

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
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 CASE AND 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,

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1 treatment foster parent or designated official for a group
2 home, shelter care facility or other facility licensed by the
3 department pursuant to the Public Health Act;

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

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

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

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

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

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

24 ~~[H.]~~ I. "foster parent" means a person, including a
25 relative of the child, licensed or certified by the department

1 or a child placement agency to provide care for children in the
2 custody of the department or agency;

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

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

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

14 (1) less than eighteen years old;

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

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

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

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

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

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1 ~~[M.]~~ N. "Indian tribe" means a federally recognized
2 Indian tribe, community or group pursuant to 25 U.S.C. Section
3 1903(1);

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

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

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

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

25 (1) reunification;

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

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

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

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

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

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

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

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

25 [~~U.~~] W. "reunification" means either a return of

1 the child to the parent or to the home from which the child was
2 removed or a return to the noncustodial parent;

3 [~~V.~~] X. "tribal court" means:

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

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

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

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

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

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

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

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1 plan after an individualized determination of the factors in
2 Subsection D of this section.

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

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

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

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

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1 the caregiver's knowledge of the child;

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

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

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

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

11 E. The department shall verify that caregivers:

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

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

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

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

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

1 (2) a single-night sleepover at the home of a
2 friend;

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

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

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

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

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

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

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

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

24 (1) a statement of the specific reasons for
25 intervention by the department or for placing the child in the

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1 department's custody and a statement of the parent's ability to
2 care for the child in the parent's home without causing harm to
3 the child;

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

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

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

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

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1 (6) a description of the home or facility in
2 which the child is placed and the appropriateness of the
3 child's placement;

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

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

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

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

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

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

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1 specifically sets forth the child's educational and post-
2 secondary goals; ~~and~~

3 (13) whether the child is participating in
4 age-appropriate activities, as defined in Section 2 of this
5 2015 act, and, if the child has any limitations on
6 participating in age-appropriate activities, an explanation of
7 those limitations; and

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

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

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

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

24 "32A-4-25.2. TRANSITION SERVICES.--

25 A. Prior to the first permanency hearing after the

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

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

17 [A.] C. Prior to a child's reaching [seventeen]
 18 sixteen years of age, the department shall meet with the child,
 19 the child's attorney and others of the child's choosing,
 20 including biological family members, and may meet with the
 21 child's court-appointed special advocate, to develop a
 22 transition plan. The department shall assist the child in
 23 identifying and planning to meet the child's needs after the
 24 child's eighteenth birthday, including housing, education,
 25 employment or income, health and mental health, local

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1 opportunities for mentors and continuing support services.

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

5 ~~[C.]~~ E. At the first hearing scheduled after the
6 child's sixteenth birthday, the court shall order a transition
7 plan for the child. The transition plan approved by the court
8 shall be reviewed at every subsequent review and permanency
9 hearing."

10 **SECTION 5.** A new section of the Abuse and Neglect Act is
11 enacted to read:

12 "[NEW MATERIAL] RIGHT OF CHILD TO PARTICIPATE IN
13 DEVELOPMENT OF CASE AND TRANSITION PLAN.--

14 A. Each child shall have the right to participate
15 in the development of the child's case and transition plan.

16 B. A child under fourteen years of age shall have
17 the right to participate in the development of the case and
18 transition plan as developmentally appropriate.

19 C. For a child fourteen years of age or older, the
20 case and transition plan shall:

21 (1) be developed in consultation with the
22 child and, at the option of the child, with up to two members
23 of the case or transition planning team who are chosen by the
24 child and who are not a foster parent of, or a caseworker for,
25 the child. One individual selected by the child to be a member

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1 of the child's case or transition planning team may be
2 designated as the child's advisor and, as necessary, as
3 advocate, with respect to the child's participation in age-
4 appropriate activities pursuant to Section 2 of this 2015 act.
5 The child's court-appointed special advocate may participate in
6 the development of the child's case and transition plan;

7 (2) include a list of the child's rights with
8 respect to education, health, visitation, safety, court
9 participation, participation in age-appropriate activities and
10 access to documents as required pursuant to Paragraph (2) of
11 Subsection B of Section 32A-4-25.3 NMSA 1978; and

12 (3) include a signed acknowledgment by the
13 child that the child has been provided a copy of the list of
14 the child's rights, that the rights contained in the list have
15 been explained to the child and that the child has had an
16 opportunity to ask questions about and understands the rights
17 contained in the list."

18 **SECTION 6. EFFECTIVE DATE.**--The effective date of the
19 provisions of this act is October 1, 2015.