate rules to implement
16 this section.

17 G. For the purpose of this section, "age-
18 appropriate activity" means an activity that is generally
19 accepted as suitable for a child of the same age or level of
20 maturity based on the development of cognitive, emotional,
21 physical, social and behavioral capacity typical for the
22 child's age or age group. "Age-appropriate activity" may
23 include:

24 (1) a cultural, social or enrichment activity;

25 (2) a single-night sleepover at the home of a

1 friend;

2 (3) participation in a camp where the child
3 spends one or more nights in an organized camp setting;

4 (4) participation in a school or
5 extracurricular activity, including an activity that may
6 involve supervised overnight stays or trips;

7 (5) for an adolescent child, an activity that
8 fosters appropriate freedom, responsibility and decision-
9 making; or

10 (6) any other activity deemed appropriate by a
11 caregiver acting in accordance with a reasonable and prudent
12 parent standard."

13 SECTION 3. Section 32A-4-21 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 115, as amended) is amended to read:

15 "32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,
16 REPORTS AND EXAMINATIONS.--

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

20 B. The predisposition study required pursuant to
21 Subsection A of this section shall contain the following
22 information:

23 (1) a statement of the specific reasons for
24 intervention by the department or for placing the child in the
25 department's custody and a statement of the parent's ability to

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1 care for the child in the parent's home without causing harm to
2 the child;

3 (2) a statement of how an intervention plan is
4 designed to achieve placement of the child in the least
5 restrictive setting available, consistent with the best
6 interests and special needs of the child, including a statement
7 of the likely harm the child may suffer as a result of being
8 removed from the parent's home, including emotional harm that
9 may result due to separation from the child's parents, and a
10 statement of how the intervention plan is designed to place the
11 child in close proximity to the parent's home without causing
12 harm to the child due to separation from parents, siblings or
13 any other person who may significantly affect the child's best
14 interest;

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

17 (4) whether the child has a family member who,
18 subsequent to study by the department, is determined to be
19 qualified to care for the child;

20 (5) a description of services offered to the
21 child, the child's family and the child's foster care family
22 and a summary of reasonable efforts made to prevent removal of
23 the child from the child's family or reasonable efforts made to
24 reunite the child with the child's family;

25 (6) a description of the home or facility in

1 which the child is placed and the appropriateness of the
2 child's placement;

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

5 (8) a statement of the child's medical and
6 educational background;

7 (9) if the child is an Indian child, whether
8 the placement preferences set forth in the federal Indian Child
9 Welfare Act of 1978 or the placement preferences of the child's
10 Indian tribe were followed and whether the child's treatment
11 plan provides for maintaining the child's cultural ties;

12 (10) a treatment plan that sets forth steps to
13 ensure that the child's physical, medical, psychological and
14 educational needs are met and that sets forth services to be
15 provided to the child and the child's parents to facilitate
16 permanent placement of the child in the parent's home;

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

22 (12) a treatment plan that sets forth steps to
23 ensure that the child's educational needs are met and, for a
24 child fourteen years of age or older, a treatment plan that
25 specifically sets forth the child's educational and post-

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1 secondary goals; [~~and~~]

2 (13) whether the child is participating in
3 age-appropriate activities and, if the child has any
4 limitations on participating in age-appropriate activities, an
5 explanation of those limitations; and

6 [~~(13)~~] (14) a description of the child's
7 foster care placement and whether it is appropriate in terms of
8 the educational setting and proximity to the school the child
9 was enrolled in at the time of the placement, including plans
10 for travel for the child to remain in the school in which the
11 child was enrolled at the time of placement, if reasonable and
12 in the child's best interest.

13 C. A copy of the predisposition report shall be
14 provided by the department to counsel for all parties five days
15 before the dispositional hearing.

16 D. If the child is an adjudicated abused child, any
17 temporary custody orders shall remain in effect until the court
18 has received and considered the predispositional study at the
19 dispositional hearing."

20 SECTION 4. Section 32A-4-25.2 NMSA 1978 (being Laws 2009,
21 Chapter 239, Section 47) is amended to read:

22 "32A-4-25.2. TRANSITION SERVICES.--

23 A. Prior to the first permanency hearing after the
24 child turns fourteen years of age, the department shall request
25 and review the child's next-step plan or individualized

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1 education plan addressing the child's educational transition
2 services. If the child does not have a next-step plan or an
3 individualized education plan, the department shall request a
4 meeting with the child's school to identify the child's
5 post-secondary goals and to obtain information about classes
6 and services available to assist the child in attaining the
7 child's post-secondary goals. The department shall invite the
8 child, the child's attorney and the adult who is making
9 educational decisions to the meeting with the school.

10 B. The treatment plan filed by the department prior
11 to each hearing after the child turns fourteen shall set forth
12 the child's post-secondary goals and report the child's
13 educational progress toward those goals.

14 ~~[A.]~~ C. Prior to a child's reaching ~~[seventeen]~~
15 sixteen years of age, the department shall meet with the child,
16 the child's attorney and others of the child's choosing,
17 including biological family members, to develop a transition
18 plan. The department shall assist the child in identifying and
19 planning to meet the child's needs after the child's eighteenth
20 birthday, including housing, education, employment or income,
21 health and mental health, local opportunities for mentors and
22 continuing support services.

23 ~~[B.]~~ D. The department shall present the child's
24 proposed transition plan to the court at the first hearing
25 scheduled after the child's ~~[seventeenth]~~ sixteenth birthday.

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1 ~~[G-]~~ E. At the first hearing scheduled after the
2 child's sixteenth birthday, the court shall order a transition
3 plan for the child. The transition plan approved by the court
4 shall be reviewed at every subsequent review and permanency
5 hearing."

6 SECTION 5. A new section of the Abuse and Neglect Act is
7 enacted to read:

8 "[NEW MATERIAL] RIGHT OF CHILD TO PARTICIPATE IN
9 DEVELOPMENT OF CASE PLAN AND TRANSITION PLAN.--Each child shall
10 have the right to participate in development of the child's
11 case and transition plan as developmentally appropriate. For a
12 child fourteen years of age or older, the case and transition
13 plan shall:

14 A. be developed in consultation with the child and,
15 at the option of the child, with up to two members of the case
16 and transition planning team who are chosen by the child and
17 who are not a foster parent of, or a caseworker for, the child.
18 One individual selected by the child to be a member of the
19 child's case and transition planning team may be designated as
20 the child's advisor and, as necessary, advocate, with respect
21 to the child's participation in age-appropriate activities
22 pursuant to Section 2 of this 2015 act;

23 B. include a list of the child's rights with
24 respect to education, health, visitation, safety, court
25 participation, participation in age-appropriate activities and

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1 access to documents as required pursuant to Paragraph (2) of
2 Subsection B of Section 32A-4-25.3 NMSA 1978; and

3 C. include a signed acknowledgment by the child
4 that the child has been provided a copy of the list of the
5 child's rights, that the rights contained in the list have been
6 explained to the child and that the child has had an
7 opportunity to ask questions about and understands the rights
8 contained in the list."

9 SECTION 6. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is October 1, 2015.

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underscoring material = new
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