

Supplemental Report From the Children's Code Reform Task Force

Including Policy and Action Recommendations for the
Three Branches of New Mexico State Government



January 2025

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I.	Introduction	5
II.	The Need for Comprehensive Reform	5
	A. Children’s Code Reform Task Force	6
	B. Senate Memorial 5 Task Force	9
	C. Internal CYFD Reform	11
	D. Executive Action	12
III.	Response to legislative Concerns re: previously proposed legislation	13
	A. Timelines – continuances caused by circumstances “beyond control of the parties”	14
	B. “Best interest of the child” standard permeates the entire Children’s Code	14
	C. Negligent Unsupervised Access to Firearms Language	15
	D. Inclusion of IFPA Language in definition of “neglect”	16
	E. Revisions & Recommendations Subcommittee	16
IV.	Proposed Legislation, Materials and Recommendations From the Full Task Force	17
	A. Changes to the Children’s Code	17
	1. Amendments to Existing Statutes	17
	a. Revising the definition for a neglected child and preventing child removal and longer stays in custody when poverty is the only issue.	
	• Amending Sections 32A-4-2, 32A-4-7 and 32A-4-22 NMSA 1978	
	b. Revising the definition for a neglected child to include instances when a child has unsupervised access to a firearm or other deadly weapon.	
	• Amending Section 32A-4-2 NMSA 1978	
	c. Revising the definition for a family in need of court-ordered services	
	• Amending Sections 32A-3B-1 through 32A-3B-22 NMSA 1978	
	2. New Acts	46
	3. Information Sheets	47
	a. The Adolescent & Young Brain and Delinquency	
	b. Adverse Childhood Experiences (ACEs)	
	c. Futility of Severe Punishment	
	d. Incarceration of Youth	
	e. Juvenile Detention Alternatives Initiative (JDAI)	
	f. Racial and Ethnic Disparities in the Juvenile Justice System	
	g. “Upstream” Interventions, Prevention Efforts and Services	
	4. Full Task Force Recommendations	48

B.	Future activities that would allow for assessment and recommendation of changes to the code	57
V.	Task force members and affiliation	58
A.	Current Members	
B.	Former Members	
VI.	Task force operations	59
A.	Resolution	
B.	Subcommittees	
VII.	Subcommittee business and reports	60
A.	Family in Need of Court-Ordered Services (FINCOS)	
1.	Task	
2.	Members	
B.	Recommendations and Revisions (R&R)	
1.	Task	
2.	Members	
C.	Juvenile Justice	
1.	Task	
2.	Members	
VIII.	Public Comment	62
A.	Survey responses	
B.	Task force meeting recordings	
C.	Written statements and materials	
IX.	Relevant legislation previously introduced	63
X.	Related Initiatives	63
A.	Children’s Court Improvement Commission (CCIC)	
XI.	Conclusion	65
Appendix		66
A.	Juvenile Justice Information Sheets	

I. Introduction

The Children’s Code Reform Task Force recommends changes to state policy, practice, and law affecting child and family welfare law in several arenas, including all three branches of government. This report includes the need for comprehensive reform – in part to make full use of federal funding available to the state, information sheets on juvenile justice, suggested definitions and expedited processes to care for children whose legal guardians have died, statutory guidance to make sure the ravages of poverty are not confused with abuse or neglect, a way to improve the ability of the state to protect children whose parents negligently allow access to firearms, and ways to legally require a family’s participation in services when there are specific signs of significant disfunction, short of filing a case under the Abuse and Neglect Act.

Following work funded by appropriation from the New Mexico legislature in 2023 and 2024, and building on that existing impetus, the Children’s Code Reform Task Force obtained an additional \$50,000 funding from the Annie E. Casey Foundation to continue work, considering and making recommendations to the three branches of state government for changes to many areas of state policy. This report presents the suggestions brought forward by this group from roughly October, 2024 through 2025, and is intended as a supplement to the first report published June 30th, 2024.

The task force asserts there must be cooperation and coordination between all the entities working on these issues/reform, requiring a three-branch approach to create effective coordination and communication between the groups who have expertise in the disparate elements of state government, with the professionals and volunteers who do the work of supporting child and family welfare and thus have the greatest knowledge in the field. The task force is made up of individuals who come from the executive, legislative, and judicial branches, with volunteers from the public and interested organizations.

Because of funding and time challenges, CCRTF has restricted itself to suggesting changes in chosen areas and issues within the Children’s Code that are capable of discreet reform, although the CCRTF asserts a well-funded multi-year effort is required for comprehensive reform.

The proposed legislation and recommendations contained within the task force’s June 2024 report and this supplemental report do not represent all that needs to be reformed in the Children’s Code and the state’s child and family welfare system. Most but not all of the work of this iteration of the task force has been under the Abuse and Neglect Act Section, Chapter 32A, Article 3B, relating to Families in Need of Court-Ordered Services (FINCOS) and Article 4, the Abuse and Neglect Act.

II. The Need for Comprehensive Reform

As noted in a previous report, “In 2020, a broad and nationwide coalition of organizations began working together to reform “child welfare systems” into “child and family wellbeing systems.”¹

¹ <https://aphsa.org/APHSABlog/mhhspp/poverty-and-neglect-are-not-the-same.aspx>

This was a different approach to addressing neglect – an approach that offers support to families in need rather than penalize them.²

In addition to a new approach encouraging comprehensive reform of “child and family wellbeing systems,” new research and practice re: brain development in adolescents and young adults, and new approaches to dealing with substance abuse, including the use of medically-assisted treatment, are demanding reform of codes and processes and practices rooted in old, outdated knowledge and beliefs.

A particular area where research has brought and is bringing about change is in the study and recognition of Adverse Childhood Experiences (ACES). The percentage of the New Mexico population with an advanced number of ACES is significantly higher than the percentage of the U.S. population.³ Reform to the Children’s Code needs to reflect and respond to this knowledge.

Changes in the 1990’s came at the federal level based on funding to states, in recognition that children were languishing in foster care, and that was not helping them. Those working within the system were seeing trauma from removal alone. Society’s understanding of the creation of trauma and trauma response has grown, including the secondary trauma suffered by workers within the child and family wellbeing system. There is a grave need for a healthier system that benefits children, families and workers.

Those in the field are acutely aware of the need for reform – to find things that are working throughout the country and to institute those reforms when working with children and families at their most traumatized – and are undertaking it, in New Mexico and beyond.

The reform comes in two packages:

- Package 1: comprehensive reform of the Children’s Code
- Package 2: comprehensive reform of the entire child and family wellbeing system in New Mexico

The CCRTF has presented and is presenting pieces representing comprehensive reform of the *Children’s Code*. To present pieces representing comprehensive reform of the *system* is outside the scope of the task undertaken by the task force, and, in large part, beyond the expertise of task force members.

A. Children’s Code Reform Task Force

In March of 2021⁴, Senate Bill 196, sponsored by Senator Linda Lopez, was introduced to create a task force to review the Children’s Code, a large and complex compilation of statutes covering topics such as foster care, abuse and neglect, adoption and Children’s Court. As stated by

² Id.

³ *Infra*, Section IV(A)(3)(b)

⁴ An earlier piece of legislation, 2019’s SM 18, had requested the chair of the Children’s Cabinet to convene a “Children’s Code Reform Task Force” to review and make recommendations for updating the Children’s Code.

Senator Lopez at the time, “In conversations in our community, those who are advocates for children – it’s time to look at it, see where we need to make amendments.”⁵

2019’s SM 18, also sponsored by Senator Lopez, had earlier sought to convene a Children’s Code Reform Task Force. The memorial set out the reasons why reform was necessary, as follows:

WHEREAS, the Children's Code is a set of New Mexico statutes that govern many matters that are essential for the safety and well-being of New Mexico's children and families; and

WHEREAS, the Children's Code includes matters relating to child development, adoptions, child abuse and neglect, guardianships, children's mental health, delinquency and state interventions into the lives of children and families; and

WHEREAS, children's and family law and policy have been undergoing a transformation in recent years, with the development of a better understanding of child development, the need to acknowledge strength and cultural wealth in the diversity of New Mexico families, the effect of factors such as historical trauma, disability and racial and ethnic disparities in the lives of New Mexico families, the effect of early trauma and adverse experiences in the lives of young people and changes to federal law that shift the focus of policy from intervention in the lives of families after an adverse event has occurred, to a focus on the timely provision of preventive services for children and families at risk; and

WHEREAS, the United States congress has recently enacted legislation that provides strong monetary incentives to states to update their laws and policies relating to children and families, establishing rapid deadlines for states to conform their laws in order to gain these federal incentives for change; and

WHEREAS, experts and stakeholders in the realm of children's and family policy and law have been contemplating an overhaul of the Children's Code in order to update the Children's Code with respect to preventive services, delinquency, child abuse and neglect policies, family interventions, children's mental health and dually involved youth...”⁶

2021’s SB 196, appropriating \$100K to the Administrative Office of the Courts and requesting the Children’s Court Improvement Commission of the NM Supreme Court to appoint a task force, unanimously passed the Senate and the House Judiciary Committee, the lone House committee to which it was assigned, but went no farther.

The New Mexico legislature chose to fund a Children’s Code Reform Task Force (CCRTF) for fiscal years 2023 and 2024 – providing \$50,000 to the Administrative Office of the Courts (AOC) in 2022 (Third Special Session SB 1) and \$75,000 to the AOC as a part of the appropriations in 2023’s SB 192.

⁵ <https://www.krqe.com/news/politics-government/legislature/bill-would-create-task-force-to-review-new-mexicos-childrens-code/>

⁶ <https://www.nmlegis.gov/Sessions/19%20Regular/memorials/senate/SJM018.pdf> , which received a Do Pass vote from the Senate Rules Committee, but was not heard in the Senate Judiciary Committee and died, API (Action Postponed Indefinitely)

The only guidance being contained in either one of the later bills was for the task force to “assess and recommend changes.”

As has been reported in the June 2024 report of the task force, two subcommittees were formed to address and explore potential changes to the Children’s Code: Crossover Youth; and Improving Responses to Poverty and Substance Misuse.⁷ These subcommittees amended and drafted legislation and recommendations that were adopted by the full task force.⁸

In the current iteration of the ongoing task force, funded by the Annie E. Casey Foundation to address policy issues, the task force formed the following subcommittees: Juvenile Justice; Families in Need of Court-Ordered Services (FINCOS); and Revisions and Recommendations.

As task force members continued to explore crafting legislation and/or amending existing statutes within the Children’s Code, it has been reinforced that the need for comprehensive reform, rather than piecemeal reform, remains high.

Portions of the Children’s Code are interwoven, with changes to a section in FINCOS⁹, for example, necessitating changes to portions of the Abuse and Neglect Act¹⁰, and vice versa.

Additionally, the recent transformation to children’s and family law and policy – i.e. the development of a better understanding of child development, the need to acknowledge strength and cultural wealth in the diversity of New Mexico families, the effect of factors such as historical trauma, disability and racial and ethnic disparities in the lives of New Mexico families, the effect of early trauma and adverse experiences in the lives of young people and changes to federal law that shift the focus of policy from intervention in the lives of families after an adverse event has occurred, to a focus on the timely provision of preventive services for children and families at risk – as referenced in 2019’s SM 18, as well as advancements in understanding youth and young adult brain development, scientific developments and changes in approach re: substance abuse and treatment of the same, and the necessary disentangling of poverty and neglect¹¹, pertain to the Children’s Code as a whole, rather than singular sections of the Code. Thus, comprehensive reform is necessary and desired.

Task force members want to explore and undertake comprehensive reform of the Children’s Code. To date, the task force has dealt with gaps in funding and gaps in operation that have made comprehensive reform challenging, given the need for adequate time to research and analyze the comprehensive effects of even minor amendments to the Children’s Code, as well as the time needed for undertaking a process for gathering robust public input. The CCRTF, consisting of leaders and policy makers in child and family welfare from around the state, asserts that

⁷ https://childlaw.unm.edu/assets/docs/childrens_code_reform_task_force_june_2024_report.pdf, p. 51

⁸ Id.

⁹ Section 32A-3B-1 NMSA 1978 et. seq

¹⁰ Section 32A-4-1 NMSA 1978 et. seq.

¹¹ See *Disentangling Poverty and Neglect in the Child Welfare System: In New Mexico and Beyond*, <https://childlaw.unm.edu/assets/docs/disentangling-poverty-and-neglect-in-the-child-welfare-system-in-nm-and-beyond.pdf>

sufficient, multi-year funding that will enable it to undertake the comprehensive reform to the Children’s Code that it and the Legislature and the Executive deem necessary.

The task force began its work under funding from the legislature that was directed to the Administrative Office of the Courts, and with a sitting judge as its chair. When the courts realized that both the location of the funding and the restraints upon a judicial officer as chair were hampering the operation of the task force, the judiciary found an appropriate partner to take over the work of the task force in the Corinne Wolfe Center for Child and Family Justice at the University of New Mexico School of Law, whose director became task force chair, and with whom a Memorandum of Understanding was signed. Unfortunately, due to the time it took to create and approve the MOU with the university, a 9-month gap in work of the task force occurred. Despite this gap, the task force regrouped, enthusiastically, with all but two of its original members, in January 2024 and was able to release a comprehensive report in June of 2024, containing proposed new Acts, amendments to existing statutes, and numerous, thoughtful recommendations.

The aim was always to continue the work of the task force beyond the end of June 2024. Unfortunately, state funding for the task force had run out. New funding had to be secured from the Annie E. Casey Foundation, to fund the task force from October 2024 through January 2025. Again, the task force was able to regroup, despite a 3-month gap in available funding to allow for task force operation. Once that funding runs out, however, there likely will be no additional funding until perhaps the legislature funds the task force for FY 26, with work to begin most likely in August of 2025.

While task force members are desirous of continuing the work of the task force, in a multi-year effort, to enable long-range study and planning and maximum public input, it is unclear whether the task force will receive sufficient funding to continue operating under the auspices of the Corinne Wolfe Center with its executive director as chair, nor to retain its experienced staff.

Ideally, the task force will receive both sufficient funding from the legislature for FY26 to retain staff and operation through the Corinne Wolfe Center, as well as some stop-gap funding that will enable the task force to operate from February through June of 2025 and without a five- or six-month gap in operations.

B. Senate Memorial 5 Task Force¹²

Senate Memorial 5 (SM 5), titled, “CYFD Restructuring Task Force”, was passed unanimously and signed by the Senate. The task force began its work in May 2024, under the following resolutions contained within the Memorial:

BE IT FURTHER RESOLVED that the task force work to augment and enhance the governor's efforts to improve the child welfare system through Executive Order 2023-020; and

¹² https://www.nmlegis.gov/Entity/LFC/SM5_Taskforce

BE IT FURTHER RESOLVED that the task force examine the organizational structure and operations of the children, youth and families department and make recommendations for necessary changes, including:

A. agency mission, vision and values compared with national best practices in child welfare administration;

B. agency organizational structure compared with statutory framework and national best practices in child welfare administration;

C. implementation of the multilevel response system known as differential or alternative response, compared with statutory framework and national best practices in child welfare administration;

D. examination and definition of a data-driven process to identify children and families at risk for maltreatment and related outcomes;

E. the availability of, needs for and best practices in wrap-around services for children and families;

F. the existing network of services, including prevention, early intervention and intervention services;

G. the availability of, needs for and best practices in services and safety for child-welfare-involved families, including hard-to-place children;

H. best practices in safety, permanency and well-being for children and families, including hard-to-place children;

I. the qualifications of and recruitment practices for frontline workers, including investigators, permanency workers and juvenile justice field staff;

J. the current use of and potential to leverage federal funding;

K. best practices in equity considerations;

L. staffing and facility needs at juvenile justice facilities;

M. the needs and best practices for and availability and implementation of evidence-based and trauma-informed programming in juvenile justice community and facility settings, including restorative justice, multisystemic therapy, functional family therapy and cognitive behavioral therapy; and

N. juvenile crime trends and best practices for prevention, early intervention and rehabilitation; and

BE IT FURTHER RESOLVED that the task force be requested to make recommendations to the legislature and the governor by November 15, 2024 for consideration during the first session of the fifty-seventh legislature; and

BE IT FURTHER RESOLVED that the task force have sufficient administrative support to enable it to meet at least monthly and move its work forward in a structured, consistent, public and transparent manner; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the governor, all members of the legislature, the legislative finance committee, the legislative health and human services committee and the secretary of children, youth and families.¹³

Links to the SM 5 monthly agendas can be found on the task force webpage, as well as briefs, handouts and presentations.¹⁴

¹³ <https://www.nmlegis.gov/Sessions/24%20Regular/final/SM005.pdf>

¹⁴ https://www.nmlegis.gov/Entity/LFC/SM5_Taskforce

The SM 5 task force released its report and recommendations shortly before publication of this report.¹⁵ The SM 5 task force made recommendations in the following areas:

- Child welfare workforce
- Prevention and early intervention
- Community-based placements and services
- Child welfare system oversight and accountability
- Juvenile justice

Significantly, while calling for the State to seek to quantify and support crossover youth, the SM 5 task force report did not mention the work done by this task force, seeking to reform the Children’s Code, in proposing legislation in its June 2024 report that enacts the Crossover Youth Act.¹⁶

The proposed Crossover Youth Act drafted by the CCRTF creates the Crossover Youth Program and “defines terms that will permit the accurate tracking of data concerning crossover youth and ensure that the broadest group of youth and young adults are served appropriately by multiple agencies and discreet divisions within agencies through collaborative efforts.”¹⁷

This omission highlights the need for a clearinghouse or process that gathers all of the work being done by all entities, across all branches of government, and makes it available to those working on reform and to the public.

The members of the Children’s Code Reform Task Force are hopeful that the reorganization work of the SM 5 task force will also continue and that the CCRTF and the SM 5 task force can work together to design, propose and recommend comprehensive reform to the Children’s Code and CYFD.

C. Internal CYFD Reform

CYFD’s Transformation Transparency Site at www.togetherwethrivenm.org states

Together We Thrive is the initiative set forth by Governor Michelle Lujan Grisham to transform the Children, Youth & Families Department. As children and families are a top priority for Governor Lujan Grisham, she issued an Executive Order to make systemic improvements to CYFD’s organizational structure, policies and procedures. CYFD’s Transformation Transparency Site will be updated regularly to reflect the work of the Executive Order.

Although it is impossible to know by looking at the site’s home page when the site first came online, one can find some information by digging into the Dashboard, a link to which can be found in the upper righthand corner of the home page.

¹⁵https://www.nmlegis.gov/Entity/LFC/Documents/SM5_Taskforce/Senate%20Memorial%205%20Taskforce%20Report_January%202025.pdf

¹⁶ Section III(A)(2)(a),

https://childlaw.unm.edu/assets/docs/childrens_code_reform_task_force_june_2024_report.pdf

¹⁷ Id.

For example, under the “Children in State Custody” heading, one can find charts and figures that date back to September of 2021 and whose last entries are labeled August of 2024.¹⁸

It is unclear whether any other internal CYFD efforts at reform have been made public.

D. Executive Action¹⁹

On 2/16/23 Exec. Order 2023-020, “Transforming Services for Children, Youth and Families, and the Children, Youth and Families Dept.,”²⁰ was signed and published by Governor Lujan Grisham.

Within the Executive Order, the governor ordered and directed the following:

WHEREAS, it is necessary to transform and reorganize CYFD to address the issues identified by Justice Vigil and ensure that CYFD best serves the interests of our State’s children and families;

NOW, THEREFORE, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, do hereby **ORDER** and **DIRECT** as follows:

1. CYFD’s organizational chart shall be reorganized to elevate personnel in charge of protectives services, behavioral health, and juvenile justice.
2. The Emergency Health and Behavioral Services Division shall ensure that a robust, statewide system exists for children and families in need of immediate services.
3. The Protective Services Division shall encompass child intake, foster care, placement services, and Fostering Connections. The Division shall work closely with the Emergency Health and Behavioral Services Division to ensure that our most at-risk children receive the services they need as soon as they need them.
4. The Juvenile Justice Division shall focus on prevention, rehabilitation, resilience, and recovery.
5. The Policy Advisory Council (the “Council”) is hereby established. The Council shall consist of seven members, including at least one representative from each of the following groups: service providers, foster care representatives, youth advocacy representatives, lawyers, behavioral health providers, and family members with experience with the CYFD system. The members of the Council shall reflect New Mexico’s cultural and geographic diversity. The members of the Council shall be

¹⁸ <https://www.togetherwethrivenm.org/dashboard/>

¹⁹ See also Informing a New Mexico Child and Family Services System Blueprint, 100% New Mexico (An initiative of the Anna, Age Eight Institute, affiliated with New Mexico State University and funded by Governor Michelle Lujan Grisham with the mission to, “Create a blueprint for Child and Family Services based on the voices of New Mexicans that defines what comprehensive array of services and opportunities need to exist for children and youth to thrive in their communities.” The blueprint, upon completion, will set out a plan for the State of NM “to provide a continuum of services from prevention to intervention prior to system involvement up to restorative intervention.” <https://www.100nm.org/services-blueprint/>

²⁰ <https://klvg4oyd4j.execute-api.us-west-2.amazonaws.com/prod/PublicFiles/ee3072ab0d43456cb15a51f7d82c77a2/0e9fd990-2fb4-4cec-897a-6406b0c58fc1/Executive%20Order%202023-020.pdf>

confirmed by the New Mexico Senate. Members will serve staggered three-year terms and will be subject to reappointment.

6. There shall be an Office of Innovation dedicated to researching best practices for better outcomes for children receiving services from CYFD.

7. CYFD shall establish a grievance system to allow families to engage in meaningful dialogue with CYFD and ensure that all clients are receiving the care they need.

8. CYFD shall be subject to an annual services audit from an out-of-state, independent consulting firm.

Within the executive order, the governor established the Policy Advisory Council (hereinafter “Council”). In March of 2023, five members were announced, and the Council met in early May of 2023. Open government advocates called for all meetings and discussions to be public.²¹ The most recent agenda listed on the Council’s webpage²² is for March 2024.²³

In an April 2024 report, KRQE reported that CYFD Secretary Casados had told lawmakers to expect a report from the Council with policy recommendations “within the next few months.”²⁴

Although the Council’s March 2024 agenda lists meetings through November 2024, it is unclear whether the Council met subsequent to March 2024 or released a report with policy recommendations, as none of those items are referenced on the Council’s webpage.²⁵

III. Response to Legislative Concerns re: Previously Proposed Legislation

During the summer of 2024, members of the Children’s Code Reform Task Force and staff had the opportunity to testify before two interim legislative committees: Courts, Corrections & Justice; and Legislative Health & Human Services. The recordings of these presentations can be found online.²⁶

At these hearings, members and staff gave a brief presentation of the work undertaken by the task force and answered legislators’ questions concerning task force work and legislation proposed in the June 2024 report.²⁷

²¹ https://www.santafenewmexican.com/news/local_news/government-watchdog-cyfd-advisory-meetings-should-stay-open-to-public/article_0e378312-ef7d-11ed-8b89-139e1b3e050d.html

²² <https://www.cyfd.nm.gov/about-cyfd/cyfd-advisory-council/>

²³ <https://www.cyfd.nm.gov/wp-content/uploads/2024/03/PAC-Meeting-Agenda-March-2024.pdf> . See

²⁴ “What’s the point of CYFD’s Policy Advisory Council,” KRQE, April 2024 at

<https://www.krqe.com/news/investigations/whats-the-point-of-cyfds-policy-advisory-council/>

²⁵ See fn. 18

²⁶ Courts, Corrections & Justice Interim Legislative Committee meeting, 8/13/24, <https://sg001-harmony.sliq.net/00293/Harmony/en/PowerBrowser/PowerBrowserV2/20240813/-1/75252>; Legislative Health & Human Services Interim Legislative Committee meeting, 8/26/24, <https://sg001-harmony.sliq.net/00293/Harmony/en/PowerBrowser/PowerBrowserV2/20240826/-1/75320>

²⁷ https://childlaw.unm.edu/assets/docs/childrens_code_reform_task_force_june_2024_report.pdf

As legislators who were interested and obviously read the earlier report of the task force took turns commenting and asking questions of members and staff, several issues rose to the top that made sense for the task force to thoughtfully respond to in this supplemental report:

A. Timelines – continuances caused by circumstances ”beyond control of the parties”

In the June 2024 report of the task force, the task force presented draft legislation amending existing statutes to revise time limitations for judicial hearings in child welfare cases.²⁸ In providing for timely permanency for children, the draft legislation set time limits for completion of hearings to occur, “absent circumstances which are beyond the control of the parties or the court.”²⁹

Some legislators who commented at the interim committee hearings thought the “beyond control of the parties” language too vague and wondered what it would mean.

This issue was considered by the Recommendations and Revisions Subcommittee. The subcommittee’s response is that the phrase and circumstance will have to be interpreted by the finder of fact who will decide whether a circumstance was a concern that was beyond the control of the parties or the court, or not.

As is common knowledge, CYFD is in the midst of a staffing crisis.³⁰ This may mean that prior to a judicial hearing, required reports might not have been written and submitted in the proper time, or that attorneys representing the state, who have far too large caseloads to handle effectively, may not even be able to show up for a hearing, or to even show up. The finder of fact will need to consider the very real concern about staffing, which may make it even more difficult to determine whether a circumstance is “beyond the control of the parties or the court.”

B. “Best interest of the child” standard permeates the entire Children’s Code

Also at interim committee meetings, legislators wanted to be insured that any proposed changes to the Children’s Code incorporated and embodied the “best interest of the child” standard.

Task force members who addressed this issue agreed that the “best interest of the child” standard permeates the Children’s Code, whether expressly stated in individual statutory sections, or not. However, it should be noted that the standard does not apply until the parent has been proven unfit under threshold constitutional and due process standards.³¹

²⁸ See https://childlaw.unm.edu/assets/docs/childrens_code_reform_task_force_june_2024_report.pdf, Section III(A)(1)(d), “Revising time limitations for judicial hearing in child welfare cases,” and amending Sections 32A-4-19, 32A-4-22, 32A-4-25 and 32A-4-25.1 NMSA 1978.

²⁹ Id., Section 1(A) and (D)

³⁰ See, e.g. New Mexico lawmakers express frustration over CYFD struggles, turnover rate, September 18, 2024 at <https://www.yahoo.com/news/mexico-lawmakers-express-frustration-over-035020994.html>

³¹ “All parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody.” *Stanley v. Illinois*, 405 U.S. 645 (1972). “We have little doubt that the Due Process Clause would be offended “[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children’s best interest.”” *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978).

Section 32A-1-3 NMSA 1978 sets forth the purpose of the “Children’s Code General Provisions Act,” commonly known as the “Children’s Code”. The section begins as follows

The Children's Code shall be interpreted and construed to effectuate the following legislative purposes:

A. first to provide for the care, protection and wholesome mental and physical development of children coming within the provisions of the Children's Code and then to preserve the unity of the family whenever possible. A child's health and safety shall be the paramount concern. Permanent separation of a child from the child's family, however, would especially be considered when the child or another child of the parent has suffered permanent or severe injury or repeated abuse. It is the intent of the legislature that, to the maximum extent possible, children in New Mexico shall be reared as members of a family unit;

Subsection A, in particular, and all of the subsections in Section 32A-1-3 NMSA 1978, setting forth the purpose of the Act, support the best interests of the child standard or concept, and the concept is embodied in the language. Therefore, in the opinion of the task force, the “best interest of the child” standard or concept does not need to appear in specific statutory sections when the purpose of the Children’s Code is followed.

Although families involved in this system had their children brought into custody because of an occurrence that was not in the best interest of the child, in almost all cases the best interest of the child cannot be divorced from the child within their own family. Many circumstances that brought a child into custody can be resolved with appropriate support and services. Many children have been left adrift in the foster care system and never find permanency whether with their own families or through adoption, a circumstance which is not in any child’s best interest.

C. Negligent Unsupervised Access to Firearms Language

In its June 2024 report, the task force, in amending the definition of neglected child in Section 32A-4-2 NMSA 1978, addressed situations when a child has negligent unsupervised access to firearms by including a definition of “firearm” and defining “neglected child” to include a child “whose parent, guardian or custodian negligently allows a child to have unsupervised access to a firearm or other deadly weapon.”

Concerns from legislators, expressed at interim committee meetings, as well as how the task force addressed these, are as follows:

1. Second Amendment concerns re: gun ownership: the CCRTF recognizes this concern.
2. Concern that the definitions of “firearm” and “deadly weapon” are consistent with those that currently appear in statute: the task force consistently worked in an aspirational manner and drew from multiple and respected sources, including NM statutes, to come up w/ their definition of “firearm” and “deadly weapon.”
3. Concern that holding parents responsible for abuse and neglect was piling on after a tragedy, punishing a family in grief: it can be appropriate to hold people accountable,

even when grieving. Idea: by changing law and making parents aware of the change, may lead to more responsible securing of weapons in the home.

4. Concern that the Benny Hargrove Safe Storage Act, Section 30-7-4.1 NMSA 1978 already provides a remedy for unsafe storage of a weapon: the statute within the criminal code imposes a criminal penalty and doesn't link to the civil action designed to protect a child. There is precedent for dual legal approaches – maybe you do lose your child due to neglect and also have criminal charge for improper storage.

While the task force initially included the negligent unsupervised access to firearms within the definition of “neglected child,” the Recommendations and Revisions Subcommittee and then the full task force decided to remove this language from its proposed legislation addressing poverty and neglect in its amendments to the Abuse and Neglect Act, Section 32A-4-1 NMSA 1978 et. seq. and to present a stand-alone bill in this regard.³²

D. Inclusion of IFPA Language in definition of “neglect”

The concern that language regarding neglect that was contained in the Indian Family Protection Act (IFPA)³³ was not being brought forward in statutory revision of the Abuse and Neglect Act was a well-founded concern and showed a thoughtful reading, and we address it in this report.³⁴

While IFPA does not define “neglected child,” it does have language relevant to poverty in its section on standards of evidence, Section 32A-28-13 NMSA 1978, which reads in relevant part

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

...

- (4) without a causal relationship identified in Paragraph (3) of this subsection, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse or nonconforming social behavior shall not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

The task force has carried this language over to the discussion draft amending Section 32A-4-2(I)(2), within the Abuse and Neglect Act.³⁵

E. Revisions & Recommendations Subcommittee

³² See Section IV(A)(1)(a) and (b) for these separate discussion drafts of proposed legislation.

³³ Section 32A-28-1 NMSA 1978 et. seq.

³⁴ See Section IV(A)(1)(a), *infra*

³⁵ *Id.*

The task force created a separate subcommittee to address legislators’ and task force members’ concerns regarding legislation previously proposed in its June 2024 report.³⁶ Some concerns were addressed in other subcommittees, as well, and all are addressed in this report. Additionally, this subcommittee reviewed task force recommendations which appeared in its first June 2024 report, but which the task force did not have time to address in the detail required. The task force chose to focus on just a few of the prior recommendations in greater depth.

IV. Proposed Legislation, Information and Recommendations from the full task force

A. Changes to the Children’s Code

1. Amendments to Existing Statutes

Note: Subsequent to its June 2024 report, the task force began meeting again, in part to consider legislation previously proposed. With input from task force members, legislators, advocates and the public, the task force now puts forth the following draft legislation which will, generally, make more resources available, financial and otherwise, to families and children; disentangle poverty from neglect; promote families staying together and reunifying when safe for children; and, when possible, permit assistance and resources to reach families without the need for an abuse and neglect determination.

a. Revising the definition for a neglected child and preventing child removal and longer stays in custody when poverty is the only issue.

- Amending Sections 32A-4-2, 32A-4-7 and 32A-4-22 NMSA 1978

Note: Revises the Children’s Code to amend the definition of “neglected child” to: (1) clarify that poverty alone is not neglect; (2) add appropriate language as contained in the Indian Family Protection Act (IFPA)³⁷; and (3) clarify processes to prevent child removal and longer stays in custody when poverty is the only issue.³⁸

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57TH LEGISLATURE – STATE OF NEW MEXICO – FIRST SESSION, 2025
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³⁶ See Section III(A) at

https://childlaw.unm.edu/assets/docs/childrens_code_reform_task_force_june_2024_report.pdf

³⁷ See Section III(D), supra

³⁸ This discussion draft previously addressed situations where a child had negligent, unsupervised access to a firearm. The task force has subsequently removed that language and created a stand-alone piece of legislation to address that issue. See Section 3(C), supra, re: legislative concerns and removal of this language; and Section IV(A)(1)(b) for new proposed legislation re: negligent unsupervised access to a firearm constituting neglect of a child.

**DISCUSSION DRAFT
FINAL DRAFT FOR REVIEW**

AN ACT

RELATING TO CHILD WELFARE; REVISING THE DEFINITION FOR A NEGLECTED CHILD; PREVENTING CHILD REMOVAL AND LONGER STAYS IN CUSTODY WHEN POVERTY IS THE ONLY ISSUE; AMENDING SECTIONS OF THE CHILDREN'S CODE.

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

SECTION 1. Section 32A-4-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 96, as amended) is amended to read:

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

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

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

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

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

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

B. "abused child" means a child:

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

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

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

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

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

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

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

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

- (3) attempted, conspired to subject or has subjected the child to torture, chronic abuse or sexual abuse; or
- (4) had parental rights over a sibling of the child terminated involuntarily;

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

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

F. "great bodily harm" means an injury to a person that creates a high probability of death, that causes serious disfigurement or that results in permanent or protracted loss or impairment of the function of a member or organ of the body;

G. "neglected child" means a child:

- (1) who has been abandoned by the child's parent, guardian or custodian;
- (2) who is without ~~[proper parental care and control or subsistence, education, medical or other care or control]~~ food, shelter, clothing, education, medical or mental health treatment, supervision, or other care or support necessary for the child's well-being because of the ~~[faults or habits]~~ behaviors of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian to provide them when able to do so ~~[to provide them;]~~ or when offered financial or other reasonable means to do so. Provided, that the inability of a parent, guardian or custodian to provide for a child due to inadequate financial resources shall not, for that reason alone, be considered neglect. Evidence showing only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse or nonconforming social behavior shall not by itself constitute neglect. Further provided that an Indian child being raised by a family in a manner that conforms to the cultural and social standards prevailing in the child's Indian community is not for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code;
- (3) who has been ~~[physically or sexually]~~ neglected or abused, when the child's parent, guardian or custodian knew or should have known of the neglect or abuse and failed to take reasonable steps to protect the child from further harm;
- (4) whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or
- (5) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a

neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code;

H. "physical abuse" includes any case in which the child suffers strangulation or suffocation and any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

- (1) there is not a justifiable explanation for the condition or death;
 - (2) the explanation given for the condition is at variance with the degree or nature of the condition;
 - (3) the explanation given for the death is at variance with the nature of the death;
- or
- (4) circumstances indicate that the condition or death may not be the product of an accidental occurrence;

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

J. "sexual abuse" includes criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law;

K. "sexual exploitation" includes:

- (1) allowing, permitting or encouraging a child to engage in prostitution;
- (2) allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing; or
- (3) filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law;

L. "sibling" means a brother or sister having one or both parents in common by birth or adoption;

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

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

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

SECTION 2. Section 32A-4-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 101, as amended) is amended to read:

"32A-4-7. RELEASE OR DELIVERY FROM CUSTODY.--

A. A person taking a child into custody shall, with all reasonable speed:
(1) release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate; or
(2) deliver the child to the department or, in the case of a child who is believed to be suffering from a serious physical or mental condition or illness that requires prompt treatment or diagnosis, deliver the child to a medical facility. If a law enforcement officer delivers a child to a medical facility, the officer shall immediately notify the department that the child has been placed in the department's legal custody.

B. When an alleged neglected or abused child is delivered to the department, a department caseworker shall review the need for placing the child in custody and shall release the child from custody unless custody is appropriate or has been ordered by the court. When a child is delivered to a medical facility, a department caseworker shall review the need for retention of custody within a reasonable time after delivery of the child to the facility and shall release the child from custody unless custody is appropriate or has been ordered by the court.

C. When an alleged neglected child is delivered to the department, a department caseworker shall review the need for placing the child in custody and shall:

(1) make reasonable efforts to help the parent, guardian or custodian obtain financial and other practical supports needed to provide basic needs such as food, shelter, clothing, education, medical or mental health treatment, supervision, or other care or support necessary for the child's well-being; and

(2) release the child from custody if the sole reason for removal was the inadequate financial resources of the child's parent, guardian or custodian and the parent, guardian or custodian has, subsequent to removal, accepted resources that enable the parent, guardian or custodian to meet the child's basic needs.

~~[C.]~~ D. If a child is placed in the legal custody of the department and is not released to the child's parent, guardian or custodian, the department shall give written notice thereof as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian together with a statement of the reason for taking the child into custody.

~~[D.]~~ E. Reasonable efforts shall be made to prevent or eliminate the need for removing the child from the child's home, with the paramount concern being the child's health and safety. In all cases when a child is taken into custody, the child shall be released to the child's parent, guardian or custodian, unless the department files a petition within three days from the date that the child was taken into custody.

~~[E.]~~ F. The department may release the child at any time within the three-day period after the child was taken into custody if it is determined by the department that release is appropriate or if release has been ordered by the court.

~~[F-]~~ G. If a child that has been taken into custody and released to the child's parent, guardian or custodian is taken into custody again within one year of having been taken into custody, the child shall not be released from custody until a department review is conducted, in consultation with the children's court managing attorney, to review the child's case and documents and determine whether the child should be released to the child's parent, guardian or custodian or if it is in the best interest of the child to file a petition alleging neglect or abuse. The department's review shall be conducted by a person above the level of supervisor who has been authorized by the secretary of children, youth and families to review such cases. If the secretary has not authorized anyone to review such cases, the department's review shall be conducted by the director of the protective services division of the department. The three-day deadline for filing the petition pursuant to Subsections ~~[D-]~~ E and ~~[E]~~ F of this section is extended to five days when the child's case is reviewed pursuant to this subsection."

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) the conditions other than the inadequate financial resources of the parent, guardian or custodian that justify continued out of home placement;

~~[(11)]~~ (12) whether reasonable efforts were made by the department to prevent removal of the child from the home prior to placement in substitute care and whether reasonable efforts were made to attempt reunification of the child with the natural parent; and

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

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

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

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

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

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

(b) the department.

C. If a child is found to be neglected or abused, in its dispositional judgment the court shall also order the department to implement and the child's parent, guardian or custodian to cooperate with any case plan approved by the court. Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety. The court may determine that reasonable efforts are not required to be made when the court finds that:

(1) the efforts would be futile; or

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

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

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

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

G. When the court vests legal custody in an agency, institution or department, the court shall transmit with the dispositional judgment copies of the clinical reports, the predisposition study and report and any other information it has pertinent to the care and treatment of the child.

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

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

2. Revising the definition for a neglected child to include instances when a child has unsupervised access to a firearm or other deadly weapon.

- Amending Section 32A-4-2 NMSA 1978

Note: Revises the Children’s Code to amend the definition of “neglected child” to address situations when a child has negligent unsupervised access to firearms.³⁹

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**DISCUSSION DRAFT
FINAL DRAFT FOR REVIEW**

³⁹ This amended language was previously included in the discussion draft of proposed legislation addressing neglect, generally, See Section IV(A)(1)(a), supra. The task force has subsequently removed this language and created a stand-alone piece of legislation to address this issue. See Section III(C), supra, re: legislative concerns and removal of this language from the legislation addressing neglect, generally.

AN ACT

RELATING TO CHILD WELFARE; REVISING THE DEFINITION FOR A NEGLECTED CHILD TO INCLUDE INSTANCES WHEN A CHILD HAS UNSUPERVISED ACCESS TO A FIREARM OR OTHER DEADLY WEAPON; AMENDING A SECTION OF THE CHILDREN'S CODE.

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

SECTION 1. Section 32A-4-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 96, as amended) is amended to read:

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

- A. "abandonment" includes instances when the parent, without justifiable cause:
 - (1) left the child without provision for the child's identification for a period of fourteen days; or
 - (2) left the child with others, including the other parent or an agency, without provision for support and without communication for a period of:
 - (a) three months if the child was under six years of age at the commencement of the three-month period; or
 - (b) six months if the child was over six years of age at the commencement of the six-month period;
- B. "abused child" means a child:
 - (1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;
 - (2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian;
 - (3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;
 - (4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or
 - (5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;
- C. "aggravated circumstances" includes those circumstances in which the parent, guardian or custodian has:
 - (1) attempted, conspired to cause or caused great bodily harm to the child or great bodily harm or death to the child's sibling;
 - (2) attempted, conspired to cause or caused great bodily harm or death to another parent, guardian or custodian of the child;
 - (3) attempted, conspired to subject or has subjected the child to torture, chronic abuse or sexual abuse; or

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

D. "deadly weapon" means an object, instrument, substance, or device used in a way that intends to and is likely to cause great bodily harm or death, or with which death can be easily and readily produced;

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

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

G. "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer. "Firearm" includes any handgun, rifle or shotgun;

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

~~[G.]~~ I. "neglected child" means a child:

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

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

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

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

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

(6) whose parent, guardian or custodian negligently allows a child to have unsupervised access to a firearm or other deadly weapon;

~~[H.]~~ J. "physical abuse" includes any case in which the child suffers strangulation or suffocation and any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

- (1) there is not a justifiable explanation for the condition or death;
- (2) the explanation given for the condition is at variance with the degree or nature of the condition;
- (3) the explanation given for the death is at variance with the nature of the death;
- or
- (4) circumstances indicate that the condition or death may not be the product of an accidental occurrence;

~~[I.]~~ K. "relative" means a person related to another person by birth, adoption or marriage within the fifth degree of consanguinity;

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

~~[K.]~~ M. "sexual exploitation" includes:

- (1) allowing, permitting or encouraging a child to engage in prostitution;
- (2) allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing; or
- (3) filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law;

~~[L.]~~ N. "sibling" means a brother or sister having one or both parents in common by birth or adoption;

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

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

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

3. Revising the definition for a family in need of court-ordered services

- Amending Sections 32A-3B-1 through 32A-3B-22 NMSA 1978

NOTE: Revises the Children’s Code to permit families and the Children, Youth and Families Department to collaborate on a plan to provide services for families in need, absent an abuse and neglect determination, and to create a process by which a FINCOS case can lead to an abuse and neglect case under prescribed circumstances, and more complete due process protections for families and children.

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57TH LEGISLATURE – STATE OF NEW MEXICO – FIRST SESSION, 2025
INTRODUCED BY

DISCUSSION DRAFT

RELATING TO CHILD WELFARE; REVISING THE DEFINITION FOR A FAMILY IN NEED OF COURT-ORDERED SERVICES; AMENDING SECTIONS OF THE FAMILY IN NEED OF COURT-ORDERED SERVICES ACT.

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

SECTION 1. Section 32A-3B-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 74, as amended) is amended to read:

“32A-3B-2. DEFINITIONS.--As used in Chapter 32A, Article 3B NMSA 1978, "family in need of court-ordered services" means the child or the family has refused family services or the department has exhausted appropriate and available family services [~~and~~] or court intervention is necessary to provide family services to the child or family and it is a family:

A. whose child, subject to compulsory school attendance, is absent from school without an authorized excuse more than ten days during a school year;

B. whose child is absent from the child's place of residence for a time period of twelve hours or more without consent of the child's parent, guardian or custodian;

C. whose child refuses to return home and there is good cause to believe that the child will run away from home if forced to return to the parent, guardian or custodian;

D. in which the child's parent, guardian or custodian refuses to allow the child to return home and a petition alleging neglect of the child is not in the child's best interests; or

E. whose child is [:

(1) ~~alleged to be engaged in an act that would be designated as prostitution if committed by an adult ; or~~

(2)] a victim of human trafficking as defined in Section 30-52-1 NMSA 1978.”

SECTION 2. Section 32A-3B-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 75, as amended) is amended to read:

“32A-3B-3. [~~PROTECTIVE~~] CUSTODY—INTERFERENCE WITH [~~PROTECTIVE~~] CUSTODY—PENALTY.--

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

- (1) has run away from the child's parent, guardian or custodian;
- (2) without parental supervision is suffering from illness or injury;
- (3) has been abandoned;
- (4) is endangered by the child's surroundings and removal from those surroundings is necessary to ensure the child's safety; or
- ~~[(5) is engaged in an act that would be designated as prostitution if committed by an adult; or]~~
- ~~[(6)]~~ (5) is a victim of human trafficking as defined in Section 30-52-1 NMSA 1978.

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

~~[C.]~~ B. When a child is taken into [protective] custody, the department shall make [a reasonable effort] active efforts to determine whether the child is an Indian child as required pursuant to the provisions of the Indian Family Protection Act.

~~[D.]~~ C. Any person, other than the child taken into [protective] custody, who interferes with placing the child in [protective] custody is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.”

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

“32A-3B-4. ~~[PROTECTIVE]~~ CUSTODY—RESTRICTIONS—TIME LIMITATIONS.-

A. A law enforcement officer who takes a child into [protective] custody shall, with all reasonable speed:

- (1) inform the child of the reasons for the [protective] custody; and
- (2) contact the department.

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

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

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

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

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

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

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

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

“32A-3B-5. NOTIFICATION TO FAMILY—RELEASE FROM [PROTECTIVE] CUSTODY.—

A. ~~[When the department takes a child into protective custody and the child is not released to the child's parent, guardian or custodian, the department shall provide written notice as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian, with a statement of the reasons for taking the child into protective custody.]~~ If a child is placed in the legal custody of the department and is not released to the child's parent, guardian or custodian, the department shall give written notice as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian together with a statement of the reasons for taking the child into custody.

B. Reasonable efforts shall be made to prevent or eliminate the need for removing a child from the child's home, with the paramount concern being the child's health and safety. In all cases when a child is taken into custody, the child shall be released to the child's parent, guardian or custodian, unless the department files a petition within three days from the date that the child was taken into custody.

C. When a child is delivered to the department, a department caseworker shall review the need for placing the child in custody and shall:

(1) make reasonable efforts to help the parent, guardian or custodian obtain financial and other practical supports needed to provide basic needs such as food, shelter, clothing, education, medical or mental health treatment, supervision, or other care or support necessary for the child's well-being; and

(2) release the child from custody if the sole reason for removal was the inadequate financial resources of the child's parent, guardian or custodian and the parent, guardian or

custodian has, subsequent to removal, accepted resources that enable the parent, guardian or custodian to meet the child's basic needs.

D. The department may release the child at any time within the three-day period after the child was taken into custody if it is determined by the department that release is appropriate or if release has been ordered by the court.

~~[B-]~~ E. When the department releases a child placed in [protective] custody to the family, the department shall refer the family for voluntary family services.

~~[C-]~~ F. When the department releases a child from [protective] custody and the child's parent, guardian or custodian refuses to allow the child to return home, the department [shall file a petition pursuant to the provisions of the Abuse and Neglect Act.] may:

1) file a petition pursuant to the provisions of the Abuse and Neglect Act;

2) file a petition pursuant to the provisions of the Families in Need of Court-Ordered Services Act; or

3) enter into a voluntary placement agreement with the child's parent or guardian pursuant to the Voluntary Placement and Family Services Act.

~~[D-]~~ G. If the department is not releasing the child to the parent, guardian or custodian within two days, the department shall notify the tribe if the child is an Indian child."

SECTION 5. Section 32A-3B-6 NMSA 1978 (being Laws 1993, Chapter 77, Section 78, as amended) is amended to read:

"32A-3B-6. PLACE OF CUSTODY.—

A. Unless a child from a family in need of services who has been placed in department custody is also alleged or adjudicated delinquent:

(1) the child shall not be held in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be delinquent children; and

(2) there shall be a preference that the child be placed in the home of a relative of the child when a relative is available to provide foster care; provided that:

(a) placement with a relative is in the best interest of the child;

(b) the relative signs a sworn statement that the relative will not return the child to or allow unsupervised visits with the parent, guardian or custodian [~~who is alleged to have committed the abuse or neglect~~] until otherwise directed by the department or the court; and

(c) within three days of accepting [~~eustody~~] placement of the child, the relative completes an application form for licensure to operate a foster home pursuant to the Children's Code.

B. The department shall make reasonable efforts to locate a relative of the child to provide foster care. If a relative is not available to provide foster care, the child may be placed in:

(1) a licensed foster home or any home authorized under the law for the provision of foster care or group care or use as a protective residence;

(2) a facility operated by a licensed child welfare services agency; or

(3) a facility provided for in the Children's Shelter Care Act.”

SECTION 6. Section 32A-3B-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 79) is amended to read:

“32A-3B-7. [~~PROTECTIVE~~] CUSTODY HEARING--TIME LIMITATIONS.-

A. When a child of an alleged family in need of court-ordered services [~~is taken into protective custody by the department or the department petitions the court for protective custody of the child~~] has been placed in the legal custody of the department or the department has petitioned the court for temporary custody of the child, a custody hearing shall be held within ten days from the date the petition is filed to determine if the child should remain with the family or be placed in the custody of the department pending adjudication. Upon written request of the respondent, the hearing may be held earlier, but in no event shall the hearing be held sooner than two days after the date the petition was filed.

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

C. [~~When the custody hearing is conducted~~] At the custody hearing, the court shall [~~release the child to his~~] return legal custody of the child to the child's parent, guardian or custodian unless probable cause exists to believe that:

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

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

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

D. At the conclusion of the [~~protective~~] custody hearing, if the court determines that [~~protective~~] custody pending adjudication is appropriate, the court may:

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

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

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

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

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

E. At the conclusion of the custody hearing, the court may order the respondent or a child of an alleged family in need of court-ordered services, or both, to undergo appropriate diagnostic examinations or evaluations. If the court determines that probable cause does not exist, the court may order the respondent or a child of an alleged family in need of court-ordered services, or both, to undergo appropriate diagnostic examinations or evaluations as necessary to protect the child's best interests, based upon the allegations in the petition and the evidence presented at the custody hearing. Copies of any diagnostic or evaluation reports ordered by the court shall be provided to the parties at least five days before the adjudicatory hearing is scheduled. The reports shall not be sent to the court.

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

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

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

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

~~[F.] G. The Rules of Evidence shall not apply to [protective] custody hearings [conducted pursuant to the provisions of this section].~~

H. Notwithstanding any other provision of law, a party aggrieved by an order entered pursuant to this section shall be permitted to file an immediate appeal as a matter of right. If the

order appealed from grants the legal custody of the child to or withholds it from one or more of the parties to the appeal, the appeal shall be expedited and shall be heard at the earliest practicable time. While an appeal pursuant to this section is pending, the court shall have jurisdiction to take further action in the case pursuant to Subsection B of Section 32A-1-17 NMSA 1978.”

SECTION 7. Section 32A-3B-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 80, as amended) is amended to read:

“32A-3B-8. BASIC RIGHTS.—

A. A child subject to the provisions of the Children's Code is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code. All provisions and protections of the federal Indian Child Welfare Act and the New Mexico Indian Family Protection Act shall apply to family in need of court-ordered services proceedings.

B. ~~[In proceedings on a petition alleging a family in need of court-ordered services, the court may appoint counsel if appointment of counsel would serve the interests of justice.]~~ At the inception of a family in need of court-ordered services proceeding, counsel shall be appointed for the parent, guardian or custodian of the child. The appointed counsel shall represent the parent, guardian or custodian who is named as a party until an indigency determination is made at the custody hearing. Counsel shall also be appointed if, in the court's discretion, appointment of counsel is required in the interest of justice.

C. ~~[In proceedings on a petition alleging]~~ At the inception of a family in need of court-ordered services proceeding, the court shall appoint a guardian ad litem for a child under the age of fourteen and the court shall appoint an attorney for a child fourteen years of age or older at the inception of the proceedings. An officer or employee of an agency vested with legal custody of the child shall not be appointed as a guardian ad litem or attorney for the child. Only an attorney with appreciable training or experience shall be appointed as guardian ad litem of or attorney for the child.

D. When a child reaches fourteen years of age, the child's guardian ad litem shall continue as the child's attorney; provided that the court shall appoint a different attorney for the child if:

- (1) the child requests a different attorney;
- (2) the guardian ad litem requests to be removed; or
- (3) the court determines that the appointment of a different attorney is appropriate.

E. Whenever it is reasonable and appropriate, the court shall appoint a guardian ad litem or attorney who is knowledgeable about the child's cultural background.

F. The court shall ensure that the child's guardian ad litem zealously represents the child's best interest's and that the child's attorney zealously represents the child.

[F.] G. A person afforded rights pursuant to the provisions of the Children's Code shall be advised of those rights at that person's first appearance before the court on a petition filed under the Children's Code.

[G.] H. A child of an alleged or adjudicated family in need of court-ordered services shall not be fingerprinted or photographed for identification purposes, unless pursuant to a court order."

SECTION 8. Section 32A-3B-9 NMSA 1978 (being Laws 1993, Chapter 77, Section 81, as amended) is amended to read:

"32A-3B-9. CHANGE IN PLACEMENT.—

A. When a child's placement is changed, including a return to the child's home, ~~written notice of the placement change shall be given to the parties and to the child's tribe if the child is an Indian child ten days prior to the placement change, unless an emergency situation requires moving the child prior to sending notice~~ written notice of the factual grounds supporting the change in placement shall be sent to the child's guardian ad litem or attorney, all parties, the child's CASA, the child's foster parents, the court and to the child's tribe if the child is an Indian child ten days prior to the placement change, unless an emergency situation requires moving the child prior to sending notice.

B. When a child, through the child's guardian ad litem or attorney, files a motion and requests a court hearing to contest the proposed placement change, the department shall not change the child's placement pending the result of the court hearing, unless an emergency requires changing the child's placement prior to the hearing.

C. ~~[When a child's placement is changed and notice pursuant to the provisions of Subsection A of this section is not provided, written notice shall be sent to the parties and to the child's tribe if the child is an Indian child within three days after the placement change.]~~ When a child's placement is changed without prior notice as provided for in Subsection A of this section, written notice shall be sent to the child's guardian ad litem or attorney, all parties, the child's CASA, the child's foster parents, the court and to the child's tribe if the child is an Indian child within three days after the placement change.

D. Notice pursuant to the provisions of this section is not required for removal of the child from temporary emergency care, emergency foster care or respite care. The department shall provide oral notification of the removal to the child's guardian ad litem or attorney.

E. Notice need not be given to the parties, other than the child, or to the court when placement is changed at the request of the child's foster parents or substitute care provider. Notice shall be given to the child's guardian ad litem or attorney."

SECTION 9. Section 32A-3B-12 NMSA 1978 (being Laws 1993, Chapter 77, Section 84, as amended) is amended to read:

“32A-3B-12. ADJUDICATORY HEARING—TIME LIMITATIONS.—

A. An adjudicatory hearing for an alleged family in need of court-ordered services shall be commenced within sixty days after the date of service on the respondent.

B. Prior to the adjudicatory hearing, all parties to the hearing shall attend a mandatory meeting and collaborate to settle issues attendant to the adjudicatory hearing and develop a proposed family services plan that serves the child's and family's best interests.

~~[B.]~~ C. The children's court attorney shall represent the state at the adjudicatory hearing.

~~[C.]~~ D. If the adjudicatory hearing is not commenced within the time limits specified in this section or within the period of any extension of those time limits, the petition shall be dismissed with prejudice.”

SECTION 10. Section 32A-3B-13 NMSA 1978 (being Laws 1993, Chapter 77, Section 85, as amended) is amended to read:

“32A-3B-13. CONDUCT OF HEARINGS—PENALTY.--

A. All hearings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means.

B. All hearings regarding a family in need of court-ordered services shall be closed to the general public. ~~[subject to the following exceptions:~~

~~(1) the parties, the parties' counsel, witnesses and other persons approved by the court may be present at the hearings. Those other persons the court finds to have a proper interest in the case or in the work of the court may be admitted by the court to closed hearings on the condition that they refrain from divulging any information that would identify the child or family involved in the proceedings; and~~

~~(2) accredited representatives of the news media shall be allowed to be present at the hearings, subject to the condition that they refrain from divulging information that would identify any child involved in the proceedings or the parent, guardian or custodian of that child and further subject to enabling regulations the court finds necessary for the maintenance of order and decorum and for the furtherance of the purposes of the Children's Code.]~~

C. Only the parties, their counsel, witnesses and other persons approved by the court may be present at the hearings. The foster parent or relative providing care for the child shall be given notice and an opportunity to be heard at the dispositional phase. Those other persons the court finds to have a proper interest in the case or in the work of the court may be

admitted by the court to closed hearings on the condition that they refrain from divulging any information that would identify the child or family involved in the proceedings.

D. Accredited representatives of the news media shall be allowed to be present at closed hearings, subject to the condition that they refrain from divulging information that would identify any child involved in the proceedings or the parent, guardian or custodian of that child and further subject to enabling regulations the court finds necessary for the maintenance of order and decorum and for the furtherance of the purposes of the Children's Code. A parent, guardian or child who is the subject of a family in need of court ordered services proceeding and is present at a hearing may object to the presence of the media. The court may exclude the media if it finds that the presence of the media is contrary to the best interests of the child.

[~~C.~~] E. If the court finds that it is in the best interest of a child under fourteen years of age, the child may be excluded from a hearing under the Family in Need of Court-Ordered Services Act. A child fourteen years of age or older may be excluded from a hearing only if the court makes a finding that there is a compelling reason to exclude the child and states the factual basis for the finding.

D. A person or party granted admission to a closed hearing who intentionally divulges information concerning the hearing in violation of the provisions of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.”

SECTION 11. Section 32A-3B-14 NMSA 1978 (being Laws 1993, Chapter 77, Section 86, as amended) is amended to read:

“32A-3B-14. FINDINGS—DISMISSAL—DISPOSITIONAL MATTERS.--

A. The court shall determine if the allegations of the petition are admitted or denied [~~by the parent or child~~]. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court, after hearing all of the evidence regarding an alleged family in need of court-ordered services, shall make and record its findings on whether the family is a family in need of court-ordered services.

B. If the court finds, on the basis of a valid admission of the allegations set forth in the petition or on the basis of clear and convincing evidence that is competent, material and relevant in nature, that the [~~child is a child of a~~] family is a family in need of court-ordered services, the court shall enter an order finding that the family is in need of court-ordered services and may proceed immediately or at a postponed hearing, commenced within thirty days of the adjudicatory hearing, to make disposition of the case. If the court does not find that the [~~child is a child of a~~] family is a family in need of court-ordered services, the court shall dismiss the petition and may refer the family to the department for appropriate services.

C. A party aggrieved by an order entered pursuant to Subsection B of this section may file an immediate appeal to the court of appeals.

~~[C.]~~ D. In that part of the hearings regarding dispositional issues, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though not competent had it been offered during the part of the hearings regarding adjudicatory issues.

~~[D.]~~ E. On the court's motion or motion of a party, the court may continue the hearing on the petition for a reasonable time, not to exceed thirty days, to receive reports and other evidence regarding disposition. The court shall continue the hearing pending the receipt of the plan for family services if that document has not been prepared and received. During any continuance granted pursuant to this subsection, the court shall make an appropriate order for legal custody ~~[of the child].~~”

SECTION 12. Section 32A-3B-15 NMSA 1978 (being Laws 1993, Chapter 77, Section 87) is amended to read:

“32A-3B-15. ~~[PLAN FOR]~~ FAMILY SERVICES PLAN.—

A. Prior to holding a dispositional hearing, the court shall direct the department to prepare a written family services plan for submission to the court.

B. ~~[The plan for family services shall contain the following information]~~ The family services plan shall be developed jointly with the family, and have specific behavioral objectives that are realistic, achievable, measurable and time-limited to remedy the factual basis for court-ordered services. The family services plan shall contain the following information:

(1) ~~[a statement of the problem]~~ the factual basis for the finding that the family is in need of court-ordered services as set forth in the adjudicatory order;

(2) the ~~[needs of the child]~~ strengths of the family;

(3) ~~[the needs of the family]~~ services needed to achieve behavioral objectives;

(4) a description of the specific progress needed to be made by both the parent and the child ~~[the reasons why the plan is likely to be useful, the availability of any proposed services and the department's overall plan for ensuring that the services will be delivered]~~ to demonstrate court-ordered services are no longer needed;

(5) if removal from the home or continued residence outside the home is recommended for the child: ~~[a statement of the likely harm the child will suffer as a result of removal from the home, including emotional harm resulting from separation from the child's parents]~~

a) a description of any previous efforts to work with the parent and the child in the home and a description of any in-home treatment programs that have been considered and rejected;

b) a discussion of how the placement is consistent with the best interests and special needs of the child; and,

c) how sibling connections will be maintained during residence outside the home;

(6) [~~if removal from the home or continued residence outside the home is recommended for the child, a description of any previous efforts to work with the parent and the child in the home and a description of any in-home treatment programs that have been considered and rejected]~~ for children fourteen years of age or older, the family services plan shall;

a) be developed in consultation with the child and, at the option of the child, with up to two members of the case planning team who are chosen by the child and who are not a foster parent of, or caseworker for, the child; and

b) include a description of the specific skills and services the child requires for successful transition into independent living as an adult;

(7) [~~a description of the steps that will be taken to minimize any harm to the child that may result if separation from the child's parent occurs or continues]~~ the health and education records of the child, including the most recent information available regarding:

a) the names and addresses of the child's health and educational providers;

b) the child's grade level performance;

c) the child's school records;

d) a record of the child's immunizations;

e) the child's known medical problems;

f) the child's medications; and

g) any other relevant health and education information concerning the child determined to be appropriate by the department;

(8) [~~if removal from the home or continued residence outside the home is recommended for the child and the child is sixteen years of age or older, a description of the specific skills the child requires for successful transition into independent living as an adult, what programs are necessary to develop the skills, the reasons why the programs are likely to be useful, the availability of any proposed programs and the department's overall plan for~~

~~ensuring that the child will be adequately prepared for adulthood]~~ if the child has a permanency plan of permanent guardianship, a description of actions the department has taken and is taking to finalize legal guardianship; and

(9) when the child is an Indian child, contact shall be made with the child's Indian tribe for the purpose of consultation and exchange of information and the plan shall indicate the person contacted in the child's Indian tribe and the results of that contact.

C. A copy of the family services plan shall be provided by the department to all parties at least five days before the dispositional hearing.

D. ~~[If the child is a member of an adjudicated family in need of court-ordered services, any]~~ Temporary custody orders shall remain in effect until the court has received and considered the family services plan at the dispositional hearing.”

SECTION 13. Section 32A-3B-16 NMSA 1978 (being Laws 1993, Chapter 77, Section 88, as amended) is amended to read:

“32A-3B-16. ~~[DISPOSITIONAL JUDGMENT]~~ DISPOSITION OF ADJUDICATED FAMILY IN NEED OF COURT-ORDERED SERVICES.—

A. If not held in conjunction with the adjudicatory hearing, the dispositional hearing shall be completed within thirty days after the conclusion of the adjudicatory hearing. At the conclusion of the dispositional hearing, the court shall set forth its findings on the following issues in the dispositional judgment:

(1) the ability of the parent and child to share a residence or whether it is contrary to the welfare of the child to remain in the home and the facts supporting why the child cannot safely remain in the home;

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

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

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

(5) the mental and physical health of all individuals involved only as they relate to the individuals' ability to comply with the family services plan;

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

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

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

(9) the availability of services recommended in the ~~[treatment]~~ family services plan;

(10) ~~[the department's efforts to work with the parent and child in the home and a description of the in-home treatment programs that the department has considered and rejected]~~ if the child has been removed from the home, that reasonable efforts, or active efforts if the child is an Indian Child, have been made by the department to prevent removal, including the department's efforts to work with the parent and child in the home and a description of the in-home treatment programs that the department has considered and rejected; ~~and]~~

(11) the conditions other than the inadequate financial resources of the parent, guardian, or custodian that justify out of home placement; and

~~[(44)]~~ (12) when the child is an undocumented immigrant child, whether the family services plan included referral to nongovernmental agencies that may be able to assist the child, and family when appropriate, in addressing immigration status.

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

(1) permit the child to remain with the child's parent, guardian or a custodian identified by the family, under the protective supervision of the department and, subject to any other conditions and limitations the court may prescribe;

~~[(2) place the child under the protective supervision of the department;~~

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

~~(a) the department;~~

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

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

~~or]~~

(2) transfer legal custody of the child to the department; or

~~[(4)]~~ (3) if the evidence indicates that the child's educational needs are not being met, the local education agency may be joined as a party and directed to assess the child's needs within forty-five days, attempt to meet the child's educational needs and document its efforts to meet the child's educational needs.

C. If a child of a family found to be in need of court-ordered services is ordered to be in the custody of the department, the court's disposition shall require the department to facilitate the child's financial security by establishing, obtaining and securing each child's financial assets for use by the child, including social security survivor benefits, social security

disability benefits, New Mexico STABLE accounts, wrongful death benefits, proceeds from lawsuits to which the child is entitled, available matched or other savings accounts, and any other assets that would benefit the child. The department's requirement to facilitate the child's financial security is an ongoing requirement until the case is dismissed. The court shall inquire about the department's efforts to facilitate the child's financial security at every hearing.

D. If a child of a family found to be in need of court-ordered services is ordered to remain in the custody of the department, the court's disposition shall prohibit the use of the child's financial assets for department or foster parent expenses.

~~[C.]~~ E. Unless a child of an adjudicated family in need of court-ordered services is also found to be a delinquent child, the child shall not be confined in an institution established for the long-term care and rehabilitation of delinquent children or in a facility for the detention of alleged delinquent children."

SECTION 14. Section 32A-3B-17 NMSA 1978 (being Laws 1993, Chapter 77, Section 88, as amended) is amended to read:

"32A-3B-17. DISPOSITION OF A CHILD WITH A DEVELOPMENTAL DISABILITY OR MENTAL DISORDER—PROCEEDINGS.—

~~A. [If during any stage of a proceeding regarding a family in need of court-ordered services petition the evidence indicates that the child has or may have a developmental disability or a mental disorder, the court may order the department to:~~

~~(1) secure an assessment of the child;~~

~~(2) prepare appropriate referrals for services for the child; and~~

~~(3) if necessary, initiate proceedings for the involuntary placement of the child pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act]~~ If during any stage of a proceeding regarding a family in need of court-ordered services petition, the evidence indicates that the child has a mental disorder or a developmental disability, the court shall adjudicate the issue of whether a family is a family in need of court-ordered services under the provisions of the Children's Code.

B. When a child in department custody needs involuntary placement for residential mental health or developmental disability services as a result of a mental disorder or developmental disability, the department shall [file a motion] petition for that child's placement pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

C. Any child in department custody who is placed for residential treatment or habilitation pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act shall remain in the legal custody of the department while in residential treatment or habilitation or until further order of the court.

~~[C.]~~ D. A court hearing for consideration of an involuntary placement of a child for residential treatment or habilitation, when the child is subject to the provisions of the Family in Need of Court-Ordered Services Act, may be heard by the court as a part of the family in need of court-ordered services proceedings or may be heard in a separate proceeding. All parties to the family in need of court-ordered services proceedings shall be provided with notice of the involuntary placement hearing.

~~[D.]~~ E. A guardian ad litem appointed pursuant to the Family in Need of Court-Ordered Services Act shall serve as the guardian ad litem for a child for the purposes of the Children's Mental Health and Developmental Disabilities Act. When a child is fourteen years of age or older, the child shall be represented by an attorney unless, after consultation between the child and the child's attorney, the child elects to be represented by counsel appointed by the court in the proceedings under the Children's Mental Health and Developmental Disabilities Act.

~~[E.]~~ F. When a child is subject to the provisions of the Family in Need of Court-Ordered Services Act and is receiving residential treatment or habilitation services, any documentation required pursuant to the Children's Mental Health and Developmental Disabilities Act shall be filed with the court as part of the family in need of court-ordered services proceeding. A review of the child's placement in a residential treatment or habilitation program shall occur in the same manner and within the same time requirements as provided in the Children's Mental Health and Developmental Disabilities Act.

~~[F.]~~ G. The clerk of the court shall maintain a separate section within a child's family in need of court-ordered services file for documents pertaining to actions taken under the Children's Mental Health and Developmental Disabilities Act.

~~[G.]~~ H. A child subject to the provisions of the Family in Need of Court-Ordered Services Act who receives treatment in a residential treatment or habilitation program shall enjoy all the substantive and procedural rights set forth in the Children's Mental Health and Developmental Disabilities Act.”

SECTION 15. Section 32A-3B-18 NMSA 1978 (being Laws 1993, Chapter 77, Section 90, as amended) is amended to read:

“32A-3B-18. DISPOSITIONAL JUDGMENTS—TIME LIMITATIONS—
MODIFICATION, TERMINATION OR EXTENSION OF COURT ORDER.—

A. A judgment vesting legal custody or protective supervision of a child in an agency shall remain in force for an indeterminate period not exceeding ~~[two years]~~ one year from the date entered.

~~[B. A judgment vesting legal custody of a child in an individual, other than the child's parent, shall remain in force for two years from the date entered unless terminated sooner by court order.~~

~~C. A judgment vesting legal custody of a child in the child's parent or a permanent guardian shall remain in force for an indeterminate period from the date entered until terminated by court order or until the child is emancipated or reaches the age of majority.]~~

~~[D.]~~ B. At any time prior to expiration, a judgment vesting legal custody or granting protective supervision may be modified, revoked or extended on motion by a party, including the child by and through the child's guardian ad litem or attorney.

~~[E.]~~ C. Prior to the expiration of a judgment transferring legal custody to an agency, the court may extend the judgment for ~~[additional periods]~~ an additional period of one year if it finds that: ~~[the extension is necessary to safeguard the welfare of the child or the public interest.]~~

(1) the family is making good faith efforts to comply with the family services plan; and

(2) there are compelling reasons to allow the family more time to address the reasons for court-ordered family services plan; and

(3) the extension is necessary to safeguard the welfare of the child or the public interest.

F. When a child reaches eighteen years of age, all family in need of court-ordered services orders affecting the child then in force automatically terminate. The termination of the orders shall not disqualify a child from eligibility for transitional services.”

SECTION 16. Section 32A-3B-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 91, as amended) is amended to read:

“32A-3B-19. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS.--

A. Within ~~[six]~~ three months of any original dispositional order and within ~~[six]~~ three months of any subsequent continuation of the order, the department shall petition the court for a review of the disposition of the family in need of court-ordered services order. The review may be carried out by either of the following:

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

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

B. The children's court attorney shall give twenty days' written notice to all parties of the time, place and purpose of any judicial review hearing held pursuant to Subsection A of this section.

C. At any judicial review hearing held pursuant to Subsection A of this section, the department and all persons given notice of the judicial review shall have the opportunity to

present evidence and to cross-examine witnesses. At the hearing, the department shall not only show that it has made reasonable ~~[effort]~~ efforts to implement the ~~[plan for]~~ family services plan approved by the court in its dispositional order, but shall also present an updated family services plan for any period of extension of the dispositional order. The parent, guardian or custodian of the child shall demonstrate to the court the family's effort to comply with the ~~[plan for]~~ family services plan approved by the court in its dispositional order and, if applicable, that the family's effort to maintain contact with the child was diligent and made in good faith, given the family's circumstances and abilities.

D. The Rules of Evidence shall not apply to hearings held pursuant to this section.

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

F. The court shall determine, during a review of a dispositional or continuation order, whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe have been followed and whether the child's treatment plan provides for maintaining the child's cultural ties. When placement preferences have not been incorporated into an order, good cause for noncompliance shall be clearly stated and supported.

G. Based on its findings, the court shall order one or more of the following dispositions:

(1) permit the child to remain with the child's parent, guardian or a custodian identified by the family, under the protective supervision of the department, subject to conditions and limitations the court may prescribe ~~[including protective supervision of the child by the department];~~

(2) ~~[return the child to his parents and]~~ place the child under the protective supervision of the department;

(3) ~~[transfer or continue legal custody of the child to:~~

~~(a) the department, subject to the provisions of Paragraph (6) of this subsection;~~

~~(b) a relative or other individual who, after study by the department or other agency designated by the court, is found by the court to be qualified to receive and care for the child with protective supervision by the department; or~~

~~(c) to the noncustodial parent, if that is found to be in the child's best interests]~~ transfer legal custody of the child to or continue legal custody of the child with the department;

(4) dismiss the action and return the child to the child's parent without supervision;

~~[(5) continue the child in the legal custody of the department with or without any required parental involvement in a treatment plan;~~

~~(6)~~ (5) make additional orders regarding the ~~[treatment]~~ family services plan or placement of the child to protect the child's best interests, if the court determines the department has failed in implementing any material provision of the ~~[treatment]~~ family services plan or abused its discretion in the placement or proposed placement of the child;

~~[(7) if at any judicial review the court finds that the child's parent, guardian or custodian has not complied with the court ordered treatment plan, the court may order the child's parent, guardian or custodian to show cause why he should not be held in contempt of court and subject to sanctions]~~ (6) if at any judicial review the court finds that the child's parent, guardian or custodian has made minimal or no efforts to comply with the court-ordered family services plan, the court may grant leave to the department to amend the petition to include allegations of neglect or abuse;

~~[(8)]~~ (7) provide for a culturally appropriate treatment plan, access to cultural practices and traditional treatment for an Indian child; or

~~(9) direct the department to show cause why an abuse or neglect action has not been filed; or]~~

~~[(10)]~~ (8) if the local education agency has been made a party, direct the local education agency to show cause why it has not met the child's educational needs.

H. At any time during a family in need of court-ordered services proceeding, the department may file a motion to amend the petition to include allegations of neglect or abuse. If the court grants the department's motion to amend the petition or grants leave to file an amended petition alleging neglect or abuse pursuant to paragraph 6 of subsection G of this section, the amended petition shall be governed by the provisions of the Abuse and Neglect Act.

~~[H.]~~ I. Dispositional orders entered pursuant to this section shall remain in force for a period of ~~[six]~~ three months.”

2. New Acts

Under the current Children's Code, when a child has been orphaned and left without a legal guardian, there is no way to bring the child into state custody without a finding that the child was abused, neglected or abandoned.

Practice varies in different parts of state as to whether a child is considered to be neglected or abandoned in these circumstances.⁴⁰ It is the opinion of the task force that children whose parents have died, and whose families have not been available to step forward, should not have to go forward in their lives with a negative finding about an innocent parent who suffered a terminal illness or an accident that led to their demise. Further, expedited processes to find permanency

⁴⁰ See Section 32A-4-2 NMSA 1978

for these children are important. In this situation there are no parents whose behavior or actions need to be changed for the child to return home safely.

From October 2024 until December 2024, the Revisions and Recommendations Subcommittee of the CCRTF was exploring ways to incorporate processes related to a “dependent child” within the Abuse and Neglect Act. Eventually, it was decided to create an entirely new Act, the Dependent Child Act, that would contain the new definition for “dependent child,” to mean “a child whose parents or legal guardians are deceased and the child is left without a legal guardian.”

The subcommittee also realized that expedited processes would need to be created, and that this would also best be done in a new and separate Act.

In working on a new Dependent Child Act, however, many questions also arose as to how the new Act would interact with and affect existing law.

Although the task force feels strongly that the Children’s Code needs to differentiate, in definition and process, how a dependent child moves through the system to permanency, a thoughtful examination of the existing code and existing practices, and the creation of a new Dependent Child Act proved too complex to undertake in the limited time period from October through December 2024 and it was determined to forego, for now, proposing a new Act.

Although the subcommittee’s proposed definition of “dependent child” only addressed orphaned children, task force members considered and are hopeful that at some point the definition and processes can be crafted to bring Safe Haven babies under the Safe Haven Act under the “dependent child” definition, as well. This is far more complex than a circumstance with deceased parents as some desperate parents who have handed over their children, once services are made available, choose to work to be reunified.

3. Information Sheets

Note: Seeing that the Second Judicial District Attorney has released, in table form, proposed amendments to the Children’s Code’s Delinquency Act⁴¹, and noting the harsh nature of the proposals and their deleterious effect upon the youth of New Mexico, the Juvenile Justice Subcommittee chose to create educational, fact-laden, policy information sheets for the benefit of legislators, citizens and the media, on discreet and consequential issues related to juvenile justice.

THE FOLLOWING INFORMATION SHEETS APPEAR IN THE REPORT APPENDIX FOR EASE OF REMOVING AND COPYING:

- A. The Adolescent & Young Brain and Delinquency
- B. Adverse Childhood Experiences (ACEs)
- C. Futility of Severe Punishment
- D. Incarceration of Youth

⁴¹ Section 32A-2-1 NMSA 1978 et. seq.

- E. Juvenile Detention Alternatives Initiative (JDAI)
- F. Racial and Ethnic Disparities in the Juvenile Justice System
- G. “Upstream” Interventions, Prevention Efforts and Services

4. Full Task Force Recommendations

Initially operating under a deadline of June 30, 2024 for the submission of its first report⁴², and then a deadline of January, 2025 for the submission of its supplemental report, the task force decided to include the recommendations proposed in the June 2024 report in this supplemental report, with updates, where possible.⁴³

Under both time deadlines and in some instances the task force and its various subcommittees and subgroups did not have sufficient time to flesh out and develop proposed legislation regarding all of the issues members felt deserving of reform. In other instances, issues were not ripe or would require collaboration with CYFD and other state agencies or subject matter experts that could not be completed by the report date.

In these instances the task force developed recommendations, to be followed through on by any and all of the following entities:

- The Children’s Code Reform Task Force, should it receive additional funding to allow it to continue its work;
- The Legislature;
- The Executive and various state agencies;
- The Judiciary; and
- Advocacy and work groups (including the Children’s Court Improvement Commission (CCIC)).

Task Force Recommendations:

NOTE: in the event that a recommendation has been acted upon by the task force or is currently being addressed by an entity, there will be an “Update” following each recommendation. Absent such an update, the task force is affirming its recommendations as presented in its June 2024 report.

a. For the Executive, Including State Agencies

Recommendation #1

That the Governor’s Office build on the useful information compiled and reported by the Children’s Cabinet, and extend and leverage the strength and capabilities of the cabinet and its contributors. By supporting and creating avenues of collaboration between these department secretaries and directors, and Office of Family Representation and Advocacy (OFRA), the Children’s Court Improvement Commission (CCIC) and the Children’s

⁴² https://childlaw.unm.edu/assets/docs/childrens_code_reform_task_force_june_2024_report.pdf

⁴³ Continued operation of the task force, only made possible by continued funding, is needed to flesh out many of the recommendations listed in both task force reports and that the task force has been unable to fully develop, due to time constraints related to intermittent funding.

Code Reform Task Force, the Children’s Cabinet can explore and provide solutions to identified high-level issues, including Universal Basic Income and the provision of direct family support when a family is under Children, Youth and Families Department (CYFD) investigation pursuant to a referral.

Notes: According to the Children’s Cabinet website, the cabinet is currently chaired by Governor Michelle Lujan Grisham, with Lieutenant Governor Howie Morales acting as the vice chair.⁴⁴ The website describes the purpose of the Children’s Cabinet as “to study and make recommendations for the design of programs that will assist the children of New Mexico.” Section 32A-22-3 NMSA 1978 requires the cabinet to make recommendations for the design of a coordinated system to maximize outcomes among children and youth under 21, particularly in disadvantaged systems, with regard to: 1) physical and mental health fitness; 2) family and community safety and support; 3) preparedness for and success in school; 4) successful transition to meaningful and purposeful adulthood and employment; and 5) valued contributions to and active participation in communities. It is essential to have full collaboration and buy-in of impacted agencies and stakeholders to have a Children’s Code that provides appropriate avenues to safety, permanency and wellbeing for children and robust support for their families.

Recommendation #2

That the Children, Youth and Families Department (CYFD) develop policies that permit providing funds to a child’s family to allow the child to remain safely at home under certain limited circumstances, in order to prevent foster placement.

Notes: It is unclear whether this change could happen under current federal and state program guidelines. This could serve to better level the playing field for families living in poverty and prevent unnecessary, traumatic removal of children from their homes.

b. For the Legislature

Recommendation #3

That legislators receive training on processes and procedures under the Children’s Code each year, and receive information on recent scientific advancements affecting child and family welfare, such as knowledge re: child brain development and substance abuse, generally.

Notes: Currently, legislators do not receive training re: child and family welfare work, which is distinct enough from other legal processes that it is essential for lawmakers to understand the unique nature of the work. It is possible that, through the Legislative Council Service, training could be provided to members of the Interim Health and Human Services Committee, or to standing committees during the early days of each legislative session. Additionally, in the past an event called “Law School for Legislators,” containing a presentation on children’s law, has been held and could be revived.

⁴⁴ See <https://www.childrencabinet.nm.gov/childrens-cabinet-contributors/>

Recommendation #4

That the legislature create a new “Dependent Child Act,” that adds a definition of “dependent child” under Section 32A-4-2 NMSA 1978, within the Abuse and Neglect Act, and provides an expedited process to address those situations when a child’s parents are deceased and the child is left without a legal guardian, but where there was no abandonment, abuse or neglect. Children in these circumstances should be entitled to services and supports without having to experience an inaccurate judgment that they were abused or neglected,⁴⁵ and they need to be moved swiftly to permanency.

Notes: This definition could also be used to describe children who come into CYFD custody under the New Mexico Safe Haven for Infants Act cases, although different processes would need to be considered as some parents choose to engage in services once they are made available.

UPDATE: The Recommendations and Revisions Subcommittee recommends creating a new “Dependent Child Act,” rather than simply adding a definition of “dependent child”. (See above.)⁴⁶

Recommendation #5

That assuming a “dependent child” act with new processes is brought forward, the legislature amend existing law and policy, as needed, to clarify that a “dependent child” is also eligible to access resources such as Title IV-E funds for children without parents, as is true for a child adjudicated as “abused or neglected”, under current statutory language. This can also be used in Safe Haven for Infants Act, cases, Section 24-22-1 NMSA 1978 et seq.

Notes: Currently these funds are available to any child adjudicated under the abuse and neglect section with a finding that it would be “contrary to the welfare of the child to remain in the home” and then a short recitation of why the child could not safely remain in the home; AND “reasonable efforts have been made” by CYFD to prevent removal from the home with a short recitation of what efforts have been made by CYFD. This change would permit a “dependent child” to also access these funds.

Recommendation #6

That the legislature take testimony and review the need for clear statutory language related to prohibiting strip searches of children in Children, Youth and Families Department (CYFD) custody except in exigent circumstances.

Notes: Current CYFD search policy for a Juvenile Reintegration Center (JRC) permits a visual or strip search of a client’s unclothed body. Under the policy, the search is conducted in a private, designated area by two JRC employees who are the same gender as the client being searched, except in exigent circumstances.⁴⁷

⁴⁵ See Section IV(A)(2), Supra

⁴⁶ Id.

⁴⁷ See Juvenile Justice Services Procedure P.5.29 JRC (3), “ Search Techniques” at <https://klyg4oyd4j.execute-api.us-west-2.amazonaws.com/prod/PublicFiles/0bafdaa4e38b4b6292f0c68ed362e88d/c662b970-d51e-49f0-a3ad-02b934e0344a/P.5.29%20JRC%20Searches%202017-1.pdf> , specifically, and CYFD policies, generally, at <https://www.cyfd.nm.gov/policies/>

Recommendation #7

That the legislature change the title of the “Abuse and Neglect Act”, Chapter 32A, Article 4 NMSA 1978 to less pejorative language, such as the “Child and Family Welfare Act”.

Notes: Children and caretakers adjudicated under this section of the Children’s Code already carry stigma without the additional negative language under the current chapter title.

Recommendation #8

That the legislature amend the Abuse and Neglect Act, Section 32A-4-1 NMSA 1978 et seq., to include language that specifically allows Medically-Assisted Treatment (MAT) for substance misuse disorders

Notes: This would apply to both parents and children, even when children are placed in juvenile detention facilities. The USFDA lists evidence-based treatment using medication for various substance misuse disorders.⁴⁸ Additionally, the National Center on Substance Abuse and Child Welfare support evidence-based medication practices.⁴⁹

Recommendation #9

That the legislature undertake a carefully-studied and comprehensive consideration of how to address poverty issues and to keep families engaged and using services, and thus safely prevent removal of children from their families. This could include an overhaul of the Families in Need of Court Services Act (FINCOS), Section 32A-3B-1 NMSA 1978 et seq., the development of new mechanisms for addressing these issues, and direction to CYFD to take a leading role in developing an array of services, including the provision of medical and mental health support.

Notes: It is important to consider, when undertaking these changes, how to prevent the abrogation of due process, the exposure of families experiencing poverty to increased government oversight, or the lengthening of time to safety, permanency and wellbeing for children.

UPDATE: The task force has amended the Families in Need of Court Services Act (FINCOS) to permit families and the Children, Youth and Families Department (CYFD) to collaborate on a plan to provide services for families in need, absent an abuse and neglect determination, and to create a process by which a FINCOS case can lead to an abuse and neglect case under prescribed circumstances, and with more complete due process protections for families and children.⁵⁰

Recommendation #10

That the legislature remove: Section 32A-3B-2(E)(1) NMSA 1978, defining as a “family in need of court services,” a family whose child is “alleged to be engaged in an act that would be designated as prostitution if committed by an adult”; Section 32A-3B-3(A)(5) NMSA 1978, permitting a child to be taken into protective custody by a law officer with

⁴⁸ See <https://www.fda.gov/drugs/information-drug-class/information-about-medications-opioid-use-disorder-moud>

⁴⁹ See <https://ncsacw.acf.hhs.gov/topics/medication-assisted-treatment/>

⁵⁰ See Section IV(A)(1)(c), supra

reasonable grounds to believe that the child “is engaged in an act that would be designated as prostitution if committed by an adult”.

Notes: Section 32A-2-3(A) NMSA 1978, defines as a “delinquent act”, “an act committed by a child that would be designated as a crime under the law if committed by an adult, not including a violation of Section 30-9-2 [NMSA 1978]”.⁵¹ Section 30-9-2 NMSA 1978 governs the crime of prostitution. To include prostitution within the Families in Need of Court Services Act (FINCOS) and the Abuse and Neglect Act creates a conflict with the Delinquency Act. Additionally, some current thinking provides that there is no such thing as a “child prostitute,” only victims and survivors of child rape.⁵²

UPDATE: The task force has amended the Families in Need of Court Services Act (FINCOS) Section 32A-3B-2(E) to remove Subsection E(1), referring to a child “alleged to be engaged in an act that would be designated as prostitution if committed by an adult”.⁵³

Recommendation #11

That the legislature amend Section 32A-4-K(1) to remove the reference to prostitution and provide that "sexual exploitation" include: "(1) allowing, soliciting, enticing, coercing, transporting, or obtaining a child by any means for the purpose of committing a sex act against a child for commercial or personal benefit."

Notes: Section 32A-2-3(A) NMSA 1978, defines as a “delinquent act”, “an act committed by a child that would be designated as a crime under the law if committed by an adult, not including a violation of Section 30-9-2 [NMSA 1978]”.⁵⁴ Section 30-9-2 NMSA 1978 governs the crime of prostitution. To include prostitution within the Families in Need of Court Services Act (FINCOS) and the Abuse and Neglect Act creates a conflict with the Delinquency Act. Additionally, some current thinking provides that there is no such thing as a “child prostitute,” only victims and survivors of child rape.⁵⁵

Recommendation #12

That the legislature define “human trafficking” as used in Sections 32A-3B-2(E)(2) and 32A-3B-3(A)(5) NMSA 1978, within the Families in Need of Court Services Act (FINCOS) to include labor trafficking.

Notes: Section 32A-3B-2(E)(2) NMSA 1978 includes within the definition of a “family in need of court services” a family whose child is “a victim of human trafficking as defined in Section 30-52-1 NMSA 1978,” while Section 32A-3B-3(A)(6) permits a child to be taken into protective custody upon reasonable grounds to believe that the child “is a victim of human trafficking as defined in Section 30-52-1 NMSA 1978.” Both sections could be amended to encompass a child who is alleged to be or have been “recruited, solicited, enticed, transported or obtained by any mean with the intent or knowledge that the child will be

⁵¹ Section 32A-2-3 NMSA 1978 was amended in 2019 to exclude prostitution from the definition of “delinquent act” as used in the Delinquency Act. See HB 56 at

<https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=56&year=19>

⁵² See, e.g. <https://rights4girls.org/wp-content/uploads/r4g/2016/08/No-Such-Thing-one-pager11.pdf>

⁵³ See Section IV(A)(1)(c), *supra*

⁵⁴ See fn. 6, above.

⁵⁵ See fn. 7, above.

caused to engage in labor, services or commercial sexual activity or sexual exploitation.” The federal Trafficking Victims Protection Act of 2000 (TVPA), 22 U.S.C. 78, Section 7102(11) includes both sex trafficking and labor trafficking within its definition of “severe forms of trafficking in persons,” as used within the Act.⁵⁶

Recommendation #13

That the legislature add a needed mechanism to move a proceeding from a case filed under the Families in Need of Court Services Act (FINCOS) to a case filed under the Abuse and Neglect Act and include a strict timeline for the engagement of the family under the plan for family services.

Notes: Necessary for when a FINCOS case was filed and it later becomes clear that abuse and neglect is occurring and more stringent measures need to be taken to protect the child and provide the family with services. Sample legislative language could read: “At any stage in the proceeding, on the motion of any party, the court shall determine by clear and convincing evidence that there is abuse and/or neglect occurring in the home by any respondent and the matter shall be refiled and recaptioned, as necessary, as an abuse and neglect matter and shall proceed accordingly.”

UPDATE: The task force has amended the Families in Need of Court Services Act (FINCOS) to permit families and the Children, Youth and Families Department (CYFD) to collaborate on a plan to provide services for families in need, absent an abuse and neglect determination, and to create a process by which a FINCOS case can lead to an abuse and neglect case under prescribed circumstances, and with more complete due process protections for families and children.⁵⁷

c. For the Judiciary

Recommendation #14

Assuming the passage of task force-proposed draft legislation, that the Children’s Court Rules Committee develop and the courts adopt a rule re: what is needed in the motions for a continuance, etc., to better define what it means to be “beyond the control of the parties or the court,” under the amendment to Section 32A-4-19(D) NMSA 1978, as proposed by the CCRTF.⁵⁸

Notes: Under current law, Section 32A-4-19 NMSA 1978, adjudicatory hearings shall be commenced within 60 days after service on the parent. In practice, trials are commenced within the required time period, but continuances are routinely granted, in some cases extending the duration of a trial to more than a year, to the detriment of children and parents who benefit from prompt permanency. (Permanency can either consist of reunification with the family or placement outside of the family.)

⁵⁶ See <https://uscode.house.gov/view.xhtml?path=/prelim@title22/chapter78&edition=prelim#:~:text=Pub.-L.,Protection%20Act%20of%202000'.%22>

⁵⁷ See Section IV(A)(1)(c), *supra*

⁵⁸ See Rule 10-343, Children’s Court Rules.

Recommendation #15

That the Children's Court Rules Committee develop and the courts adopt a rule that requires consultation between judges who have cross- or intra-jurisdiction conflicts.

Notes: The rule would require consultation when conflicts arise due to adjudications scheduled with the same attorney, at the same time, both in the same or different districts.

Recommendation #16

That the Children's Court Rules Committee develop and the courts adopt amendments to existing rules and forms that provide greater clarity around what are reasonable efforts to locate and serve, before the Children, Youth and Families Department (CYFD) can publish in lieu of personal service.

Notes: For example, under an amended Rule 10-103 NMRA and its accompanying forms (Rules 10-513, 514, 515 and 516 NMRA), CYFD could be allowed 90 days to serve a respondent and, if service is not possible, CYFD could then be required to commence efforts to serve by publication no later than 180 days from custody.

Recommendation #17

That the Children's Court Rules Committee develop and the courts adopt amendments to existing Rules 10-103 and 104 NMRA to provide that if an individual appears voluntarily at a court proceeding under the Abuse and Neglect Act, the court bailiff or other designated personnel can provide copies of the pleadings in open court to that individual and that provision constitutes the date for service for setting the timeline for the case.

Notes: Currently, even if a parent appears at a hearing before they have been served, they are still required to be legally served. This change would simplify the service process while still protecting due process.

Recommendation #18

That the Children's Court Rules Committee develop and the courts adopt a rule that requires specific information to be included in the notice of change of placement pursuant to Section 32A-4-14 NMSA 1978.

Notes: Presently there is inconsistency in the filing of notices of changes of placement and the information contained in notices. Specific information needed in a notice includes: the factual grounds for the change, the type of placement/name/location of the provider being removed from and the type of placement/name/location of the provider being moved to; how many changes the child/youth has experienced at the time of change, and does the change result in a change of schools, providing the name of current school, the name of school after the change and how many school changes the child/youth has experienced.

d. For Multiple Branches of the Government⁵⁹

⁵⁹ The CCIC is included here because it is comprised of representatives of all three branches of government, including several state agencies.

Recommendation #19

That the Children’s Court Improvement Commission (CCIC) undertake further study on the issue of confidentiality in protective services cases, including seeking input from system-involved youth and families.

Notes: During the 2024 legislative session, duplicate bills, HB 175 and SB 258, providing for the sharing of certain Children, Youth and Families Department (CYFD) information, were introduced, but did not receive hearings.⁶⁰ While CYFD has been on board with sharing permitted information, the department needs to follow current rules until the law is changed. Currently, Section 32A-4-33(A) NMSA 1978 provides, with exceptions for parties, etc. that

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

Of note, Colorado had been operating under a similar statute to New Mexico’s Section 32A-4-33 NMSA 1978, which has been found to be unconstitutional.⁶¹ In contrast, some states have reduced confidentiality requirements in child welfare cases.⁶² Questions arise as to who shielding a dysfunctional system serves.

Recommendation #20

That further study be undertaken by the Children’s Court Improvement Commission (CCIC) re: the autonomy of a parent or family that makes use of the Safe Haven for Infants Act, including insuring that force or preference for reunification is not undertaken to the detriment of the child’s permanency or the surrendering parent’s autonomy, while still protecting a parent who may be a victim of domestic violence or is in desperate need of resources to safely parent.

Notes: SB 311 and HB 327, duplicate bills proposing to modify the Safe Haven for Infants Act, were introduced during the 2024 legislative session. The proposed

⁶⁰ See Section VIII, below. The Financial Impact Report (FIR) for HB 175 states that, “broadly speaking, the bill instructs CYFD to construe as openly as possible the release of information under federal and state law.” See <https://www.nmlegis.gov/Sessions/24%20Regular/firs/HB0175.PDF>

⁶¹ The court in *Peck v. McCann*, U.S. Court of Appeals for the Tenth Circuit, Appellate Case: 21-1125, Document: 010110722208, Date Filed: 08/09/2022 (<https://www.ca10.uscourts.gov/sites/ca10/files/opinions/010110722208.pdf>), ruled that Section 19-1-307(4), C.R.S., mandating confidentiality as to *all* information within child abuse records, violated the First Amendment, as there was a feasible and less restrictive alternative in prohibiting and punishing only disclosures of identifying information from child abuse reports.

⁶² See the Child Welfare Information Gateway’s *Disclosure of Confidential Child Abuse and Neglect Records*, providing an overview of state statutes and current through February 2022, at <https://cwip-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/confide.pdf?VersionId=LUGuVVqo2zHa1gGfCAmBFSLxj8n240s2> . See also, the federal Child Abuse Prevention and Treatment Act (CAPTA) confidentiality requirements as laid out by the U.S. Dept. of Health and Human Services Children’s Bureau, at https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=67

legislation allowed for the surrender of infants that might otherwise be abandoned, in approved safety devices installed in specified locations, such as fire stations and health care facilities.⁶³

Recommendation #21

That the state fund and assist local governments in instituting Universal Basic Income (UBI) pilot programs for families at risk of having their children removed due to underlying poverty, to meet the prevention goal of keeping people out of the child welfare system.

Notes: As of 2022, UBI programs were being undertaken in the following states and the District of Columbia: AL, CA, CO, FL, GA, IL, LA, MD, MN, MO, NJ, NY and SC.⁶⁴ Proponents of UBI find the following benefits: reduced poverty rates; improved employed prospects; reduced food insecurity; and improved health. Some top concerns re: UBI are: removes the incentive to work; program costs; shrinks the labor force; programs lead to poor spending habits; and inflationary risks.⁶⁵ The success of UBI has been documented.⁶⁶ Studies have shown that even a \$100 income support has served to reduce engagement with child welfare agencies.

Recommendation #22

That the executive, legislative and judicial branches employ the three-branch approach where feasible and appropriate, to reform child and family welfare.⁶⁷

Notes: A three-branch approach takes an intentional step back from governing as usual toward improving outcomes for children and families as a shared objective of all three branches of government. It is essential to involve all three branches of government to achieve lasting and effective reform while protecting taxpayers and supporting workforce development.

Recommendation #23

That the legislature authorize, as necessary, and the Children, Youth and Families Department (CYFD) develop policies to use state and federal funds for concrete supports for parents, such as temporary rent, clothing, or utilities support, as early as possible once a family comes to the notice of the department.

Notes: Supports could be extended to families as early as the investigation phase or from the Prevention and Initiatives Bureau within CYFD. Resources dedicated

⁶³ See <https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=327&year=23> . See also CYFD's guide to NM's Safe Haven for Infants Act at <https://www.cyfd.nm.gov/protective-services/new-mexico-safe-haven-for-infants-act/> .

⁶⁴ See <https://www.forbes.com/advisor/personal-finance/universal-basic-income-programs/> and <https://www.washingtonpost.com/magazine/2022/10/24/universal-basic-income/>

⁶⁵ Id, Forbes article, fn. 13.

⁶⁶ See <https://www.washingtonpost.com/magazine/2022/10/24/universal-basic-income/> and <https://www.givedirectly.org/2023-ubi-results/> . See also <https://college.unc.edu/2021/03/universal-basic-income/> (pros and cons of UBI) and <https://www.governing.com/policy/the-troubling-proliferation-of-universal-basic-income-programs>

⁶⁷ See <https://www.nga.org/threebranch/>

to prevention will mitigate even greater expenses in the future and protect children.

Recommendation #24

That the Office of Family Representation and Advocacy (OFRA), the Children, Youth and Families Department (CYFD), the Administrative Office of the Courts (AOC) and the Corinne Wolfe Center for Child and Family Justice (CWC) collaborate to collect and analyze robust data to inform the possible expansion of preventive legal advocacy to families who are being investigated by CYFD.

Notes: There is a pre-filing legal advocacy pilot program running in New Mexico's 2nd Judicial District. Outside of the pilot program, currently, counsel is not appointed for parents and children until a legal case is filed and the child has already been removed. Under the pilot program, a family who receives notice that they are under investigation can apply to OFRA for legal counsel during the course of the investigation.

B. Future activities that would allow for full assessment and recommendation of changes to the code

- For the three branches of New Mexico's government to work together to create a mechanism or clearinghouse to support coordination and communication between *all* entities, across *all* branches, working to reform the Children's Code and the Child and Family Welfare System
- For the legislature to fully support the Children's Code Reform Task Force as it drafts additional proposed legislation and continues to foster dialogue between major stakeholders, including CYFD and those with lived experience
- For the legislature to fully support the task force developed under 2024's SM 5
- For the Children's Code Reform Task Force to inform the work of the SM 5 Task Force
- For the Children's Code Reform Task Force members to educate interim committees on contents of this report, including draft legislation and recommendations, and testify during the upcoming legislative session on any introduced proposed legislation
- For legislative committees to confer with long-established groups working in child and family welfare to gather information from parents and youth with lived experience such as the New Mexico Child Advocacy Network (NMCAN) and OFRA. Although OFRA is a new agency it is managed by individuals with decades of experience in the field
- For CYFD to find more effective ways of communicating about their processes with greater transparency within the strictures of existing laws on confidentiality
- For the AOC to continue to improve collection, analysis and publication of data related to the operation of the child and family welfare system
- For legislators to be informed and educated annually, before every legislative session, about child and family welfare law and the day-to-day workings of the child and family welfare system
- For the legislature and state agencies to invite national experts in child and family welfare to study and evaluate the child and family welfare system

V. Task force members and affiliation

A. Current Members

- Justin Boyd, JD – General Counsel, CYFD
- Shelly Bucher, LMSW - Director, Substitute Care Advisory Council
- Carolyn Casillas – CYFD/JJS-Field Associate Deputy Director- Southern Region
- Rosenda Chavez-Lara, JD – Family Law Attorney
- Matthew Cockman, JD – Law Office of the Public Defender, 11th Judicial District
- Cristen Conley, JD, CWLS, - Task Force Chair, and Director of the Corinne Wolfe Center for Child and Family Justice
- Alison Endicott-Quinones, JD - Legal Director, Advocacy Inc.
- Bette Fleishman, JD - Executive Director, Pegasus Legal Services for Children
- Beth Gillia, JD, MA – Executive Director, Office of Family Representation and Advocacy
- Shira Greenberg - Founder & Artistic Director, Keshet Dance & Center for the Arts/Keshet Arts & Justice Initiative
- Leslie Jones, JD, CWLS - Legal Services Division Director, Office of Family Representation and Advocacy
- Senator Linda Lopez - New Mexico State Senator, Dist. 11
- Mary McQueeney, JD – Acting Managing Attorney for the SE Region, Children, Youth and Families Department, State of New Mexico
- Catherine Pavelski, CPSW, - Family Peer Support Navigator, Office of Family Representation and Advocacy
- Reed Ridens, as a young adult representative from NMCAN
- Judge Alma Roberson, JD – Chief Children’s Court Judge, Second Judicial District
- Amanda Romero, JD – Chief Children’s Court Attorney, CYFD
- Judge John E. Romero, JD - Children’s Court Judge, ret’d, Second Judicial District
- John Schoepner, JD – retired Children’s Court Hearing Officer
- Lorilynn Violanta, Co-Executive Director as staff representative from NMCAN
- Brandie White, Program Director, Mesilla Valley CASA
- Jacqueline Yalch, Past President, NM Tribal Indian Child Welfare Consortium
- Kathleen Sabo, JD – Task Force Coordinator

- Tony Ortíz, JD – Task Force Staff

B. Former Members

- Judge Catherine Begaye – Former Task Force Chair and current Presiding Children’s Court Judge, 2nd Judicial District
- Jesse Clifton, JD - Attorney, Disability Rights New Mexico
- Matthew Cockman, JD – Law Office of the Public Defender, 11th Judicial District
- Judge Diana Garcia – Children’s Court Judge, 2nd Judicial District
- Hilari Lipton, JD - Director of Law and Policy, NM Appleseed
- Dennica Torres, District Defender, Law Offices of the Public Defender (Second Judicial District)

VI. Task force operations

A. Resolution

Although the task force was not required to follow the Open Meetings Act, Section X, the task force desired to operate under as transparent and publicly-accessible process as possible. On February 22, 2024, at the first meeting at which the task force reconvened publicly, the task force passed a resolution and adopted the following procedures⁶⁸:

- Announced that task force meetings would be held via Zoom on the fourth Thursday of each month, beginning on February 22, 2024 and concluding on June 27, 2024, with information re: public attendance posted online on the CCRTF webpage on the Corinne Wolfe Center for Child and Family Justice website⁶⁹.
- Announced that recordings of meetings would be posted online on the task force webpage.⁷⁰
- Announced that the schedule of meetings, agendas, meeting notes and a copy of the resolution would be posted online on the task force webpage, with the agenda posted at least 72 hours before any task force meeting.
- Announced that opportunities for public comment, whether spoken or written, would be available at each task force meeting.
- Announced that meeting notes would be posted online on the task force webpage.

⁶⁸See https://childlaw.unm.edu/assets/docs/resolution_for_ccrtf_final_signed.pdf for the full resolution.

⁶⁹ See <https://childlaw.unm.edu/childrens-code-reform-task-force/index.html>

⁷⁰ Due to technical and staffing challenges, the meeting recordings have not yet been posted on the task force webpage and may not be posted subsequently.

B. Subcommittees

1. Members discussed issues that needed addressing and what they thought most needed to be fixed, and came up with three subcommittees: Families in Need of Court-Ordered Services (FINCOS); Juvenile Justice; and Revisions and Recommendations.
2. Members self-selected which subcommittee(s) they wished to participate in – some chose multiple.
3. Subcommittees chose co-chairs for each subcommittee and co-chairs worked with staff to schedule subcommittee meetings.
4. Subcommittee members discussed and chose priorities on which to work.
5. Some subcommittee subgroups met to advance work on discreet topics.
6. Subgroups reported to full subcommittee for vetting, questions and discussion.
7. Subcommittee and subgroup members reviewed all draft legislation, information sheets and recommendations.

VII. Subcommittee business and reports

A. Family in Need of Court-Ordered Services (FINCOS)

1. **Task:** The subcommittee sought to amend the Family in Need of Court-Ordered Services Act, Section 32A-3B-1 NMSA 1978 et. seq., to achieve the following goals: 1. Clarify and expand the circumstances in which FINCOS can and should be used; 2. Allow for court assistance without the need for a finding of abuse or neglect, where appropriate; 3. Effectively increase the number of families availing themselves of services; 4. Create a process whereby a FINCOS case, when appropriate, can lead to an abuse and neglect case, with the same due process protections contained within the Abuse and Neglect Act, Section 32A-4-1 NMSA 1978 et. seq.
2. **Members**
 - Shelly Bucher
 - Cristen Conley
 - Alison Endicott-Quinones
 - Leslie Jones, Chair
 - Mary McQueeney
 - Catherine Pavelski
 - Reed Ridens
 - Amanda Romero
 - Lorilynn Violanta

B. Recommendations and Revisions (R&R)

1. **Task:** The subcommittee undertook the following tasks:
 - Explored drafting any new Acts based upon recommendations contained in the June 2024 report;
 - Worked to consider and present any additional recommendations from the whole task force;
 - Responded to legislative concerns as expressed at interim committee meetings, including amending legislation previously proposed in the June 2024 report, where appropriate.

2. Members

- Shelly Bucher
- Rosenda Chavez-Lara
- Cristen Conley, Chair
- Alison Endicott-Quinones
- Farra Fong
- Beth Gillia
- Senator Linda Lopez
- Mary McQueeney
- Catherine Pavelski
- Reed Ridens
- Judge Alma Roberson
- Amanda Romero
- Lorilynn Violanta
- Brandie White
- Jacqueline Yalch

C. Juvenile Justice

1. **Task:** The subcommittee, given the proposals from the Office of the Bernallillo County District Attorney⁷¹ to crack down on offenses committed by youth including expanding what juveniles can be charged for as adults, undertook the task to create information sheets to inform and educate legislators, the public and the media on the following topics⁷²:
 - Adverse Childhood Experiences or ACEs;
 - The Adolescent and Young Adult Brain and Delinquency;
 - Disparate Impact of Juvenile Justice Measures on Youth and Young Adults;
 - Futility of Severe Punishment;
 - Incarceration of Youth;
 - Juvenile Detention Alternatives Initiative or JDAI; and

⁷¹ See HB 134, 2025, <https://www.nmlegis.gov/Sessions/25%20Regular/bills/house/HB0134.pdf> and <https://bloximages.newyork1.vip.townnews.com/santafenewmexican.com/content/tncms/assets/v3/editorial/6/70/670a5278-9187-11ef-b6a4-af8133b371f1/67196d8344a6f.pdf.pdf>

⁷² See Section IV(A)(3), *supra*

- “Upstream” Interventions, Prevention Efforts and Services.

2. Members

- Justin Boyd
- Carolyn Casillas
- Cristen Conley
- Shira Greenberg
- Senator Linda Lopez, Co-Chair
- Judge Alma Roberson
- Judge John Romero, Co-Chair
- John Schoeppner

VIII. Public Comment

A. Survey responses

As part of the online registration process for public participation in task force meetings, registrants were asked to fill out a survey. Two of the questions on the survey were as follows:

1. What changes do you think need to be made to the Children’s Code?; and
2. Who would benefit most from these changes?

People registering for the meetings were not required to answer these two questions, but most chose to do so.

Following the June 30, 2024 publication of its first report, only one additional respondent provided survey answers, reported here, anonymously⁷³:

- **Suggested change(s):** Definitions about abuse and neglect. Mandated reporting and who are mandatory reporters. Law enforcement involved custody holds. Strengthen confidentiality provisions. VPAs. [Voluntary Placement Agreements] Guardianship provisions.
 - **Who Benefits?** Our children, youth, and families. Our communities. Impoverished families of color.

- **B. Task force meeting recordings:** Recordings of selected meetings can be found on the task force YouTube channel at <https://www.youtube.com/@NMChildrensCodeReformTaskForce>.⁷⁴ Due to the lack of available personnel and technical issues only a few recordings were available to post.

C. Written statements and materials

⁷³ See previous report, Section VII(A) at https://childlaw.unm.edu/assets/docs/childrens_code_reform_task_force_june_2024_report.pdf for earlier survey responses.

⁷⁴ Recordings missing from meetings held in January 2024 and beyond are due to technical and staffing issues.

The task force did not receive any additional written statements and materials from the public between the June 30, 2024 release of its previous report and the publication of this report.⁷⁵

IX. Relevant legislation previously introduced

In its June 30, 2024 report, the task force detailed relevant legislation previously introduced, both state and federal.⁷⁶

X. Related Initiatives⁷⁷

A. Children’s Court Improvement Commission (CCIC)⁷⁸

The New Mexico Court Improvement Program (NMCIP) was created as part of the Omnibus Budget Reconciliation Act (OBRA) of 1993. The Act provides federal funds to state judiciaries, child welfare agencies, and tribes to improve and provide services to families at risk or in crisis. Since 1995, the New Mexico State Judiciary has received a grant from the Federal Children’s Bureau which calls for a Continuous Quality Improvement (CQI) approach on measurable outcomes and models within the Child Welfare system. The engine of the NMCIP is the Children’s Court Improvement Commission (CCIC), renamed and reformed as a Commission in 2009 by the Supreme Court of New Mexico, made up of inter-agency and interdisciplinary stakeholders across the state to make recommendations to the Court. The members of the CCIC collaborate on various initiatives for the betterment of all New Mexico families in the child and family welfare system.⁷⁹

The NMCIP/CCIC strategic plan calls for improving outcomes for children and families through:

- updating court procedures
- educational outcomes through data sharing
- improved representation
- increasing the knowledge, skill and ability of the child welfare and juvenile justice communities

The CCIC has been an incubator for cutting edge and best practices for child and family welfare for approximately three decades, addressing quality of advocacy, court practices, and time to permanency for children, whether reuniting with their families or moving to other permanent

⁷⁵ See previous task force report, Section VII(C), for previously submitted statements and materials from the public, https://childlaw.unm.edu/assets/docs/childrens_code_reform_task_force_june_2024_report.pdf

⁷⁶ Id., Section VIII

⁷⁷ See Section II(B), *supra*, for a discussion of the related Senate Memorial 5 task force

⁷⁸ For current roster as appointed by the NM Supreme Court, see <https://supremecourt.nmcourts.gov/wp-content/uploads/sites/2/2024/04/CCIC-Roster-4-16-24.pdf>

⁷⁹ For more information about the NMCIP and CCIC, See <https://cip.nmcourts.gov/about-court-improvement-commission/>

homes. The CCIC established Children’s Courts in the state, implemented performance measures, implemented mediation in child and family welfare proceedings, and supports ongoing trainings based on new legislation. As part of their work they convened a Crossover Youth Workgroup that developed recommendations for stakeholders to improve identification and tracking of youth involved in both the juvenile justice and child and family welfare systems.⁸⁰

Additionally, much of the CCIC’s work on, and education about, multiple issues has informed the work of the task force on timeliness, extended foster care under Fostering connections, successfully encouraged the implementation of interdisciplinary representation of children and families in a growing number of judicial districts, and created the Corinne Wolfe Center for Child and Family Justice at the University of New Mexico School of Law which presents or co-sponsors annual statewide training for thousands of law and lay professional and volunteers in all aspects of child and family welfare law. The CCIC has produced Best Practice Bulletins, booklets and court guides on multiple topics - which it makes available for free - and developed practice standards for the attorneys representing families and children, all adopted or approved by the New Mexico Supreme Court. The CCIC also developed the Tribal-State Judicial Consortium which is now a stand-alone entity and CCIC partners developed the first ICWA court in the state.

The CCIC has frequently developed and supported legislation, including codifying the Every Student Succeeds Act (ESSA) and making it easier for children and youth in foster care, and others, to maintain parity with classmates, graduate on time, and participate in school-based sports and activities. Many people who serve on this task force also are Commissioners for the CCIC, or regularly attend CCIC meetings.

The first phase of the group’s work culminated in a set of recommendations for relevant statewide entities to implement policy and process changes in order to meet the needs of the growing population of crossover youth, many of whom are children of color. The Crossover Youth Workgroup sent its recommendations to the following recipients in July 2022:

- Children’s Court Judges Association (CCJA)
- Supreme Court/Rules Committee
- Children, Youth and Families Department (CYFD)
- Law Offices of the Public Defender (LOPD)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorney (AODA)

The Crossover Youth Subcommittee of the CCRTF reviewed the CCIC’s recommendations and incorporated them into the new Crossover Youth Act, where appropriate.⁸¹

⁸⁰ See Appendix D, https://childlaw.unm.edu/assets/docs/childrens_code_reform_task_force_june_2024_report.pdf

⁸¹ See Crossover Youth Act (COYA), Section III(A)(2)(a), above.

XI. Conclusion

The Children's Code Reform Task Force once again appreciates the opportunity to gather and share the work of its dedicated members, who seek to improve circumstances for New Mexico's vulnerable children and families.

As has been noted previously, there is a need for comprehensive, on-going reform of both the Children's Code and the Child and Family Welfare System in New Mexico, particularly as human behavior and the social and scientific understanding of that behavior evolves.

To that end, and as in its June 2024 report, the CCRTF has again put forth policy ideas, in the form of legislative proposals, recommendations and science-based research that it believes will improve and elevate child and family support systems and services in our state.

Originally conceived as a multi-year effort, task force members are hopeful that ongoing funding for its work will create opportunities for the comprehensive reform that is needed, along with advanced communication and collaboration between all entities working on reform on both the Children's Code and the Child and Family Welfare System in New Mexico.

APPENDIX

A. Juvenile Justice Information Sheets

1. The Adolescent & Young Brain and Delinquency
2. Adverse Childhood Experiences (ACEs)
3. Futility of Severe Punishment
4. Incarceration of Youth
5. Juvenile Detention Alternatives Initiative (JDAI)
6. Racial and Ethnic Disparities in the Juvenile Justice System
7. “Upstream” Interventions, Prevention Efforts and Services

NOTE: The information sheets appear beginning on the next page and beyond, for ease of removing and copying.



The Adolescent & Young Adult Brain and Delinquency

FICTION

Adolescents and young adults should be treated the same as adults re: culpability and rehabilitation when they commit criminal offenses.

FACTS

It is **settled constitutional law** that children are less culpable than adults for the purpose of sentencing because of their developmental differences and heightened capacity for rehabilitation.

See e.g., Roper v. Simmons, 543 U.S. 551, 567 (2005)[1]

Adolescents' risk assessment, decision-making capacities, and future orientation **differ from those of adults in ways that are particularly relevant to criminal conduct**.^[2]

RECENT NEUROSCIENCE RESEARCH

Maturation of brain structure, brain function, and brain connectivity continues throughout the early twenties. This ongoing brain development has profound implications for decision-making, self-control and emotional processing.^[3]

- During emotionally charged situations, late adolescents (18–21) respond more like younger adolescents (13–17) than like young adults (22–25) due to differences in brain maturation.
- Compared to young adults above age 21, late adolescents (18–21) also take more risks and engage in more sensation-seeking behavior.
- Due to differences in brain development, late adolescents are more likely than young adults to respond to immediate outcomes and are less likely to delay gratification.

These developmental differences in behavior have direct implications for legal decision-making, including waiving Miranda rights, susceptibility to false confessions, and making ill-advised trial decisions (e.g., plea decisions).^[4]

The Ceiling: Raising The Age Beyond 18

Several states are considering extending the upper age limits of juvenile court jurisdiction beyond age 18 to include emerging adults or young people through their early 20s.^[5]

The Floor: Raising The Minimum Age of Juvenile Prosecution:

Twenty-three states have set a minimum age at which youth and young adults can be processed through juvenile courts.^[6]



Children's Code Reform Task Force

Undertaking Thoughtful Reform

Legislative Resource

One-Page Info Sheet
(Both sides)

FOOTNOTES

[1] BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER; THE CENTER FOR LAW, BRAIN AND BEHAVIOR; THE SENTENCING PROJECT; AND THE CHILDREN'S POLICY AND LAW INITIATIVE OF INDIANA ON BEHALF OF APPELLANT, *Kedrowitz v. Indiana*, p. 7 (2023)

<https://www.sentencingproject.org/app/uploads/2023/03/2023.3.13-Amicus-Brief-STAMPED-RECEIVED.pdf>

[2] *Id.*, p.10

[3] *White Paper on the Science of Late Adolescence, A Guide for Judges, Attorneys and Policy Makers*, p.2 (2022)

<https://clbb.mgh.harvard.edu/wp-content/uploads/CLBB-White-Paper-on-the-Science-of-Late-Adolescence-3.pdf>

[4] *Id.*

[5] As of 2021, three states, **Vermont**, **Michigan** and **New York**, have raised the age of maximum juvenile court jurisdiction to 18, meaning that a young adult can remain under the purview of juvenile courts until they turn 19. **Vermont's** Act 201 of 2020 allows for further age expansions of juvenile court jurisdiction to include 19 year olds in 2022. See, *Age Boundaries in Juvenile Justice Systems* (2021)

<https://www.nga.org/publications/age-boundaries-in-juvenile-justice-systems/>

[6] *Id.*

ADDITIONAL RESOURCES

1. *Roper v. Simmons*, 543 U.S. 551 (2005)

<https://tile.loc.gov/storage-services/service/ll/usrep/usrep543/usrep543551/usrep543551.pdf>

2. *Understanding the Adolescent Brain and Legal Culpability*, (2015)

https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/august-2015/understanding-the-adolescent-brain-and-legal-culpability/

3. *Adolescent Brain Development and Youth Justice*, (2023)

<https://www.ncsl.org/civil-and-criminal-justice/adolescent-brain-development-and-youth-justice>

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Adverse Childhood Experiences (ACEs)

FICTION

Punishment alone should be enough to deter delinquent behavior by youth.

FACTS

The behavior and actions of most youth in the juvenile justice system in New Mexico have been impacted by negative experiences outside of their control. Adverse Childhood Experiences (ACEs) are associated with elevated juvenile justice system contact. [1]

NEW MEXICO RESEARCH

A New Mexico study of juvenile offenders committed for incarceration in 2011 found that 86% of those juveniles had experienced 4 or more adverse childhood experiences (ACEs). Faculty from the University of New Mexico (UNM) School of Law and the UNM School of Medicine, and New Mexico's Children, Youth and Families Department (CYFD) initiated a joint project to look at the prevalence of Adverse Childhood Experiences (ACEs) nationally and in New Mexico. The study was intended to better establish the association between early childhood trauma and delinquency, as well as to explore the role that law and medicine can play in ensuring better health and juvenile justice outcomes for children who have experienced ACEs. [2]

Adverse childhood experiences were grouped into either childhood abuse or household dysfunction and were formulated as 10 childhood experiences identified as risk factors for chronic disease in adulthood: emotional abuse, physical abuse, sexual abuse, emotional neglect, physical neglect, violent treatment towards mother, household substance abuse, household mental illness, parental separation or divorce, and having an incarcerated household member. [3]

The 2016 study included all 220 juvenile offenders committed for incarceration in New Mexico during 2011 and used the results of comprehensive multi-disciplinary psychosocial assessments to examine juveniles' ACEs, psychological and family conditions, and exposure to other traumatic events. 86% of incarcerated New Mexico juveniles experienced 4+ ACEs. New Mexico juveniles experienced ACEs at a higher rate than juvenile offender populations in other studies. [4]

Social conditions in Bernalillo County

Social conditions in Bernalillo County, such as an increase in substance abuse disorders, a high rate of adverse childhood experiences (ACEs), poor education outcomes, and high rates of poverty can contribute to high rates of crime. **In New Mexico, the percentage of the population with two or more ACEs is 27.30%, which is significantly higher than the percentage of the U.S. population, 17.40%.** [5]

Efforts are needed to identify and prevent

Efforts are needed to identify and prevent early childhood trauma in New Mexico. Intervention goals include preventing additional ACEs in young children who have experienced them and trauma screening when children enter the juvenile justice system. Additionally, evidence-based, trauma-informed, family-engaged mental health and substance-abuse treatments should be available throughout the juvenile justice system and to youth subsequent to discharge from detention and incarceration. [6]



Children's Code Reform Task Force

Undertaking Thoughtful Reform

Legislative Resource

One-Page Info Sheet
(Both sides)

FOOTNOTES

[1] *Adverse Childhood Experiences and Justice System Contact: A Systemic Review*, (2021)

<https://publications.aap.org/pediatrics/article/147/1/e2020021030/77102/Adverse-Childhood-Experiences-and-Justice-System?autologincheck=redirected>

[2] *Adverse Childhood Experiences in the New Mexico Juvenile Justice Population*, Yael Cannon, JD, George Davis, MD, Andrew Hsi, MD and MPH, Alexandra Bochte, JD, in Collaboration with the New Mexico Sentencing Commission, p.1 (2016)

<https://nmssc.unm.edu/reports/2016/adverse-childhood-experiences-in-the-new-mexico-juvenile-justice-population.pdf>

[3] Id.

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[5] *Update on Crime in New Mexico and Bernalillo County*, New Mexico Legislative Finance Committee, p. 13 (July 15, 2024)

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https://assets.aecf.org/m/resourcedoc/Report_disposablechildren_2024.pdf

2. *Missing Pieces*, a 17-minute interview of Dr. George Davis, CYFD's former director of psychiatry, discussing what some describe as "a largely-ignored blueprint" in the effort to find the "Missing Pieces" of the juvenile justice system in NM (December 2024)

https://www.youtube.com/watch?v=K8grTcghqVs&ab_channel=KOB4

3. *At New Mexico's biggest jail for children, toilets and staff are lacking – but strip searches are common*, (2023)

<https://searchlightnm.org/at-new-mexicos-biggest-jail-for-children-toilets-and-staff-are-lacking-but-strip-searches-are-common/>

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Futility of Severe Punishment

FICTION

More severe punishment is an effective deterrent to juvenile crime in New Mexico.

FACTS

Research shows clearly that the chance of being caught is a vastly more effective deterrent than even draconian punishment.

NEW MEXICO RESEARCH

FY23 through FY25, the Legislature appropriated \$259 million toward initiatives to improve the swiftness and certainty of justice, including \$150 million for law enforcement recruitment and retention efforts and \$40 million for an improved criminal justice information system. [1]

Research shows the certainty and swiftness of being caught for criminal activity is a more powerful deterrent to crime than the severity of the criminal penalties in state law. LFC analysis finds the criminal justice system in Bernalillo County has an accountability gap where arrests, criminal convictions, and prison admissions do not keep pace with trends in criminal activity. [2]

New Mexico could reduce crime by treating its root causes, such as addiction, increasing the certainty offenders will be caught and held accountable, and decreasing the likelihood current inmates will reoffend upon release. [3]

History repeating

The history of juvenile justice in this country is one of pendulum swings between the goal of rehabilitation and the impulse to punish. Today, that pendulum is tipping back towards the punitive approach that led to a near-doubling of the number of youth behind bars during the 1990s. [4]

A path forward

We must keep moving forward. That means caring for system-involved youth in the same way we care for our own children, not giving up on them and putting them in cells. We've tried that route before and we know it doesn't work. Now is the time to build on the lessons of two decades of transformation, not abandon them and another generation of children. [5]



Children's Code Reform Task Force

Undertaking Thoughtful Reform

Legislative Resource

One-Page Info Sheet
(Both sides)

FOOTNOTES

[1] *Update on Crime in New Mexico and Bernalillo County*, New Mexico Legislative Finance Committee, p.4 (July 15, 2024).

<https://www.nmlegis.gov/handouts/ALFC%20071524%20Item%202%20Policy%20Spotlight%20-%20Bernalillo%20County%20Criminal%20Justice%20System%20Update.pdf>

[2] Id.

[3] Id., p.5. See also, *Five Things About Deterrence*, National Institute of Justice, (May 2016)

<https://nij.ojp.gov/topics/articles/five-things-about-deterrence>

[4] *A Vision for Progress, Not Regression, on Youth Justice*, The Imprint, Gladys Carrion (November 19, 2024)

https://imprintnews.org/opinion/vision-progress-not-regression-youthjustice/256237utm_source=newsletter&utm_medium=email&utm_term=Wed+Nov+27+2024&utm_campaign=California+Study+Reveals+Characteristics+of+Suicideprone+Foster+Youth

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Incarceration of Youth

FICTION

Incarceration of young people is an effective strategy for steering youth and young adults away from delinquent or criminal behavior and improves public safety

FACTS

Though the number of youth confined in juvenile justice facilities has declined significantly over the past two decades [1], **our country incarcerates more youth than any other country in the world.**[2] **It does so despite overwhelming evidence showing that incarceration is an ineffective strategy for steering youth away from delinquent behavior and that high rates of youth incarceration do not improve public safety.**[3]

Evidence reveals these key findings:

- Incarceration does not reduce delinquent behavior
- Incarceration impedes young people's success in education and employment
- Incarceration does lasting damage to young people's health and wellbeing
- Juvenile facilities are rife with maltreatment and abuse
- Racial and ethnic disparities in incarceration are vast and unjust[4]

Why incarceration fails:

- Brain immaturity fuels delinquency
- Increased maturity is tied to desistance[5] (or turning away) from delinquency
- Early childhood trauma often feeds delinquency in adolescence [6]
- Incarceration can retraumatize youth and make them less likely to succeed[7]

State legislatures are turning to statutes to address minimum transfer ages from juvenile to adult court systems. The specifics vary significantly across states and include which system actors have discretion over transfer decisions (e.g., judges or prosecutors) and which crimes are excluded from an age minimum (usually crimes of violence), as well as other factors beyond age that prosecutors are required to consider.[8]

COMMUNITY ALTERNATIVES TO CONFINEMENT

Examples of community alternatives to confinement with powerful evidence of effectiveness that achieve equal or better outcomes and cost a small fraction of the price associated with confinement in a youth corrections facility include:

- Youth Advocate Programs (YAP)
- Credible Messengers
- Intensive multi-pronged family-focused treatment models
- Wraparound programs
- Programs led by grassroots neighborhood, civic and faith-based organizations[9]

Policy and practice reforms also show substantial promise in reducing overreliance on youth incarceration by ensuring that youth justice systems make good decisions and provide appropriate responses to youth behavior, while improving youth and public safety outcomes. These include using fiscal incentives encouraging courts and corrections agencies to keep youth at home, and by prohibiting incarceration for lower-level offenses. [10]



Children's Code Reform Task Force

Undertaking Thoughtful Reform

Legislative Resource

One-Page Info Sheet
(Both sides)

FOOTNOTES

[1] Between 2000 and 2022, youth incarceration declined from 108,800 to 27,600. This one-day count combines figures for two sets of youth. First, it includes those held in detention facilities (those awaiting their court dates or pending placement to a longer-term facility after being found delinquent in court). Second, it includes committed youth held in youth prisons, residential treatment centers, group homes, or other placement facilities (as a court-ordered consequence after being adjudicated delinquent in juvenile court). In 2021, 44% of youth in the one-day count were in detention and 53% had been committed to a secure placement facility (the juvenile equivalent of imprisonment). These counts do not include people under 18 held in adult prisons and jails. *Youth Justice by the Numbers*, (2024)

<https://www.sentencingproject.org/policy-brief/youth-justice-by-the-numbers/>

[2] Despite the lowest youth crime rate in over 20 years, the youth incarceration rate in the USA remains approximately 7 times higher than in England and 3,000 times higher than in Japan. *Child incarceration and long-term adult health outcomes: a longitudinal study*, (2018)

<https://pmc.ncbi.nlm.nih.gov/articles/PMC6527101/#:~:text=The%20USA%20incarcerates%20more%20youth,held%20for%20non%2Dviolent%20charges>

According to Human Rights Watch, the U.S. has the highest number of children in juvenile detention facilities in the industrialized world. *Children Behind Bars: The Global Overuse of Detention of Children*, (2016)

<https://www.hrw.org/world-report/2016/country-chapters/africa-americas-asia-europe/central-asia-middle-east/north#:~:text=We%20know%20that%20the%20United,for%20meaningful%20education%20or%20rehabilitation>

Additionally, the U.S. sends more children to adult jails and prisons than other countries. *Placement of Children in Adult Jails and Prisons is Challenged*, (2015)

<https://eji.org/news/placement-of-children-in-adult-jails-and-prisons-challenged/>

See also, *Children in Adult Prison: Children threatened by abuse, neglect, violence, racial bias, and poverty are usually ignored – unless they do something violent*. <https://eji.org/issues/children-in-prison/>. The type of facility where a child is confined can affect their health, safety, access to services, and outcomes upon reentry. Adult prisons and jails are unquestionably the worst places for youth. They are not designed to provide age-appropriate services for children and teens, and according to the **Campaign for Youth Justice**, youth in adult facilities may be placed in solitary confinement to comply with the PREA safety standard of “sight and sound” separation from incarcerated adults. Youth in adult facilities are also 5 times more likely to commit suicide than those in juvenile facilities. *Youth Confinement: The Whole Pie 2019*, (2019)

<https://www.prisonpolicy.org/reports/youth2019.html>

[3] <https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/>

[4] Id.

[5] Defined, by some, as the process by which criminality declines over time.

<https://nij.ojp.gov/topics/articles/what-does-it-mean-defining-measuring-and-analyzing-desistance-crime-criminal#:~:text=Research%20on%20crime%20over%20the,course%2C%20generally%20after%20adolescence.%E2%80%9D>

[6] Elevated ACE scores were associated with increased risk of juvenile justice system contact. Estimates of the adjusted odds ratio of justice system contact per 1-point increase in ACE score ranged from 0.91 to 1.68. Results were consistent across multiple types of justice system contact and across geographic regions.

<https://publications.aap.org/pediatrics/article-abstract/147/1/e2020021030/77102/Adverse-Childhood-Experiences-and-Justice-System?redirectedFrom=fulltext>

[7] Id., fn. 3

[8] *Age Boundaries in Juvenile Justice Systems*, (2021)

<https://www.nga.org/publications/age-boundaries-in-juvenile-justice-systems/>

[9] Id., fn. 3

[10] Id.

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Juvenile Detention Alternatives Initiative (JDAI)

❌ FICTION

Increasing reliance on detention and incarceration for juveniles is the most effective way to improve public safety.

✅ FACTS

The Juvenile Detention Alternatives Initiative (JDAI) is an effective, data-driven, research-based, collaborative approach to youth justice. JDAI sites are committed to supporting healthy young people, strong families and safe communities. JDAI is grounded in decades of research showing that incarceration poses concrete dangers to young people, tends to threaten community safety and disproportionately affects Black, Indigenous and Hispanic youth.

RESEARCH

New Mexico's System Improvement approach is based on the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI). It is designed to enable jurisdictions to safely reduce reliance on secure confinement through continuous juvenile justice system improvement. **JDAI is intended to:**

- Eliminate inappropriate or unnecessary use of secure detention
- Minimize failures to appear and incidence of delinquent behavior;
- Redirect public finances to successful reform strategies;
- Improve conditions in secure detention facilities; and
- Reduce racial and ethnic disparities. [1]

Detention is an ineffective response to crime (e.g., one peer-reviewed study concluded that pretrial juvenile detention increases the odds of felony recidivism by 33%).[2] Research shows that even a short stay in detention is associated with serious harm to young people's mental and physical well-being; to their education and employment prospects [3] and to their risk of further justice system involvement. Rigorous studies have consistently shown that Black, Indigenous and Hispanic youth referred to juvenile courts are more likely to be detained than similarly situated white youth, even when controlling for types of offending and other factors. National statistics show that nonwhite youth, and especially Black youth, are more likely to be detained than white youth across every category of offending.[4] Collaboration among system stakeholders and with community partners is at the heart of JDAI. No one agency or entity owns JDAI.[5]

JDAI IN NEW MEXICO COUNTIES

Each year Bernalillo County is awarded funds from the New Mexico State Government General Funds, through CYFD, to increase public safety through the support of data driven, evidence based juvenile justice practice and reform. The Continuum Statute requires the development of an advisory board that reflects all system and community stakeholders. This board creates strategic plans and makes data driven decisions to determine how the funding will be pent to serve the interests of community well-being. [6]

Bernalillo County joined the JDAI network in 1999. Over the next ten years, JDAI expanded to four additional counties: Doña Ana, Lea, Santa Fe and San Juan. [7]



Children's Code Reform Task Force

Undertaking Thoughtful Reform

Legislative Resource

One-Page Info Sheet
(Both sides)

FOOTNOTES

- [1] *JDAI Core Strategies*, Annie E. Casey Foundation
<https://www.aecf.org/work/juvenile-justice/jdai/jdai-core-strategies>
- [2] *The Impact of Pretrial Detention on 12-Month Recidivism: A Matched Comparison Study* (June 4, 2020)
<https://journals.sagepub.com/doi/10.1177/001128720926115>
- [3] *The Impact of Juvenile Conviction on Human Capital and Labor Market Outcomes* (January 14, 2022)
<https://www.stlouisfed.org/publications/review/2022/01/14/the-impact-of-juvenile-conviction-on-human-capital-and-labor-market-outcomes>
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<https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/racial-and-ethnic-disparity>
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<https://assets.aecf.org/m/resourcedoc/AECF-CollaborationandLeadership-1999.pdf>
- [6] *Juvenile Detention Alternatives Initiative of Bernalillo County*, (2023)
<https://www.bernco.gov/health-and-public-safety/wp-content/uploads/sites/60/2023/09/JDAI-Pamphlet-2023.pdf> pg. 3
- [7] *Juvenile Detention Alternatives Initiative Scale-Up: Study of Four States* (February 28, 2019)
<https://wested2024.s3.us-west-1.amazonaws.com/wp-content/uploads/2019/03/29115458/Juvenile-Detention-Alternatives-Initiative-Scale-Up-Study-of-Four-States.pdf>

ADDITIONAL RESOURCES

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<https://www.nmlegis.gov/handouts/CCJ%20092514%20Item%205%20Juvenile%20Detention%20Alternatives.pdf>
2. *Juvenile Court Statistics 2022*, (2024)
<http://www.ncjj.org/Publication/Juvenile-Court-Statistics-2022.aspx>
(download required)

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Racial and Ethnic Disparities in the Juvenile Justice System

FICTION

Juvenile sentencing laws are applied fairly and impartially to different racial and ethnic groups.

FACTS

Youth of color are much more likely than white youth to be held in juvenile facilities.

RESEARCH

In the United States in 2021, the white placement rate in juvenile facilities was 49 per 100,000 youth under age 18. By comparison, the Black youth placement rate was 228 per 100,000, 4.7 times higher. Tribal youth were 3.7 times as likely to be placed in juvenile facilities (181 per 100,000) and Latino youth were 16% more likely (57 per 100,000). [1]

Racial disparities are also evident in decisions to transfer youth from juvenile to adult court. In 2017, Black youth made up 35% of delinquency cases, but over half (54%) of youth judicially transferred from juvenile court to adult court. Meanwhile, white youth accounted for 44% of all delinquency cases, but made up only 31% of judicial transfers to adult court. And although the total number of youth judicially transferred in 2017 was less than half what it was in 2005, **the racial disproportionality among these transfers has actually increased over time.** Reports also show that in **California**, prosecutors send Hispanic youth to adult court via **“direct file”** at 3.4 times the rate of white youth, and that **American Indian** youth are 1.8 times more likely than white youth to receive an adult prison sentence. [2]

Exacerbating the difficulty of addressing this issue is the fact that disparities exist well before contact with the juvenile justice system has occurred—in child welfare, the foster care system, school readiness, school performance, and school suspensions and expulsions (HHS, 2021; Knott and Giwa, 2012; Morris and Perry, 2016). Youths of color are more likely to live in single-parent families, in poverty, in disadvantaged communities with low performing schools, and in high-crime areas (Hirschfield, 2018; Moak et al., 2012; National Research Council, 2013). Given the problem’s extent and complexity, this issue is difficult to address. [3]

In New Mexico, in 2019, the placement rate in a residential placement facility per 100,000 youth was 467 Black, 277 White, 62 American Indian, 58 Hispanic and 0 Asian, according to an analysis of the Office of Juvenile Justice and Delinquency Prevention’s Census of Juveniles in *Residential Placement* for 2019.[4]



Children's Code Reform Task Force

Undertaking Thoughtful Reform

Legislative Resource

One-Page Info Sheet
(Both sides)

FOOTNOTES

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[2] *Youth Confinement: The Whole Pie 2019*, Wendy Sawyer, Prison Policy Initiative (2019)

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[3] Racial and Ethnic Disparity in Juvenile Justice Processing, Office of Juvenile Justice and Delinquency Prevention, (2022)

<https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/racial-and-ethnic-disparity#7-0>

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“Upstream” Interventions, Prevention Efforts and Services

❌ FICTION

The most effective way to deal with juvenile delinquency is to lock offenders up.

✅ FACTS

Since the 1990s, the nation has shifted from an incarceration-heavy approach toward juvenile offenders to one that tries to keep them out of the criminal justice system and provide counseling, training and rehabilitation services instead. These innovative programs are yielding positive results in terms of public safety and fiscal policy. [1]

DIVERSION

Diversion is generally considered to be a formalized effort to divert someone who is already in the criminal justice system. **It can also include pre-arrest diversion** such as civil citations and co-responder or community programs that apply to juveniles. **The goal is to find service-based alternatives to the traditional justice system.** **Pre-arrest diversion and pre-court diversion** involve a decision to address delinquent conduct without involving a young person formally in the court system. [1]

Compared with youth who are diverted, youth who are arrested and formally petitioned in court have a far higher likelihood of subsequent arrests and school failure. [2]

Compelling research finds that **formal involvement in the justice system tends to undermine rather than enhance public safety and to reduce young people's future success.** Studies find that youth diverted from the justice system:

- Have far lower likelihood for subsequent arrests
- Are less likely to be incarcerated
- Commit less violence
- Have higher rates of school completion and college enrollment
- Earn higher incomes in adulthood [3]

Recent reform efforts have showcased promising strategies, including:

- Funding to support diversion programming and to create new diversion pathways.
- Efforts to contact and engage parents/guardians and other family members.
- Reducing imbalances in diversion opportunities in-state by requiring jurisdictions to develop diversion options, or by setting standard guidelines for diversion.
- Creating new mechanisms to assist and support youth who might otherwise fail diversion and have their cases formally petitioned in court.
- Creating ongoing oversight boards to review progress and recommend adjustments and further policy and practice reforms.[4]



Due to neuroplasticity (the ability of the brain to change), adolescents are susceptible to lasting neural alterations in response to environmental conditions, especially the harsh conditions of juvenile confinement; **however, they may also be more amenable than adults toward redirection and rehabilitation.** To capitalize on adolescents' unique rehabilitative potential, the primary objective of juvenile justice reform should be to strengthen and support redirection and rehabilitative efforts that are developmentally appropriate for youth and reinforce individual existing strengths and contributions.[5]



Children's Code Reform Task Force

Undertaking Thoughtful Reform

Legislative Resource

One-Page Info Sheet
(Both sides)

FOOTNOTES

[1] Pre-arrest diversion is called “deflection,” and can allow police interactions with youth to be treated as public health opportunities in which mental health interventions and/or substance abuse assistance are provided through deflection rather than a criminal record. This approach can provide a bevy of benefits without many downfalls. Deflection can also include myriad community-based services for juveniles. *How Juvenile Justice “Deflection” Programs Reduce Crime and Save Money*, (2022)

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