

# Report From the Children's Code Reform Task Force

Including Proposed Legislation, Recommendations and Public Comment



**June 2024**

Pursuant to SB 1 (Third Special Session, 2022) and SB 192 (2023)

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## **Acknowledgments**

Tremendous gratitude and respect go to the Children’s Code Reform Task Force members, who volunteered their expertise tirelessly and with great good humor to make recommendations on ways to improve the laws that affect the most vulnerable children and families who come to the attention of the New Mexico Children, Youth, and Families Department. Credit is due to the members of the public who came to meetings to listen and let us know where work needs to be done. We particularly want to call out the useful input and leadership we received from young people and parents with lived expertise in the system. We could not have done the work we did without the support of the task force coordinator, Kathleen Sabo, and staff, Tony Ortiz, who guided us and wrote and edited well into the nights and weekends. Finally, thank you to the Legislators of New Mexico who recognize the need to keep the law alive and responsive to the changing needs of the residents of our state.

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June 2024

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## I. Introduction

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. The task force was charged with assessing the Children’s Code and recommending changes. The law in the field needs to be regularly updated to bring current research, understanding, and practice to bear in our most intimate and important relationships - within our families. As a unique amalgamation of federal and state law, effective child and family welfare law must reflect the mores of the humans it serves and the social sciences that underpin it.

As you will note in this report, the members of the task force began work in January 2023, until the AOC deemed it was necessary to remove this work from the judiciary and find a home for the task force that could bring the strength of all three branches of government to bear. The task force was moved to the Corinne Wolfe Center for Child and Family Justice at the University of New Mexico School of Law where work was resumed with most of the original task force members in February of 2024. The re-assigned task force drafted proposed legislation and recommendations for the legislature to bring parts of the Children’s Code up to date to be more responsive to social, scientific, economic and cultural developments and realities.

Through the years the Children’s Code has been continuously updated, with the most recent changes including: 2019 and 2020, passage and revision of the Fostering Connections Act; 2022, passage of the Indian Families Protection Act (IFPA), substantial changes to the Code’s Abuse and Neglect Act, and creation of the Office of Family Representation and Advocacy (OFRA); and in 2023, passage of the Voluntary Placement and Family Services Act.

While these recent revisions to the Code represent substantial changes, the suggested changes to the Code and recommendations contained in this report represent an evolving understanding of the field, as they occur in response to and in concert with widespread, national reform of “child welfare systems” into “child and family wellbeing systems” - an approach to addressing neglect and the wellbeing of families and children that goes farther in offering support to families in need rather than penalizing them.<sup>1</sup>

Child and family welfare sits in a complex and challenging policy and legal arena. With that recognition, task force administrators worked hard to have an interdisciplinary task force, made up of experts working in both the child welfare and juvenile justice parts of the system. Administrators revisited task force composition as work progressed and as they recognized the need for specific expert opinions as informed by specific experience. By adding people with particular expertise, from multiple disciplines, and from various parts of the State of New Mexico, task force leadership worked to ensure the task force was comprised of committed individuals with a broad base of knowledge and support.<sup>2</sup>

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<sup>1</sup> 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>

<sup>2</sup> See Section IV, *infra*, for a listing of task force members and affiliations.

What has been undertaken in support of children and families in New Mexico, to date, as the result of tireless work undertaken by many through the years – e.g. OFRA, IFPA, Child Care Tax Credit and savings and checking accounts for youth – has moved the State of New Mexico forward in its work to shore up the supportive and ameliorative underpinnings of child and family welfare. There is much still to be done, and we must work together, honoring our varied history, values, and people, acknowledging and taking up the challenges and opportunities presented by our rural/urban divide in a large state with a small population<sup>3</sup>; the state’s widespread and pervasive poverty that impacts children and their families; the unprecedented impacts of Covid 19; the statewide loss of mental health providers in 2013; and the high turnover and vacancy rate at CYFD from leadership to front line teams, where all, by nature of their work protecting children, are constantly exposed to trauma.

The proposed legislation and recommendations contained within this 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 of the work of the task force has been under the Abuse and Neglect Section, Chapter 32A, Article 4, but involves and impacts Article 3B - relating to Families in Need of Court Services, and Article 5 - relating to Adoptions. Some of the work has been influenced by Article 28 - the Indian Family Protection Act (IFPA) and the Voluntary Placement and Family Services Act - Article 3A within the Code.

As is suggested in the recommendations of the task force, robust reform can only occur if all three branches of the State’s government – executive, legislative and judicial – are involved in the needed reforms. In the executive branch, these reforms implicate the work of more than just the child welfare agency, including for example, OFRA, the Health Care Authority, Public Education Department, the Early Childhood Education and Care Department, and more. Consequently, the report’s specific recommendations are directed to each branch of government and multiple departments and agencies.

As you read this report and take in the proposed legislation and recommendations put forth by the task force, we ask you – whether legislator, member of the judiciary, part of the executive department, child welfare advocate or member of the public – to think aspirationally and ambitiously, as the members of the task force have done. Ask yourself: *What is possible to improve the lives of the most vulnerable children and families in New Mexico?*

Please imagine how the State of New Mexico can do its best by its children and families, and then please do your part to make this better future for all a reality.

## **II. History of Task Force and Task to be Accomplished**

The task force was created through an appropriation in 2022’s SB 1 (Third Special Session), appropriating \$50K to the Administrative Office of the Courts (AOC) for the Children’s Code Task Force.

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<sup>3</sup> New Mexico is 5<sup>th</sup> in land mass, 37<sup>th</sup> in population.

For the remainder of 2022, the composition and operational plan for the task force was determined by parties leading this effort. From January 2023 to May of 2023, the task force and newly created subcommittees commenced work. Through initial public meetings, the task force identified priorities and formed subcommittees, within which smaller groups of task force members would further identify priorities and work on draft legislation, where appropriate. At this point, the task force paused to allow the Judiciary time to seek an appropriate entity to sponsor and administer the effort.

While the task force was initially meeting, 2023's SB 192 appropriated \$75K to the AOC for the Children's Code Reform Task Force, "to assess and recommend changes." Under a Memorandum of Understanding (MOU) between the AOC and the University of New Mexico (UNM), the task force is now under the direction of the Corinne Wolfe Center for Child & Family Justice at the UNM School of Law. The task force began meeting again in February 2024.

Pursuant to the above-referenced MOU, the body is tasked with presenting a report to the AOC, by June 30<sup>th</sup>, 2024, providing recommendations for changes to the Children's Code and recommendations for future activities that would allow for assessment and recommendation of changes to the code.

### **III. Proposed Legislation and Recommendations From the Full Task Force**

#### **A. Changes to the Children's Code**

##### **1. Amendments to Existing Statutes**

**Note:** The following draft legislation 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 synchronize the timing of state child welfare processes with both federal timelines and the reality of treatment for substance misuse.

##### **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; and (2) address situations when a child has negligent unsupervised access to firearms; and (3) clarify processes to prevent child removal and longer stays in custody when poverty is the only issue.

BILL  
57<sup>TH</sup> LEGISLATURE – STATE OF NEW MEXICO – FIRST SESSION, 2025  
INTRODUCED BY

**DISCUSSION DRAFT  
FINAL DRAFT FOR REVIEW**

AN ACT

RELATING TO CHILD WELFARE; REVISING THE DEFINITION OF 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. "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]~~ 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. 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; 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."

**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.”

**b. Ensuring the economic well-being of children in state custody**

- Amending Sections 32A-4-21 and 32A-4-22 NMSA 1978

**Note:** Revises the Children’s Code to provide economic stabilization for children and families, including the creation of ABLE accounts for children in state custody and the provision of basic income pilot programs for families involved in the child welfare system.

BILL  
57<sup>TH</sup> LEGISLATURE – STATE OF NEW MEXICO – FIRST SESSION, 2025  
INTRODUCED BY

**DISCUSSION DRAFT**

## FINAL DRAFT FOR REVIEW

### AN ACT

RELATING TO CHILD WELFARE; ENSURING THE ECONOMIC WELL-BEING OF CHILDREN IN STATE CUSTODY; AMENDING SECTIONS OF THE CHILDREN'S CODE.

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

**SECTION 1.** Section 32A-4-21 NMSA 1978 (being Laws 1993, Chapter 77, Section 115, as amended) is amended to read:

“32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES—REPORTS AND EXAMINATIONS.--

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

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

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

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

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

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

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

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

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

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

(9) a case plan that sets forth steps to ensure that the child's physical, medical, cultural, psychological and educational needs are met and that sets forth services to be provided to the child and the child's parents to facilitate permanent placement of the child in the parent's home;

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

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

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

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

(14) a statement of the department's efforts to facilitate the child's financial security and the department's plan to establish, obtain and otherwise secure 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; and

(15) a statement affirming that the child's financial assets will not be used by the department for department or foster parent expenses.

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

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

**SECTION 2.** 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) 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) 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, and is ordered to remain 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 is found to be neglected or abused, and 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. 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.]~~ F. 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.]~~ G. 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.]~~ H. 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.]~~ I. 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.]~~ J. 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.]~~ K. When the court determines pursuant to Subsection ~~[C.]~~ E. 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.”

c. **Removing a presumption of abandonment as a basis to consider termination of parental rights in abuse or neglect cases**

- Amending Section 32A-4-28 NMSA 1978

**Note:** Revises the Children’s Code to remove “presumptive abandonment” as grounds for the termination of parental rights (TPR) in child welfare cases and under the Abuse and Neglect Act. The elements of presumptive abandonment, as it stands in the Abuse and Neglect Act, most often arise as a result of state removal of a child and are often conditions created by the removal itself, the child’s time away from the family, and the experience of foster care, not by the faults or habits of the parent prior to or after removal. The proposed legislation does not amend statutory sections within the Adoption Act.

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BILL  
57<sup>TH</sup> LEGISLATURE – STATE OF NEW MEXICO – FIRST SESSION, 2025  
INTRODUCED BY

**DISCUSSION DRAFT  
FINAL DRAFT FOR REVIEW**

AN ACT

RELATING TO CHILD WELFARE; REMOVING A PRESUMPTION OF ABANDONMENT AS A BASIS TO CONSIDER TERMINATION OF PARENTAL RIGHTS IN ABUSE OR NEGLECT CASES.

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

**SECTION 1.** Section 32A-4-28 NMSA 1978 (being Laws 1993, Chapter 77, Section 122, as amended) is amended to read:

“Section 32A-4-28. TERMINATION OF PARENTAL RIGHTS—ADOPTION DECREE.--

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

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

- (1) there has been an abandonment of the child by his parents; or
- (2) the child has been a neglected or abused child as defined in the Abuse and Neglect Act [32A-4-1 NMSA 1978] and the court finds that the conditions and causes of

the neglect and abuse are unlikely to change in the foreseeable future despite reasonable efforts by the department or other appropriate agency to assist the parent in adjusting the conditions that render the parent unable to properly care for the child. The court may find in some cases that efforts by the department or another agency are unnecessary, when:

- (a) there is a clear showing that the efforts would be futile; or
- (b) the parent has subjected the child to aggravated circumstances. ~~or~~

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

- ~~(a) — the child has lived in the home of others for an extended period of time;~~
- ~~(b) — the parent-child relationship has disintegrated;~~
- ~~(c) — a psychological parent-child relationship has developed between the substitute family and the child;~~
- ~~(d) — if the court deems the child of sufficient capacity to express a preference, the child no longer prefers to live with the natural parent;~~
- ~~(e) — the substitute family desires to adopt the child; and~~
- ~~(f) — a presumption of abandonment created by the conditions described in Subparagraphs (a) through (e) of this paragraph has not been rebutted.~~

~~C. — A finding by the court that all of the conditions set forth in Subparagraphs (a) through (f) of Paragraph (3) of Subsection B of this section exist shall create a rebuttable presumption of abandonment.]~~

~~[D.] C.~~ The department shall not file a motion, and shall not join a motion filed by another party, to terminate parental rights when the sole factual basis for the motion is that a child's parent is incarcerated.

~~[E.] D.~~ The termination of parental rights involving a child subject to the federal Indian Child Welfare Act of 1978 shall comply with the requirements of that act.

~~[F.] E.~~ If the court finds that parental rights should be terminated; that the requirements for the adoption of a child have been satisfied; that the prospective adoptive parent is a party to the action; and that good cause exists to waive the filing of a separate petition for adoption, the court may proceed to grant adoption of the child, absent an appeal of the termination of parental rights. The court shall not waive any time requirements set forth in the Adoption Act ~~[unless the termination of parental rights occurred pursuant to the provisions of Paragraph (3) of Subsection B of this section]~~. The court may enter a decree of adoption only after finding that the party seeking to adopt the child has satisfied all of the requirements set forth in the Adoption Act. Unless otherwise stipulated by all parties, an adoption decree shall take effect sixty days after the termination of parental rights, to allow the department sufficient time to provide counseling for the child and otherwise prepare the child for the adoption. The adoption decree shall conform to the requirements of the Adoption Act [32A-5-1 NMSA 1978] and shall have

the same force and effect as other adoption decrees entered pursuant to that act. The court clerk shall assign an adoption case number to the adoption decree.”

**d. Revising time limitations for judicial hearings in child welfare cases**

- Amending Sections 32A-4-19, 32A-4-22, 32A-4-25 and 32A-4-25.1 NMSA 1978

**Note:** Revises the Children’s Code to provide for earlier and more frequent judicial reviews better aligned with federal “Adoption and Safe Families Act” (ASFA) timelines, to provide sufficient time for families suffering from substance misuse to undergo treatment, yet still provide for the safety and welfare of children. The revisions also provide for timely permanency for children, which may include reunification with their families, in child welfare cases. The task force posits that front loading judicial oversight could reduce the time to permanency, allowing children to leave foster care earlier, reduce caseloads for the judiciary and state agencies, and reduce costs to the state and taxpayers.

BILL \_\_\_\_\_  
57<sup>TH</sup> LEGISLATURE – STATE OF NEW MEXICO – FIRST SESSION, 2025  
INTRODUCED BY

**DISCUSSION DRAFT  
FINAL DRAFT FOR REVIEW**

AN ACT

RELATING TO CHILD WELFARE; REVISING TIME LIMITATIONS FOR JUDICIAL HEARINGS IN CHILD WELFARE CASES; AMENDING SECTIONS OF THE CHILDREN’S CODE.

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

**SECTION 1.** Section 32A-4-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 113, as amended) is amended to read:

“32A-4-19. ADJUDICATORY HEARINGS—TIME LIMITATIONS.--

A. The adjudicatory hearing in a neglect or abuse proceeding shall be commenced within sixty days after the date of service on the respondent and shall be completed within ninety days of commencement, absent circumstances which are beyond the control of the parties or the court.

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

C. The children's court attorney shall represent the state at the adjudicatory hearing.

D. When the adjudicatory hearing on any petition is not commenced within the time period specified in Subsection A of this section or within the period of any extension granted, and not completed within ninety days of commencement, absent circumstances which are beyond the control of the parties or the court, the petition shall be dismissed with prejudice as to the individual respondent. The court shall make a finding as to the circumstances beyond the control of the parties or the court and state the factual basis for its finding.”

**SECTION 2.** 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~~] completed 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) 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) 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.”

**SECTION 3.** Section 32A-4-25 NMSA 1978 (being Laws 1993, Chapter 77, Section 119, as amended) is amended to read:

“32A-4-25. PERIODIC JUDICIAL REVIEW OF DISPOSITIONAL JUDGMENTS.--

A. The initial judicial review shall be held within sixty days of the disposition. At the initial judicial review, the parties shall demonstrate to the court efforts made to implement the treatment plan approved by the court in its dispositional order. The court shall determine the extent to which the treatment plan has been implemented and make supplemental orders as necessary to ensure compliance with the treatment plan and the safety of the child. Prior to the initial judicial review, the department shall submit a copy of the adjudicatory order, the dispositional order and notice of the initial judicial review to the council. The staff of the council, or an entity contracting with the council, shall review the case. If the staff or contracting entity determines that the case meets the criteria established in council rules, the staff or contracting entity shall designate the case for review by a substitute care review board. A representative of the substitute care review board, if designated, shall be permitted to attend and comment to the court.

B. Following the initial judicial review, the court shall conduct subsequent periodic judicial reviews of the dispositional order [within six months of the conclusion of the permanency hearing or, if a motion has been filed for termination of parental rights or permanent guardianship, within six months of the decision on that motion and every six months thereafter] every three months as long as the permanency plan for any child in the matter remains reunification or a permanency plan of a planned permanent living arrangement. Prior to a subsequent periodic judicial review, the department shall submit a progress report to the council or any designated substitute care review board. Prior to any judicial review by the court pursuant to this section, the substitute care review board may review the dispositional order or the continuation of the order and the department's progress report and report its findings and recommendations to the court.

C. Judicial review pursuant to this section 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 appointed by the court;

provided, however, that the court approve any findings made by the special master.

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

- (1) all parties, including:
  - (a) the child alleged to be neglected or abused or in need of court-ordered services, by and through the child's guardian ad litem or attorney;
  - (b) the child's parent, guardian or custodian, who has allegedly neglected or abused the child or is in need of court-ordered services; and
  - (c) any other person made a party by the court;



- (2) the child's foster parent or substitute care provider;
- (3) the child's court-appointed special advocate; and
- (4) if designated by the council, the substitute care review board.

E. At any subsequent judicial review hearing held pursuant to Subsection B of this section, the department and all parties given notice pursuant to Subsection D of this section shall have the opportunity to present evidence and to cross-examine witnesses. At the hearing, the department shall show that it has made reasonable effort to implement any treatment plan approved by the court in its dispositional order and shall present a treatment plan consistent with the purposes of the Children's Code [Chapter 32A NMSA 1978] for any period of extension of the dispositional order. The respondent shall demonstrate to the court that efforts to comply with the treatment plan approved by the court in its dispositional order and efforts to maintain contact with the child were diligent and made in good faith. The court shall determine the extent of compliance with the treatment plan and whether progress is being made toward establishing a stable and permanent placement for the child.

F. The Rules of Evidence shall not apply to hearings held pursuant to this section. The court may admit testimony by any person given notice of the hearing who has information about the status of the child or the status of the treatment plan.

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

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

- (1) dismiss the action and return the child to the child's parent without supervision if the court finds that conditions in the home that led to abuse have been corrected and it is now safe for the return of the abused child;
- (2) permit the child to remain with the child's parent, guardian or custodian subject to those conditions and limitations the court may prescribe, including protective supervision of the child by the department;
- (3) return the child to the child's parent and place the child under the protective supervision of the department;
- (4) transfer or continue legal custody of the child to:
  - (a) the noncustodial parent, if that is found to be in the child's best interests;
  - (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 and is appointed as a permanent guardian of the child; or
  - (c) the department, subject to the provisions of Paragraph (6) of this subsection;
- (5) continue the child in the legal custody of the department with or without any required parental involvement in a treatment plan; provided that reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety unless the court finds that such efforts are not required. The court may determine that reasonable efforts are not required to be made when the court finds that:
  - (a) the efforts would be futile; or
  - (b) the parent, guardian or custodian has subjected the child to aggravated circumstances;

(6) make additional orders regarding the treatment 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 plan or abused its discretion in the placement or proposed placement of the child; or

(7) if during a 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:

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

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

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

J. When the court determines, pursuant to Paragraph (5) of Subsection H 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. The department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

K. Once permanency hearings begin pursuant to 32A-4-25.1, judicial review hearings shall be held in conjunction with any permanency review hearing."

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

“32A-4-25.1. PERMANENCY HEARINGS—PERMANENCY REVIEW HEARINGS.--

A. A permanency hearing shall be commenced [~~within six months of the initial judicial review of a child's dispositional order or~~] within twelve months of a child entering foster care pursuant to Subsection [~~D~~] E of this section [~~whichever occurs first~~]. Prior to the initial permanency hearing:

(1) the department shall submit a copy of any continuation of the dispositional order and notice of hearing to the council or any substitute care review board designated pursuant to Section 32A-8-5 NMSA 1978;

(2) the department shall submit a progress report to any designated substitute care review board;

(3) all parties to the hearing shall attend a mandatory meeting and attempt to settle issues attendant to the permanency hearing and develop a proposed treatment plan that serves the child's best interest; and

(4) any designated substitute care review board may review the child's case and the department's progress report and report its findings and recommendations to the court.

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

- (1) reunification;
- (2) placement for adoption after the parents' rights have been relinquished or terminated or after a motion has been filed to terminate parental rights;
- (3) placement with a person who will be the child's permanent guardian;
- (4) placement in the legal custody of the department with the child placed in the home of a fit and willing relative; or
- (5) placement in the legal custody of the department under a planned permanent living arrangement, provided that there is substantial evidence that none of the above plans is appropriate for the child.

C. If the court adopts a permanency plan of reunification, the court shall ~~[adopt a plan]~~ find that there is a reasonable plan for transitioning the child home within ~~[a reasonable period depending on the facts and circumstances of the case, but not to exceed]~~ six months or less, and shall schedule a permanency review hearing within three months. ~~[If the child is reunified, the subsequent hearing may be vacated.]~~ Permanency review hearings will continue to be held every three months for as long as any child in the matter has a permanency plan of reunification or a permanency plan of a planned permanent living arrangement.

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

- (1) change the plan from reunification to one of the alternative plans provided in Subsection B of this section;
- (2) dismiss the case and return custody of the child to the child's parent, guardian or custodian;
- (3) continue legal custody of the child in the department to complete a transition home to the child's parent, guardian or custodian and continue the case plan for not more than six months, after which the case shall be dismissed unless the plan is changed as provided in Paragraph (1) of this subsection; or
- (4) return the child to the custody of the child's parent, guardian or custodian, subject to any conditions or limitations as the court may prescribe, including protective supervision of the child by the department and continuation of the case plan for not more than six months, after which the case shall be dismissed. The department may seek removal of a child from the home by obtaining an order in the pending case or by seeking emergency removal under Section 32A-4-6 NMSA 1978 during the period of protective supervision if the child's best interest requires such action. When a child is removed in this situation, a permanency hearing shall be scheduled within thirty days of the child coming back into the department's legal custody.

E. The court shall hold a permanency hearing and adopt a permanency plan for a child within twelve months of the child entering foster care. For purposes of this section, a child shall be considered to have entered foster care on the earlier of:

- (1) the date of the first judicial finding that the child has been abused or neglected; or
- (2) sixty days after the date on which the child was removed from the home.

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

~~[G.]~~ E. The children's court attorney shall give notice of the time, place and purpose of any permanency hearing or permanency review hearing held pursuant to this section to:

- (1) all parties, including:
  - (a) the child alleged to be neglected or abused or in need of court-ordered services, by and through the child's guardian ad litem or attorney;
  - (b) the child's parent, guardian or custodian, who has allegedly neglected or abused the child or is in need of court-ordered services; and
  - (c) any other person made a party by the court;
- (2) the child's foster parent or substitute care provider;
- (3) the child's court-appointed special advocate; and
- (4) if designated by the council, the substitute care review board.

~~[H.]~~ G. The Rules of Evidence shall not apply to permanency hearings. The court may admit testimony by any person given notice of the permanency hearing who has information about the status of the child or the status of the treatment plan. All testimony shall be subject to cross-examination.”

## 2. New Acts

### a. Crossover Youth Act<sup>4</sup>

**Note:** The “Crossover Youth Act,” (COYA) within the Children’s Code, Chapter 32A NMSA 1978, 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. The COYA defines “crossover youth” to mean a child who is simultaneously involved in both the child welfare and juvenile justice systems, whether or not the child has been adjudicated in those systems.

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<sup>4</sup> See Joint Letter from the Administration for Children and Families Children's Bureau (CB) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) regarding their commitment to addressing the complex needs of young people who navigate both the child welfare and juvenile justice systems, at <https://www.acf.hhs.gov/sites/default/files/documents/cb/joint-letter-cb-ojjdp-dually-involved-youth.pdf>

BILL  
57<sup>TH</sup> LEGISLATURE – STATE OF NEW MEXICO – FIRST SESSION, 2025  
INTRODUCED BY

**DISCUSSION DRAFT  
FINAL DRAFT FOR REVIEW**

AN ACT

RELATING TO CHILD WELFARE; ENACTING THE CROSSOVER YOUTH ACT; PROVIDING DEFINITIONS; CREATING THE CROSSOVER YOUTH PROGRAM; PROVIDING DUTIES; REQUIRED TRAINING FOR THE JUDICIARY, CHILDREN, YOUTH AND FAMILIES DEPARTMENT, THE LAW OFFICES OF THE PUBLIC DEFENDER AND THE ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS; REQUIRING INTRA-AGENCY AND INTERAGENCY COLLABORATION; PROVIDING BASIC RIGHTS; MAKING AN APPROPRIATION.

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

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

“[NEW MATERIAL] SHORT TITLE--Sections 1 through 6 of this act may be cited as the “Crossover Youth Act.”

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

“[NEW MATERIAL] DEFINITIONS--As used in the Crossover Youth Act:

A. “crossover youth” means a child who is simultaneously involved in both the child welfare and juvenile justice systems, whether or not the child has been adjudicated in those systems; and

B. “dually-involved eligible adult” means a person who is being served by the fostering connections program, pursuant to the Fostering Connections Act, and who is simultaneously involved in the juvenile justice system or adult criminal justice system.”

**SECTION 3.** A new section of the Children’s Code is enacted to read:

“[NEW MATERIAL] CROSSOVER YOUTH PROGRAM CREATED--PROGRAM COORDINATOR—DUTIES.--

A. The crossover youth program is created within the children, youth and families department. The department shall appoint a program coordinator to administer the crossover youth program.

B. The crossover youth program coordinator shall:

- (1) facilitate collaboration between the protective services division and the juvenile justice services division in all cases involving crossover youth;
- (2) facilitate collaboration between the fostering connections program and the adult justice system in all cases involving dually-involved eligible adults;
- (3) collect data, including data related to New Mexico crossover youth who are housed in a facility in another state or who have been adjudicated in the juvenile justice system in another state, regarding final determinations by the courts in all cases involving crossover youth and dually-involved eligible adults;
- (4) develop and deliver annual mandatory training materials to the children, youth and families department, the judiciary, the law offices of the public defender and the administrative office of the district attorneys. The training materials shall include information on the Crossover Youth Act; and
- (5) assist the children, youth and families department with the promulgation of rules and regulations pursuant to the provisions of the Crossover Youth Act.”

**SECTION 4.** A new section of the Children’s Code is enacted to read:

“[NEW MATERIAL] REQUIRED TRAINING—JUDICIARY-- CHILDREN, YOUTH AND FAMILIES DEPARTMENT—LAW OFFICES OF THE PUBLIC DEFENDER DEPARTMENT—ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS.--

A. The judiciary shall:

(1) require annual mandatory training on crossover youth issues, including issues concerning delinquent offenders, youthful offenders, victim’s rights, the federal Indian Child Welfare Act, the Indian Family Protection Act, the Fostering Connections Act, the negative impact of juvenile justice involvement on youth who are exiting from the foster care system, the impact of trauma on child development, and the eight core strategies of the juvenile detention alternatives initiative that are incorporated into the Children’s Code. The judiciary shall also develop training on best practices and procedures regarding the importance of having one judge for one family in cases involving crossover youth, when possible. When one judge for one family is not possible in crossover youth cases, the training shall address the importance of having judges confer with one another. The training shall be provided for all judicial officers assigned to children’s court divisions of the district courts, and all attorneys that are contracted with or employed by the Office of Family Representation and Advocacy; and

(2) require annual mandatory training on cultural humility and racial and ethnic disparities impacting youth who are involved in the juvenile justice system and the child welfare system. The training shall be provided for all judicial officers assigned to children’s court divisions of the district courts, and all attorneys that are contracted with or employed by the Office of Family Representation and Advocacy.

B. The children, youth and families department shall:

(1) require annual mandatory training on crossover youth issues, including issues concerning delinquent offenders, youthful offenders, victim's rights, the federal Indian Child Welfare Act, the Indian Family Protection Act, the Fostering Connections Act, the negative impact of juvenile justice involvement on youth who are exiting from the foster care system, the impact of trauma on child development, and the eight core strategies of the juvenile detention alternatives initiative that are incorporated into the Children's Code. The training shall be provided for all staff assigned to the protective services division and the juvenile justice services division, including all children's court attorneys; and

(2) require annual mandatory training on cultural humility and racial and ethnic disparities impacting youth who are involved in the juvenile justice system and the child welfare system. The training shall be provided for all staff and leadership assigned to the protective services division and the juvenile justice services division, including all children's court attorneys, and the general counsel.

C. The law offices of the public defender shall:

(1) require annual mandatory training on crossover youth issues, including issues concerning delinquent offenders, youthful offenders, victim's rights, the federal Indian Child Welfare Act, the Indian Family Protection Act, the Fostering Connections Act, the negative impact of juvenile justice involvement on youth who are exiting from the foster care system, the impact of trauma on child development, and the eight core strategies of the juvenile detention alternatives initiative that are incorporated into the Children's Code. The training shall be provided for all attorneys, including contract attorneys, and appropriate support staff working on cases with such impacted youth in the juvenile justice and child welfare systems; and

(2) require annual mandatory training on cultural humility and racial and ethnic disparities impacting youth who are involved in the juvenile justice system and the child welfare system. The training shall be provided for all attorneys, including contract attorneys, and appropriate support staff working on cases with such impacted youth.

D. The administrative office of the district attorneys shall:

(1) require annual mandatory training on crossover youth issues, including issues concerning delinquent offenders, youthful offenders, victim's rights, the federal Indian Child Welfare Act, the Indian Family Protection Act, the Fostering Connections Act, the negative impact of juvenile justice involvement on youth who are exiting from the foster care system, the impact of trauma on child development, and the eight core strategies of the juvenile detention alternatives initiative that are incorporated into the Children's Code. The training shall be provided for all attorneys and appropriate support staff working on cases with such impacted youth; and

(2) require annual mandatory training on cultural humility and racial and ethnic disparities impacting youth who are involved in the juvenile justice system and the child welfare system. The training shall be provided for all attorneys and appropriate support staff working on cases with such impacted youth.”

**SECTION 5.** A new section of the Children’s Code is enacted to read:

“[NEW MATERIAL] INTRA-AGENCY COLLABORATION--  
INTERAGENCY COLLABORATION.--

A. In all cases involving crossover youth, the protective services division and the juvenile justice division shall jointly manage the cases. The children, youth and families department shall develop protocols to ensure that case coordination between the divisions occurs on a formal basis.

B. In all cases involving crossover youth, the crossover youth program coordinator shall facilitate interagency collaboration to provide support and services to crossover youth and their families. The crossover youth program coordinator shall work with the Children, Youth and Families Department, the Public Education Department, the Department of Health, the Human Services Department, and any other appropriate departments and agencies.”

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

“[NEW MATERIAL] BASIC RIGHTS.--

A. When a crossover youth is placed in the legal custody of the department or another person and siblings of the crossover youth have not been jointly placed, the siblings shall have reasonable rights of visitation, unless the court finds that visitation would be contrary to the safety or well-being of any of the siblings.

B. When a crossover youth is placed in the legal custody of the department or another person, any parent, guardian or custodian of the crossover youth shall have reasonable rights of visitation unless the court finds that the best interests of the crossover youth preclude any visitation.”

**SECTION 7.** SECTION 32A-2-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 36, as amended) is amended to read:

“32A-2-7. COMPLAINTS—REFERRAL—PRELIMINARY INQUIRY—  
NOTICE—TIME WAIVER.--

A. Complaints alleging delinquency shall be referred to probation services, which shall conduct a preliminary inquiry to determine the best interests of the child and of the public with regard to any action to be taken.



B. During the preliminary inquiry on a delinquency complaint, the matter may be referred to another appropriate agency and conferences may be conducted for the purpose of effecting adjustments or agreements that will obviate the necessity for filing a petition. At the commencement of the preliminary inquiry, the parties shall be advised of their basic rights pursuant to Section 32A-2-14 NMSA 1978, and no party may be compelled to appear at any conference, to produce any papers or to visit any place. The child shall be informed of the child's right to remain silent. The preliminary inquiry shall be completed within the time limits set forth in the Children's Court Rules.

C. Prior to a preliminary inquiry being conducted with a child who is detained, the child's parent, guardian or custodian or the child's attorney shall be given reasonable notice by the juvenile probation and parole officer and an opportunity to be present at the preliminary inquiry. Prior to a preliminary inquiry being conducted with a crossover youth who is detained, the crossover youth's parent, guardian or custodian, the crossover youth's attorney and guardian ad litem, and the protective services division shall be given reasonable notice by the juvenile probation and parole officer and an opportunity to be present at the preliminary inquiry. If a child is not detained, the preliminary inquiry shall be conducted within thirty days of receipt of the referral from law enforcement. The thirty-day time period may be extended upon a determination by the department that an extension is necessary to conduct a thorough preliminary inquiry and that the extension is not prejudicial to the best interests of the child.

D. When a child is in detention or custody and the children's court attorney does not file a petition within the time limits authorized by the Children's Court Rules, the child shall be released immediately. If a child is not detained and a determination is made to file a petition, the petition shall be filed within sixty days of completion of the preliminary inquiry, unless a motion is granted to extend the time limit for good cause shown. If a child is not in custody or detention, a petition shall not be dismissed for failure to comply with the time limit set forth in this subsection unless there is a showing of prejudice to the child.

E. After completion of the preliminary inquiry on a delinquency complaint involving a misdemeanor, probation services may notify the children's court attorney and recommend an appropriate disposition for the case. If the child has been referred for three or more prior misdemeanors within two years of the instant offense, probation services shall notify the children's court attorney and recommend an appropriate disposition for the case.

F. Probation services shall notify the children's court attorney of the receipt of any complaint involving an act that constitutes a felony under the applicable criminal law. Probation services shall also recommend a disposition to the children's court attorney.

G. The child, through counsel, and the children's court attorney may agree, without judicial approval, to a waiver of time limitations imposed after a petition is filed. A time waiver defers adjudication of the charges. The children's court attorney may place restrictions on a child's behavior as a condition of a time waiver. If the child completes

the agreed upon conditions and no new charges are filed against the child, the pending petition shall be dismissed. If the children's court attorney files a new petition against the child, the children's court attorney may proceed on both the original petition and the new charges. The department shall become a party if probation services are requested as a condition of the time waiver.”

**SECTION 8.** Section 32A-2-24 NMSA 1978 (being Laws 1993, Chapter 77, Section 53, as amended) is amended to read:

**“32A-2-24. PROBATION REVOCATION—DISPOSITION—CROSSOVER YOUTH.--**

A. A child on probation incident to an adjudication as a delinquent child who violates a term of the probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be begun by filing in the original proceeding a petition styled as a "petition to revoke probation". Petitions to revoke probation shall be screened, reviewed and prepared in the same manner and shall contain the same information as petitions alleging delinquency. Procedures of the Delinquency Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for these allegations.

B. The standard of proof in probation revocation proceedings shall be evidence beyond a reasonable doubt and the hearings shall be before the court without a jury. In all other respects, proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to proceedings on a delinquency petition. If a child is found to have violated a term of the child's probation, the court may extend the period of probation or make any other judgment or disposition that would have been appropriate in the original disposition of the case.

C. During a probation revocation proceeding for a crossover youth, the petition to revoke probation shall include a statement filed by the juvenile justice division of the department that the division made reasonable efforts to help the crossover youth with the successful completion of all probation requirements, including the specific details of such efforts.”

**SECTION 9. APPROPRIATION.--** One hundred thousand dollars (\$100,000) is appropriated from the general fund to the children, youth and families department for expenditure in fiscal year 2026 to create and staff the crossover youth program. Any unexpended or unencumbered balance remaining at the end of fiscal year 2026 shall revert to the general fund.

## **b. Reinstatement of Parental Rights Act**

**Note:** Unlike the other proposed legislation contained in this report, the task force chose to include work previously done by a committee of the CCIC re: reinstatement of parental rights. Rarely, but occasionally, a young person’s best interest would be served by reuniting safely with a parent who has, subsequent to the loss of their parental rights, been able to address the “causes and conditions that brought the child into [state] custody.”

BILL  
57th LEGISLATURE – STATE OF NEW MEXICO – 2025  
INTRODUCED BY

**DISCUSSION DRAFT  
FINAL DRAFT FOR REVIEW**

AN ACT

RELATING TO CHILD WELFARE; ENACTING THE REINSTATEMENT OF PARENTAL RIGHTS ACT.

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

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

“[NEW MATERIAL] SHORT TITLE.--Sections 1 through 14 of this act may be cited as the “Reinstatement of Parental Rights Act”.”

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

“[NEW MATERIAL] DEFINITIONS.--As used in the Reinstatement of Parental Rights Act:

A. “former parent” means a parent whose rights to their child were legally terminated or a parent who has relinquished their rights.”

**SECTION 3.** A new section of the Children’s Code is enacted to read:

“[NEW MATERIAL] JURISDICTION AND VENUE.--

A. The court has exclusive original jurisdiction of all proceedings pursuant to this act.

B. A petition initiating proceedings pursuant to this act shall be filed in the court of the county:

- (1) of the child’s legal residence;
- (2) where the child resides; or
- (3) where the parent seeking reinstatement resides.

C. Any party may request a change of venue.

D. A change of venue shall be granted if all parties are in agreement.

E. A change of venue may be granted upon a showing that:

- (1) a different venue is where most of the information upon which the court must base its findings is located; or
- (2) for good cause.

F. Any party may exercise the right of excusal as per NMSA Section 38-3-9 (1978).”

**SECTION 4.** A new section of the Children’s Code is enacted to read:

“[NEW MATERIAL] PETITION.--

A. A petition initiating proceedings pursuant to this act may be filed by the child, a former parent, or the department.

B. A petition for reinstatement pursuant to this act shall be entitled, “In the Matter of the Reinstatement of Parental Rights of ....., and concerning ....., a child”, shall be filed as a new case with the court, and shall set forth with specificity:

1. it is in the best interest of the child;
2. a material change in circumstance exists in which the parent or parents can now be reasonably expected to provide for the safety and stability of the child;
3. at least twelve (12) months have elapsed since the termination of parental rights order was entered and any appeals have been exhausted. The twelve (12) month requirement may be waived if:
  - a. the child will turn 18 years old in fewer than 12 months; or
  - b. the department files the petition and alleges good cause exists; or
  - c. extraordinary circumstances exist;
4. The child is currently or was previously in the department’s custody;
5. The name and birth date of the child;
6. The date the former parent’s rights were relinquished or terminated;
7. The child has not reached permanency through adoption or permanent guardianship, the adoption or permanent guardianship was granted but not sustained, or the adoptive parent or permanent guardian consents to the proceeding;
8. the child is not in an adoptive or other potentially permanent placement that will result in sustained permanency for the child, and a potential permanent placement is not likely to occur within six months from the filing of the Petition;
9. whether the child is an Indian Child; and
10. the birth name of the child; any other names by which the child has been known; and if a name change is requested, the child’s proposed name, which could be the child’s former name.

C. The following documents shall be attached to the petition:

1. consent to the reinstatement by:
  - a. the child who is the subject of the reinstatement, if ten years of age or older except when the court finds that the child does not have the mental capacity to give consent; and
  - b. the former parent whose rights are proposed to be reinstated; or
  - (c) an order terminating a prior adoption or guardianship or consent of the adoptive parent or guardian; and
- (2) a plan for transitioning the child back into the parent’s home within a reasonable period depending on the facts and circumstances of the case but not to exceed ninety [90]

days or a request for the department to provide transition services and establish a plan to transition the child into the former parent's home.

D. An amended petition may be filed by the former parent's attorney, the child's attorney or the department."

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

"[NEW MATERIAL] LEGAL STATUS OF ADOPTION OR GUARDIANSHIP.--

A. If the child was adopted or in a permanent guardianship, and the adoptive parents or guardians do not consent to the reinstatement of parental rights of the former parent, then the case is not ripe for reinstatement.

B. Prior to the filing of a petition for reinstatement, the adoptive parent's rights shall have been relinquished or terminated, or the permanent guardianship shall have been terminated pursuant to the provisions of the Children's Code."

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

"[NEW MATERIAL] APPOINTMENT OF COUNSEL.--

A. Upon the filing of a petition for reinstatement, an attorney shall be appointed by the court to represent a former parent who is named in the petition and whose rights the petition seeks to have reinstated if they are indigent or if it is required in the interest of justice. If the former parent consents, the attorney who previously served as the former parent's attorney in an abuse and neglect case may be appointed.

B. Upon the filing of a petition for reinstatement, an attorney shall be appointed by the court to represent the child. If the child consents, the attorney who is currently serving as the child's attorney in an abuse or neglect case or who previously served as the child's attorney in an abuse and neglect case may be appointed.

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

"[NEW MATERIAL] NOTICE OF PETITION--SUMMONS--FORM OF SERVICE—  
WAIVER.--

A. The petition for reinstatement, notice of hearing, and summons shall be served by the petitioner on the department, unless service has been previously waived in writing. The clerk of the court shall mail to the director of protective services in Santa Fe a copy of the petition for reinstatement, notice of hearing, and summons within one working day of the notice of hearing being filed with the court. Upon written request to the court, the department may seek alternative methods of service such as service by email.

B. The following shall be served by certified mail, return receipt requested or pursuant to the Rules of Civil Procedure for the District Courts:

- (1) any person whose consent is required;
- (2) any person known to the petitioner having custody or visitation with the child under court order; and
- (3) the Indian tribe or tribes and the Indian custodian, if the child is an Indian child pursuant to the provisions of the Indian Family Protection Act.

C. The summons shall state that the person served shall respond to the petition within twenty (20) days if the person or agency intends to contest the reinstatement. The notice shall also state that failure to so respond shall be treated as a default.

D. The service required by this section may be waived in writing by the persons entitled to service. The department cannot waive service.

E. Proof of service of the Petition, summons and notice of hearing on all persons for whom service is required by this section shall be filed with the court.

F. The persons required to be served pursuant to Subsection B of this section have a right to intervene and file a response.

G. Service as set forth in this section is not required for a former parent who is not a party to the petition for reinstatement.”

**SECTION 8.** A new section of the Children’s Code is enacted to read:

“[NEW MATERIAL] INITIAL HEARING.--

A. The court shall hold an initial hearing within twenty (20) days of the filing of the petition.

B. The court shall issue a notice of the hearing within one (1) day of the filing of the petition.

C. The rules of evidence shall not apply.

D. If upon completion of the initial hearing, the court finds that there is probable cause to believe that the requirements of the petition have been met and that the best interests of the child may be served by reinstatement of parental rights, the court shall set a hearing on the merits of the petition to be held within sixty (60) days.

E. If upon completion of the initial hearing the court does not find probable cause, the petition may be denied or the court may allow an amendment to the petition, in which case an initial hearing shall be held within ten days of filing the amended petition.”

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

“[NEW MATERIAL] MERITS HEARING.--

A. Upon a finding of probable cause, the court shall conduct a hearing on the merits of the petition for the reinstatement of parental rights.

B. The hearing shall be held no later than sixty (60) days from the initial hearing. Upon a finding of extraordinary circumstances, the hearing may be continued for no more than an additional forty-five (45) days.

C. Prior to the hearing, all parties shall attend a mandatory meeting to develop a proposed plan to transition the child into the former parent’s home and identify any necessary transition services. Upon the request of any party, the court shall order mediation in lieu of or in addition to the mandatory meeting.

D. The grounds for reinstatement of parental rights shall be proved by preponderance of evidence and the rules of evidence shall apply.

E. The court shall grant the petition for reinstatement if the court finds the following:

1. reinstatement is in the best interest of the child;
2. a material change in circumstance exists in which the parent or parents can provide for the safety and stability of the child;

3. the date the former parent's rights were relinquished or terminated;
4. at least twelve (12) months have elapsed since the termination of parental rights order was entered and any appeals have been exhausted. The twelve (12) month requirement may be waived if:
  - a. the child will turn eighteen (18) years old in fewer than twelve (12) months;
  - b. the department files the petition and alleges good cause exists; or
  - c. extraordinary circumstances exist;
5. the child is currently or was previously in the department's custody;
6. the child has not reached permanency through adoption or permanent guardianship, the adoption or permanent guardianship was granted but not sustained, or the adoptive parent or permanent guardian consents to the proceeding;
7. the child is not in an adoptive or other potentially permanent placement that will result in permanency for the child, and a potential permanent placement is not likely to occur within six (6) months from the filing of the petition;
- (8) the Indian tribe or the Indian custodian received notice of the proceedings if the child is an Indian child;
- (9) all required consents have been attained; and
- (10) a plan to transition is not necessary to transition the child into the parent's home.

F. At the conclusion of the hearing, the court shall order one of the following:

1. if all requirements in paragraph E have been met, the petition is granted, and the parent is granted legal and physical custody of the child;
2. if all the requirements in paragraph E, except E(10) have been met, the court shall order a plan to transition the child into the former parent's home and any necessary transition services; or
3. the petition is denied.

G. When the court orders a plan to transition the child back into the former parent's home, it shall include a transition into the former parent's home within ninety (90) days, any requested transition services, and shall designate the parent's rights and responsibilities during the transition period. Legal custody of the child remains with the legal custodian during the transition period.

H. At the end of the plan to transition the child back into the former parent's home, the court shall proceed as follows:

1. the court shall enter an order granting the petition if all parties are in agreement; or
2. the court shall hold a hearing to determine if the petition should be granted, denied, or if additional time to transition is necessary, the court may extend the plan to transition the child back into the former parent's home for up to an additional ninety (90) days."

**SECTION 10.** A new section of the Children’s Code is enacted to read:  
“[NEW MATERIAL] FINAL ORDER OF REINSTATEMENT.--

A. When the court grants the petition, it shall enter a final order of reinstatement of parental rights, which shall restore all rights, powers, privileges, immunities, duties, and obligations of the parent as to the child, including those relating to custody, control, and support of the child. The order of reinstatement shall include the new or restored name of the child if requested and consented to by the child who is the subject of the reinstatement and who has achieved sufficient age and maturity.

B. The granting of the petition does not vacate or otherwise affect the validity of the original termination order as to any non-petitioning parties. A judgment of the court reinstating the parental rights to a parent divests the consenting adoptive parent, permanent guardian, or the department of legal and physical custody or guardianship of the child.

C. The court shall order the dismissal of any pending matter relating to the child originating out of the case against the petitioning parent pursuant to the provisions of the Abuse and Neglect Act and direct the clerk's office to provide a certified copy of the final order of reinstatement of parental rights to the parent at no cost.

D. If the rights of both former parents are reinstated, and parents do not reside together, then the court may enter a temporary custody and time-sharing order. The parties whose rights have been reinstated shall petition the domestic relations court for a final custody plan.”

**SECTION 11.** A new section of the Children’s Code is enacted to read:  
“[NEW MATERIAL] DEPARTMENT’S DUTIES AND AUTHORITY ARE NOT ABROGATED.--

A. There is nothing in this act that supersedes the department’s obligation and ability to investigate allegations of abuse or neglect on the child who is the subject of the petition.

B. If the child is removed from the former parent’s home prior to reinstatement, the department shall file notice with the court.”

**SECTION 12.** A new section of the Children’s Code is enacted to read:  
“[NEW MATERIAL] CHILD SUPPORT AND COSTS.--Any parent whose parent-child legal relationship is restored is not liable for any unpaid child support or the unpaid costs of any services provided to the child from the date of the original order terminating the parental-child relationship to the date of the order reinstating the parent-child relationship.”

**SECTION 13.** A new section of the Children’s Code is enacted to read:  
“[NEW MATERIAL] BIRTH CERTIFICATES.--

A. The parent whose rights have been reinstated may prepare an application for a birth certificate in the new or restored name of the child, showing them as the child’s parent. The parent shall forward the application to the registrar of vital statistics in the state where the child was born.

B. The state registrar of vital statistics shall prepare a birth record in the new or restored name of the child and the name of the reinstated parent in accordance with the vital statistics laws.”



**SECTION 14.** A new section of the Children’s Code is enacted to read:  
“[NEW MATERIAL]. APPEAL.--Indigent former parents and children are entitled to court appointed counsel upon appeal.”

### **3. Task Force Recommendations**

Operating under a strict deadline of June 30, 2024 for the submission of its final report, in several 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: 1. The Children’s Code Reform Task Force, should it receive additional funding to allow it to continue its work; 2. The Legislature; 3. The Executive and various state agencies; 4. The Judiciary; and 4. Advocacy and work groups (including the Children’s Court Improvement Commission (CCIC)).

#### **Task Force Recommendations:**

##### **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 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.<sup>5</sup> 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

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<sup>5</sup> See <https://www.childrencabinet.nm.gov/childrens-cabinet-contributors/>

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 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.

**Recommendation #4**

That the legislature add a definition of "dependent child" under Section 32A-4-2 NMSA 1978, within the Abuse and Neglect Act, to address those situations when a child's parents are deceased or medically unable to provide care and no other caretaker is available, but where there was no 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.

**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.

**Recommendation #5**

That 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. 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.<sup>6</sup>

### **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.<sup>7</sup> Additionally, the National Center on Substance Abuse and Child Welfare support evidence-based medication practices.<sup>8</sup>

### **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

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<sup>6</sup> See Juvenile Justice Services Procedure P.5.29 JRC (3), “ Search Techniques” at <https://klvg4oyd4j.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/>

<sup>7</sup> See <https://www.fda.gov/drugs/information-drug-class/information-about-medications-opioid-use-disorder-moud>

<sup>8</sup> See <https://ncsacw.acf.hhs.gov/topics/medication-assisted-treatment/>

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.

### **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 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]”.<sup>9</sup> 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.<sup>10</sup>

### **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]”.<sup>11</sup> 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.<sup>12</sup>

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<sup>9</sup> 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>

<sup>10</sup> See, e.g. <https://rights4girls.org/wp-content/uploads/r4g/2016/08/No-Such-Thing-one-pager11.pdf>

<sup>11</sup> See fn. 6, above.

<sup>12</sup> See fn. 7, above.

### **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 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.<sup>13</sup>

### **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.”

## **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.<sup>14</sup>

**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

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<sup>13</sup> See <https://uscode.house.gov/view.xhtml?path=/prelim@title22/chapter78&edition=prelim#:~:text=Pub.-L.,Protection%20Act%20of%202000,%22>

<sup>14</sup> See Rule 10-343, Children’s Court Rules.

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.)

**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 Government<sup>15</sup>**

##### **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.<sup>16</sup> 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.<sup>17</sup> In contrast, some states have reduced confidentiality requirements in child welfare cases.<sup>18</sup> Questions arise as to who shielding a dysfunctional system serves.

##### **Recommendation #20**

That the courts and the Children, Youth and Families Department (CYFD) explore whether Kinship Guardianship Act funding can be provided to guardians without bringing the family into the abuse and neglect system.

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<sup>15</sup> The CCIC is included here because it is comprised of representatives of all three branches of government, including several state agencies.

<sup>16</sup> 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>

<sup>17</sup> 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.

<sup>18</sup> 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://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/confide.pdf?VersionId=LUGuVVqo2zHalgGfCAmBFSLxj8n240s2>. 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](https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=67)

**Notes:** There is concern that because kinship guardians have to be licensed by CYFD in order to get funding, it brings the family into the abuse and neglect system, potentially facilitating referrals and investigations when a family is seeking support, and with a disparate impact upon families suffering from poverty who become subject to greater scrutiny when they accept government benefits. Currently, the same federal subsidy is used for both adoption and guardianship.

### **Recommendation #21**

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 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.<sup>19</sup>

### **Recommendation #22**

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.<sup>20</sup> 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.<sup>21</sup> The success of UBI has been documented.<sup>22</sup> Studies have shown that even a \$100 income support has served to reduce engagement with child welfare agencies.

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<sup>19</sup> 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/> .

<sup>20</sup> See <https://www.forbes.com/advisor/personal-finance/universal-basic-income-programs/> and <https://www.washingtonpost.com/magazine/2022/10/24/universal-basic-income/>

<sup>21</sup> Id, Forbes article, fn. 13.

<sup>22</sup> 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>



**Recommendation #23**

That the executive, legislative and judicial branches employ the three-branch approach where feasible and appropriate, to reform child and family welfare.<sup>23</sup>

**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 #24**

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

**Recommendation #25**

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 2<sup>nd</sup> 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 Assessment and Recommendation of Changes to the Code:**

- 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

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<sup>23</sup> See <https://www.nga.org/threebranch/>

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

#### **IV. 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
- Jesse Clifton, JD - Attorney, Disability Rights New Mexico
- 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
- Hilari Lipton, JD - Director of Law and Policy, NM Appleseed
- 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
- Judge Alma Roberson, JD - Children’s Court Judge, Second Judicial District

- Judge John E. Romero, JD - Children’s Court Judge, ret’d, Second Judicial District
- 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, 2<sup>nd</sup> Judicial District
- Judge Diana Garcia – Children’s Court Judge, 2<sup>nd</sup> Judicial District
- Dennica Torres, District Defender, Law Offices of the Public Defender (Second Judicial District)

## **V. 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 procedures<sup>24</sup>:

- 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 website<sup>25</sup>.
- Announced that recordings of meetings would be posted online on the task force webpage.<sup>26</sup>
- 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.

### **B. Subcommittees**

1. First task force meeting, January 2023: members discussed issues that needed addressing and what they thought most needed to be fixed; Chair

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<sup>24</sup>See [https://childlaw.unm.edu/assets/docs/resolution\\_for\\_ccrtf\\_final\\_signed.pdf](https://childlaw.unm.edu/assets/docs/resolution_for_ccrtf_final_signed.pdf) for the full resolution.

<sup>25</sup> See <https://childlaw.unm.edu/childrens-code-reform-task-force/index.html>

<sup>26</sup> 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.

then singled out two subcommittees, based on responses: Improving Responses to Poverty and Substance Misuse, and Crossover Youth.

2. Members self-selected which subcommittee(s) they wished to participate in – some chose both.
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 to work on
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 and recommendations

## **VI. Subcommittee Business and Reports**

### **A. Crossover Youth**

1. **Task:** The subcommittee had a goal of developing proposed draft legislation creating the “Crossover Youth Act,” (COYA) within the Children’s Code, Chapter 32A NMSA 1978, to define 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. The COYA defines “crossover youth” to mean a child who is simultaneously involved in both the child welfare and juvenile justice systems, whether or not the child has been adjudicated in those systems.

The task force also undertook the creation of a “Crossover Youth Fact Sheet” to educate legislators, the media and the public containing basic facts and information regarding crossover youth.<sup>27</sup>

2. **Members**<sup>28</sup>
  - Carolyn Casillas
  - Rosenda Chavez-Lara
  - Jesse Clifton
  - Matthew Cockman
  - Bette Fleishman, Chair
  - Hilari Lipton
  - Senator Linda Lopez
  - Judge Alma Roberson
  - Brandie White

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<sup>27</sup> See Appendix D, below

<sup>28</sup> See Section 3, above, for member affiliation. Previous members: Judge Cathering Begaye; Judge Diana Garcia; Dennica Torres.

### **3. Process**

- a. Met as a full subcommittee for 90 minutes once every two weeks. The subcommittee began meeting in February of 2023 and continued to meet into June 2024.
- b. Reviewed recommendations on crossover youth from the Children’s Court Improvement Commission (CCIC).
- c. Reviewed “crossover youth” and related definitions, laws and processes regarding the same from other jurisdictions
- d. Drafted and vetted proposed legislation, “Crossover Youth Act”.
- e. Created a “Crossover Youth” fact sheet
- f. Subcommittee members reviewed the draft legislation and the fact sheet

## **B. Improving Responses to Poverty and Substance Misuse**

1. **Task:** The subcommittee has a goal of developing draft legislation that will, generally, make more resources available, financial and otherwise, to families and children; disentangle poverty from neglect; promote families staying together and reunifying; and synchronize the timing of state child welfare processes with both federal timelines and the reality of treatment for substance misuse. The subcommittee worked to accomplish this goal by self-selecting into the following subgroups (with some members working in multiple subgroups):

- a. Neglect definition
- b. Economic stabilization
- c. “Presumptive abandonment” and Termination of Parental Rights (TPR)
- d. Timelines
- e. Expansion of Families in Need of Court-Ordered Services (FINCOS)

### **2. Members**

- Shelley Bucher
- Alison Endicott-Quinones
- Beth Gillia
- Shira Greenberg
- Leslie Jones, Co-Chair
- Senator Linda Lopez
- Mary McQueeney
- Catherine Pavelski, Co-Chair
- Judge Alma Roberson
- Former Judge John E. Romero
- Jacqueline Yalch

### **3. Process**

- a. Met as a full subcommittee every two weeks for 90 minutes

- b. Considered the proposed Reinstatement of Parental Rights Act, as previously drafted by a workgroup of the New Mexico Children’s Court Improvement Commission (CCIC).
- c. Identified priorities and created subgroups to work on discreet issues and draft proposed legislation, where appropriate:

**(1) Section 32A-4-2 NMSA 1978, Abuse and Neglect Subgroup:** The subgroup worked on the following issues:

- Amending the definition of “neglected child” to clarify that poverty alone is not neglect; and address situations when a child has negligent unsupervised access to firearms.
- Preventing child removal and longer stays in custody when poverty is the only issue.

**(a) Legislation**

- Amendments to Section 32A-4-2(D)(F) and (G) to amend the definition of “neglected child” to clarify that poverty alone is not neglect and to address situations when a child has negligent unsupervised access to firearms.
- Amendments to Sections 32A-4-7 and 32A-4-22 NMSA 1978 to prevent child removal and longer stays in custody when poverty is the only issue.

**(b) Recommendations:** Recommendations drafted by this subgroup have been approved by the full task force and are listed in Section III(A)(3), above.

**(2) Economic Stabilization Subgroup:** Worked on revisions to the code that will help to provide economic stabilization for families, including the creation of ABLE accounts for children in state custody and the provision of basic income pilot programs for families involved in the child welfare system.

**(a) Legislation**

- Amend Sections 32A-4-21 and 32A-4-22 NMSA 1978 to ensure the economic wellbeing of children in state custody.

**(b) Recommendations:** Recommendations drafted by this subgroup have been approved by the full task force and are listed in Section III(A)(3), above.

**(3) Presumptive Abandonment and TPR Subgroup:** Worked on revisions to the code that will remove “presumptive abandonment” as grounds for the

termination of parental rights (TPR) in child welfare cases and under the Abuse and Neglect Act.

**(a) Legislation**

- Amend Section 32A-4-28 NMSA 1978 to remove subsections B(3) and C and “presumptive abandonment” as a grounds for TPR under the Abuse and Neglect Act.

**(b) Recommendations:** None

**(4) Timelines Subgroup:** Worked on revisions to the code that will provide for earlier and more frequent judicial reviews, better aligned with federal “Adoption and Safe Families Act” (ASFA) timelines, to provide sufficient time for families suffering from substance misuse to undergo treatment, yet still provide for the safety and welfare of children, and provide for timely permanency for children, which may include reunification with their families, in child welfare cases.<sup>29</sup>

**(a) Legislation**

- Amend Section 32A-4-19 NMSA 1978 (Adjudication)
- Amend Section 32A-4-22 NMSA 1978 (Disposition)
- Amend Section 32A-4-25 NMSA 1978 (Periodic Jud. Review)
- Amend Section 32A-4-25.1 NMSA 1978 (Permanency Hearings)

**(b) Recommendations:** Recommendations drafted by this subgroup have been approved by the full task force and are listed in Section III(A)(3), above.

**(5) Expansion of FINCOS Subgroup:** Working on revisions to the code that will expand the definition of “families in need of court-ordered services” (FINCOS), in order to make more families eligible for available services.

**(a) Legislation:** None

**(b) Recommendations:** Recommendations drafted by this subgroup have been approved by the full task force and are listed in Section III(A)(3), above.

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<sup>29</sup> See [https://childlaw.unm.edu/assets/docs/the\\_timeline\\_color\\_double\\_sheet\\_with\\_citations.pdf](https://childlaw.unm.edu/assets/docs/the_timeline_color_double_sheet_with_citations.pdf) for a graphic depiction of the current timeline in a typical child and family welfare case.

4. **Reports:** In order to inform the work of the task force, the coordinator and the staff of the task force completed the following reports:

a. **Report: *Permanency Timelines and Judicial Review***<sup>30</sup>

As the Children’s Code has evolved and the federal Adoption and Safe Families Act (AFSA) has been implemented, the timeframes within which important decisions must be made have consistently shortened. This sense of urgency reflects the reality that time is not static to a child. A child separated from his or her family deserves the speediest of resolutions. Foster care is a stopgap measure, never a solution.

Consequently, the report compares timelines in New Mexico with timelines used in child welfare cases in other jurisdictions.

b. **Report: *Disentangling Poverty and Neglect in The Child Welfare System: In New Mexico and Beyond***<sup>31</sup>

Aware of a national movement to disentangle poverty and neglect<sup>32</sup>, and with the knowledge that New Mexico, as of 2021, was one of six states with a poverty rate of 22% or more – joining Alabama, Arkansas, Kentucky, Louisiana and Mississippi<sup>33</sup> - the report examined efforts undertaken, or not, by New Mexico and other states, in support of that movement. The report looked at statutes, rules and regulations, case law, plans for reform and ongoing efforts to find solutions through statutory changes, training, multiple agency coordination and collaboration, multigenerational involvement and increased and/or redirected resources.

The report noted that with a strong focus on improving outcomes for children in the child welfare system, New Mexico – including the governor, legislators, state agencies, advocates and those with lived experience – could be poised to move forward in enacting reforms that will serve children and families in poverty and in the child welfare system.

The report further noted that solutions to the problem of poverty and neglect entanglement can occur and are occurring in multiple ways:

- Changing the definition of “neglect” to exclude problems related solely to poverty and for which there is no available assistance
- Moving money from surveillance activities and unwarranted foster care to providing resources to families that will help alleviate poverty

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<sup>30</sup> <https://childlaw.unm.edu/assets/docs/permanency-timelines-and-judicial-review.pdf>

<sup>31</sup> <https://childlaw.unm.edu/assets/docs/disentangling-poverty-and-neglect-in-the-child-welfare-system-in-nm-and-beyond.pdf>

<sup>32</sup> <https://aphsa.org/APHSABlog/mhhspp/poverty-and-neglect-are-not-the-same.aspx>

<sup>33</sup> <https://assets.aecf.org/m/resourcedoc/aecf-2023kidscountdatabook-2023.pdf> ;  
<https://www.census.gov/library/stories/2022/10/poverty-rate-varies-by-age-groups.html>;  
<https://www.census.gov/content/dam/Census/library/stories/2022/10/poverty-rate-varies-by-age-groups-figure-1.jpg>



- Retraining intake personnel and case workers and investigators to recognize when resources to alleviate poverty will resolve issues and give these workers the power to refer families to these resources
- Removing some mandated reporter requirements
- Involving multiple generations
- Involving multiple agencies

The report opined that perhaps information contained within can provide a roadmap or augment existing roadmaps for how best to care for ALL of our children.

## VII. 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.

Here are the responses, presented anonymously, that the task force received in the online survey:

- **Suggested change(s):** Reinstatement of parental rights. Compliance with IFPA/ICWA. Cross over youth.
  - **Who Benefits?** New Mexico’s children and families.
- **Suggested change(s):** So many
  - **Who Benefits?** children and families
- **Suggested change(s):** Possibly child age of consent for services
  - **Who Benefits?** Children and families
- **Suggested change(s):** Clarify def on neglect (disentangle from poverty). Reinstatement of parental rights.
  - **Who Benefits?** Children and families.
- **Suggested change(s):** Revising the age 14 as the age to make behavioral health decisions.
  - **Who Benefits?** Families
- **Suggested change(s):** We need to look at the policy that allows youth 14 years old to opt out of behavioral health care is causing poor outcomes for NM youth. Is this policy causing youth to have higher levels of involvement in Juvenile Justice, Child Protective Services, Residential Treatment or contributing to our high youth suicide and overdose rates?
  - **Who Benefits?** Children and Families
- **Suggested change(s):** Separation of JJ and CPS. State run county administered structure.
  - **Who Benefits?** Children at risk of placement.
- **Suggested change(s):** No suggestions at this time. Just trying to learn more.

- **Who Benefits?** Children in New Mexico
- **Suggested change(s):** Family Court: Definition of child psychological child abuse in the reporting laws for guidance to the family courts and mental health professionals regarding obligations to protect children from all forms of child abuse. Wording balance in Kayden's Law to ensure concerns of both parent-litigants for abusive range parenting are properly addressed.
  - **Who Benefits?** Children in the family courts, protection from child abuse by a pathological (narcissistic-borderline-dark personality) parent. Protection of parents following divorce from spousal psychological abuse using the child as the weapon.
- **Suggested change(s):** 1) Separate statutory definitions for emotional child abuse and psychological child abuse. 2) Coercive control statutorily defined as abuse. 3) Child-witnessed domestic violence statutorily defined as emotional child abuse by DV offender. 4) Procedures for family court cases with CYFD involvement.
  - **Who Benefits?** Families experiencing domestic violence, coercive control, emotional and/or psychological child abuse, and CYFD involvement during child custody litigation in family court cases.
- **Suggested change(s):** Age of youth to deny behavioral health services.
  - **Who Benefits?** Youth and families
- **Suggested change(s):** Children's Rights and Sanctions for Violations
  - **Who Benefits?** children and youth
- **Suggested change(s):** Harsher penalties when CYFD is found to not have made reasonable efforts in providing court-ordered services for children in foster care. Loss of federal funding is apparently not enough. There should also be a loss in State funding that affects the County office management.
  - **Who Benefits?** Children who have been abused/neglected.
- **Suggested change(s):** I'm not sure yet but I'm very interested in this task force.
  - **Who Benefits?** Children and their parents
- **Suggested change(s):** Give both parents and the minor child (below the age of 18) the right to consent to mental health treatment and do not allow the minor child to refuse treatment where the parent has given consent.
  - **Who Benefits?** Parents and minor children.
- **Suggested change(s):** Clarify the definition of neglect. Who has removal authority. Clarify the charge and structure of CYFD.
  - **Who Benefits?** Young people and families impacted by systems
- **Suggested change(s):** Many areas have been identified when we began; ultimately a full review would be appropriate but that is outside this time period
  - **Who Benefits?** the children of New Mexico; protecting their rights.
- **Suggested change(s):** More child- and family-centered
  - **Who Benefits?** Children and families involved in delinquency and dependency proceedings.
- **Suggested change(s):** NMSA 32A-26-1 extend Fostering Connections eligibility to age 24.
  - **Who Benefits?** Youth who have aged out of foster care.
- **Suggested change(s):** More protection for children. They need more rights.
  - **Who Benefits?** abused children

**B. Task Force Meeting Recordings:** 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.

**C. Written Statements and Materials**

1. **Statement:** During the March 28, 2024 meeting of the CCRTF, the task force received the following statement from Monica Miura, an advocate.

*My name is Monica Miura and I am an advocate working with a coalition, which includes members from: the State of NM Behavioral Health Planning Council's Child and Adolescent Subcommittee, Families ASAP, Attachment Healing Center, and Southern NM NAMI, that are committed to improving outcomes for children with mental health challenges and the families that are raising them. Our coalition has been focused on the desire to study the possible benefits of changing the wording in the Children's Code (found in the various sections of 32A-6A), to give both parents and the minor child the right to consent to mental health treatment.*

*Currently the Children's Code says that a minor child at 14 years old can refuse mental health treatment. We would not be the first state to change this law. A 2016 study, "What Can Parents Do? A Review of State Laws Regarding Decision Making for Adolescent Drug Abuse and Mental Health Treatment" conducted on behalf of the NIH, examined US state laws regarding parental and adolescent decision-making for substance use and mental health inpatient and outpatient treatment. These ten states have this updated joint consent law in place: Idaho, Kansas, Maryland, Massachusetts, Montana, Nebraska, New Hampshire, New York, Pennsylvania, and Texas.*

*Our coalition would like to see a Memorial created to study the effect this law change in other states has had on their children's well-being.*

*We believe that when the Children's Code was last revised, part of the reason for deciding upon the age of 14 was because children's advocates feared that parents used mental health treatment, especially residential treatment, when children became "difficult." We think that mental health treatment no longer works that way and the checks and balances involved with medical necessity prevent treatment being used inappropriately. We also recognize that when the current law was put into place many years ago it was to give children the right to seek treatment that their parents may be unwilling to recognize is warranted.*

*We also believe this study is warranted to see if the age should be reconsidered based on the developmental stages of young teens and the impact that treatment refusal can have on families. Treatment refusal can have dire consequences for the child and family, often leading to the need for higher levels of care such as residential treatment, CYFD Juvenile Justice, or Child Protective Custody. Community-based therapies can keep the youth stable and with a better ability to cope with adolescence and to maintain mental and behavioral health wellness.*

*We support the right of a minor child to seek treatment, our concern is about the right to refusal. If warranted, based on the study conducted from the Memorial, we are interested in*

*modified wording to the Children’s Code that allows families to make the decision for their children to take advantage of needed therapies. Right now, parents are responsible for their minor children but have no decision-making power to get them mental health treatment even when they see them exhibiting extremely dangerous behaviors that could have life-long consequences or are in fear for their child’s life. We’d like to see new wording that gives both parents and the minor child the right to consent to mental health treatment and does not allow the minor child to refuse treatment when the parent has given consent.*

*We respectfully request that the Children’s Code task force recommend that a Memorial be created to study what changes the 10 other states have experienced in youth outcomes in their communities since changing their laws.*

2. **Memorial:** During the April 25, 2024 meeting of the CCRTF, the task force received the following Memorial as public comment from coalition members representing the State of NM Behavioral Health Planning Council’s Child and Adolescent Subcommittee, Families ASAP, Attachment Healing Center, and Southern NM NAMI. The task force did not take a position or make a recommendation concerning the memorial.

#### A MEMORIAL

REQUESTING THE DEPARTMENT OF HEALTH TO UNDERTAKE A STUDY TO ASCERTAIN THE POSSIBLE BENEFITS OF CHANGING THE WORDING IN THE CHILDREN’S CODE, TO GIVE BOTH PARENTS AND THE MINOR CHILD THE RIGHT TO CONSENT TO MENTAL HEALTH TREATMENT BY STUDYING AND COMPARING THE YOUTH OUTCOMES IN NEW MEXICO TO STATES WITH JOINT CONSENT LAWS IN PLACE.

WHEREAS, the Children’s Code says that a minor child at 14 years old can refuse mental health treatment.

WHEREAS, if the child does not consent to mental health treatment, the parent cannot make the decision for their children to take advantage of needed therapies.

WHEREAS, when the Children’s Code was last revised, part of the reason for deciding upon the age of 14 was that children’s advocates feared that parents used mental health treatment, especially residential treatment, when children became “difficult.”

WHEREAS, mental health treatment now has checks and balances involved with medical necessity to prevent treatment being used inappropriately.

WHEREAS, when the current law was put into place, it was also to give children the right to seek treatment that their parents may be unwilling to recognize is warranted.

WHEREAS, it is warranted to see if the age should be reconsidered based on the developmental stages of young teens and the impact that treatment refusal can have on families.

WHEREAS, treatment refusal can have dire consequences for the child and family, often leading to the need for higher levels of care such as residential treatment, CYFD Juvenile Justice, or Child Protective Custody.

WHEREAS, community-based therapies can keep the youth stable and with a better ability to cope with adolescence and to maintain mental and behavioral health wellness.

WHEREAS, parents are responsible for their minor children but have no decision-making power to get them mental health treatment even when they see them exhibiting extremely dangerous behaviors that could have life-long consequences or are in fear for their child's life.

WHEREAS, the ten states of Idaho, Kansas, Maryland, Massachusetts, Montana, Nebraska, New Hampshire, New York, Pennsylvania, and Texas have joint consent laws.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE or THE HOUSE OF REPRESENTATIVES OF THE STATE OF NEW MEXICO that the Department of Health undertake a study to analyze and compare the youth outcomes in the State of New Mexico to youth outcomes in Idaho, Kansas, Maryland, Massachusetts, Montana, Nebraska, New Hampshire, New York, Pennsylvania, and Texas.

BE IT FURTHER RESOLVED that the Department of Health report findings and recommendations to the legislative health and human services committee by December 1, 2025; and BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the secretary of health, the chair and vice chair of the legislative health and human services committee, the national alliance on mental illness, disability rights of New Mexico, the behavioral health planning council (bhpc) and the bhpc child and adolescence subcommittee and families ASAP.

## VIII. Relevant Legislation Previously Introduced

### A. State

- **HB 95 (2024):** Family in Need of Court-Ordered Services
  - **Sponsors:** Reps. Stefani Lord and Harlan Vincent
  - **Fiscal Impact Report (FIR):**  
<https://www.nmlegis.gov/Sessions/24%20Regular/firs/HB0095.PDF>
  - **Action:** Referred to House Health & Human Services Committee (HHHC) and House Appropriations and Finance Committee (HAFC); No hearings; Action Postponed Indefinitely (API)
  
- **HB 149 & SB 35 (2024):** Medication for Juveniles in Treatment Programs (duplicates)
  - **Sponsors:** Reps. Cristina Parajon and Pamilya Herndon, Sen. Gerald Ortiz y Pino (HB 149); Sen. Gerald Ortiz y Pino, Rep. Kathleen Cates (SB 35)
  - **Fiscal Impact Reports (FIR):**  
<https://www.nmlegis.gov/Sessions/24%20Regular/firs/HB0149.PDF>  
<https://www.nmlegis.gov/Sessions/24%20Regular/firs/SB0035.PDF>
  - **Actions:**
    - **HB 149:** Referred to House Health & Human Services Committee (HHHC) and House Appropriations and Finance Committee (HAFC); Do Pass in HHHC; API

- **SB 35:** Referred to Senate Health and Public Affairs Committee (SHPAC) and Senate Finance Committee (SFC); No hearings; API
- **HB 175 and SB 258 (2024):** Sharing of Certain CYFD Info (duplicates)
  - **Sponsors:** Reps. Marian Matthews, Tara Jaramillo, Meredith Dixon, Eleanor Chavez and Reena Szcpepanski (HB 175); Sen. Katie Duhigg (SB 258)
  - **Fiscal Impact Reports (FIR):**  
<https://www.nmlegis.gov/Sessions/24%20Regular/firs/HB0175.PDF>  
<https://www.nmlegis.gov/Sessions/24%20Regular/firs/SB0258.PDF>
  - **Actions:**
    - **HB 175:** Not printed; API
    - **SB 258:** Referred to SHPAC and the Senate Judiciary Committee (SJC); No hearings; API
- **HB 327 and SB 311 (2024):** Surrender of Infants (duplicates)
  - **Sponsors:** Rep. Stefani Lord (HB 327); Sen. (SB 311)
  - **Fiscal Impact Report (FIR):**  
<https://www.nmlegis.gov/Sessions/23%20Regular/firs/HB0327.PDF>  
<https://www.nmlegis.gov/Sessions/23%20Regular/firs/SB0311.PDF>
  - **Action:**
    - **HB 327:** Referred to HAFC and HHHHC; No hearings; API
    - **SB 311:** Referred to SJC and Senate Finance Committee (SFC); No hearings; API
- **SJR 6 (2024):** CYFD Commission & Executive Director, CA
  - **Sponsors:** Sens. Jerry Ortiz y Pino, Siah Correa Hemphill, Bill Tallman and Harold Pope, and Rep. Eleanor Chavez
  - **Fiscal Impact Report (FIR):**  
<https://www.nmlegis.gov/Sessions/24%20Regular/firs/SJR06.PDF>
  - **Action:** Referred to Senate Rules Committee, SJC and SFC; Do pass from SRC, w/ amendments; API
- **SJR 17 (2024):** Rights of Children, CA
  - **Sponsor:** Senator Bill Soules
  - **Fiscal Impact Report (FIR):** None
  - **Action:** Referred to SRC and SJC; No hearings; API
- **SM 5 (2024):** CYFD Restructuring Task Force<sup>34</sup>
  - **Sponsors:** Sens. Linda M. Lopez, Harold Pope and Antoinette Sedillo Lopez
  - **Fiscal Impact Report (FIR):**  
<https://www.nmlegis.gov/Sessions/24%20Regular/firs/SM005.PDF>

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<sup>34</sup> See Section XV(b), *infra*.

- **Action:** Referred to SRC and SHPAC; Do Pass from SRC and SHPAC; Passed and signed in the Senate
- **HB 221 (2023):** Exposure of Children to Certain Drugs
  - **Sponsors:** Reps. Stefani Lord, Jenifer Jones
  - **Fiscal Impact Report (FIR):**  
<https://www.nmlegis.gov/Sessions/23%20Regular/firs/HB0221.PDF>
  - **Action:** Referred to HHHC and House Judiciary Committee (HJC); No hearings; API
- **SB 128 (2023):** Child Protective Custody Procedures
  - **Sponsors:** Sens. Katy M. Duhigg, Linda M. Lopez, Siah Correa Hemphill
  - **Fiscal Impact Report (FIR):**  
<https://www.nmlegis.gov/Sessions/23%20Regular/firs/SB0128.PDF>
  - **Action:** Referred to SHPAC and SJC; No hearings; API
- **SB 324 (2021):** Protective Custody for Children
  - **Sponsors:** Sen. Linda Lopez
  - **Fiscal Impact Report (FIR):**  
<https://www.nmlegis.gov/Sessions/21%20Regular/firs/SB0324.PDF>
  - **Action:** Referred to SHPAC and SJC; Do Pass from SJC; API
- **HB 506 (2017):** Termination of Parental Rights
  - **Sponsors:** Rep. Gail Chasey
  - **Fiscal Impact Report (FIR):**  
<https://www.nmlegis.gov/Sessions/17%20Regular/firs/HB0506.PDF>
  - **Action:** Referred to HJC and received a Do Pass; Passed in the House, 64-0; Referred to SJC and received a Do Pass; API
- **SB 252 (2013):** Children’s Code Abuse & Neglect Changes
  - **Sponsors:** Sen. Phil A. Griego
  - **Fiscal Impact Report (FIR):**  
<https://www.nmlegis.gov/Sessions/13%20Regular/firs/SB0252.PDF>
  - **Action:** Referred to SPAC, SJC and SFC; No hearings; API

## **B. Federal: The Family First Prevention Services Act**

The Family First Prevention Services Act was included in the [Bipartisan Budget Act of 2018 \(HR 1892\)](#). According to the National Conference of State Legislatures (NCLS),

One of the major changes the act seeks to bring about is how Title IV-E funds can be spent by states. Prior to Family First, Title IV-E funds could only be used to help with the costs of foster care maintenance for eligible children; administrative expenses to manage the program; training for staff, foster parents and certain private agency staff; adoption assistance; and kinship guardianship assistance.

Under Family First, states, territories and tribes with approved Title IV-E plans have the option to use these funds for prevention services that would allow “candidates for foster care” to stay with their parents or relatives. States are then reimbursed for prevention services for up to 12 months. States must have a trauma-informed prevention plan, and services need to be rated by the [Title IV-E Prevention Services Clearinghouse](#) as promising, supported or well-supported to receive federal reimbursement.

The act also seeks to curtail the use of congregate or group care for children and instead places a new emphasis on family foster homes. With limited exceptions, the federal government will not reimburse states for children placed in group care settings for more than two weeks. Approved settings, known as qualified residential treatment programs, must use a trauma-informed treatment model and employ registered or licensed nursing staff and other licensed clinical staff. The child must be formally assessed within 30 days of placement to determine if their needs can be met by family members in a family foster home or another approved setting.

Certain institutions are exempt from the two-week limitation, but even they are generally limited to 12-month placements. Additionally, to be eligible for federal reimbursement, the act generally limits the number of children allowed in a foster home to six.

In response to states reporting significant financial and capacity barriers to transforming their child welfare systems, Congress approved the [Family First Transition Act](#) in 2019. The act encouraged timely implementation of the Family First act by providing financial relief for states as their child welfare systems develop prevention-focused infrastructure.<sup>35</sup>

## **IX. Related Initiatives**

### **A. Children’s Court Improvement Commission (CCIC)<sup>36</sup>**

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

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<sup>35</sup> <https://www.ncsl.org/human-services/family-first-prevention-services-act> . See that site for an in-depth look at the Family First Prevention Services Act. As of June 30, 2024, it appears that New Mexico’s plan has been submitted but not yet approved. See *Status of Submitted Title IV-E Prevention Program Five-Year Plans* at <https://www.acf.hhs.gov/cb/data/status-submitted-title-iv-e-prevention-program-five-year-plans> . See also *Disentangling Poverty and Neglect in the Child Welfare System: In New Mexico and Beyond*, pp. 28-32, for information about Colorado’s federally-approved 5-Year Family First Prevention Plan.

<sup>36</sup> 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>



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.<sup>37</sup>

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 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.<sup>38</sup>

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 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 topic - which it makes available for free - and developed practice standards for the attorneys representing families and children. The CCIC 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

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<sup>37</sup> For more information about the NMCIP and CCIC, See <https://cip.nmcourts.gov/about-court-improvement-commission/>

<sup>38</sup> See Appendix D, below.

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.<sup>39</sup>

### **B. SM 5 (2024)<sup>40</sup>**

This memorial, requesting the Legislative Finance Committee to create a task force to support and enhance the restructuring of the Children, Youth and Families Department (CYFD), passed the Senate, 41-0, during the 2024 legislative session.

SM 5 resolves 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 resolves that the task force examine the organizational structure and operations of CYFD 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;

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<sup>39</sup> See Crossover Youth Act (COYA), Section III(A)(2)(a), above.

<sup>40</sup> See <https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=M&LegNo=5&year=24>

- 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.

The memorial requests the task force to make recommendations to the legislature and the governor by November 15, 2024 for consideration during the first session of the fifty-seventh legislature.

At the time of publication of this report, task force members have been appointed and the task force has met twice.<sup>41</sup>

## **X. Conclusion**

The Children’s Code Reform Task Force appreciates the opportunity to add our voice to a vitally important conversation: How can we improve circumstances for the vulnerable children and families who call New Mexico home?

Living beings, including *Homo sapiens*, are not static creatures. As our understanding of human behavior evolves, it becomes imperative to re-visit the laws, rules and policies that shape our child and family welfare system. In that spirit, we have suggested legislative proposals, recommendations and science-based research that we believe will improve and elevate child and family support systems and services in our state.

The North Star for our work can be summed-up as follows: With the exception of instances when a child is truly not safe, children do better when they live with and enjoy the love and support of their families. Consequently, the legislative proposals and recommendations in this report reflect a non-punitive model for safely keeping families intact.

In closing, members of our task force look forward to substantive discussions with policy makers in the Executive, Judicial and Legislative branches of government. When we work together, anything is possible.

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<sup>41</sup> See <https://sg001-harmony.sliq.net/00293/Harmony/en/PowerBrowser/PowerBrowserV2/20240620/-1/74936> for a recording of the May 24, 2024 meeting and <https://sg001-harmony.sliq.net/00293/Harmony/en/PowerBrowser/PowerBrowserV2/20240626/-1/75022> for a recording of the June 21, 2024 meeting. See also <https://www.nmlegis.gov/Agendas/ALFCageJun21.24.pdf> for the June 21, 2024 meeting agenda and [https://www.nmlegis.gov/Entity/LFC/Documents/SM5\\_Taskforce/SM%20%20May%20Agenda\\_Post.pdf](https://www.nmlegis.gov/Entity/LFC/Documents/SM5_Taskforce/SM%20%20May%20Agenda_Post.pdf) for the May 24, 2024 meeting agenda. Additionally, a listing of SM 5 task force members can be found at [https://www.nmlegis.gov/Entity/LFC/Documents/SM5\\_Taskforce/Senate%20Memorial%20%20Taskforce.pdf](https://www.nmlegis.gov/Entity/LFC/Documents/SM5_Taskforce/Senate%20Memorial%20%20Taskforce.pdf)

## **XI. Appendices**

### **A. Crossover Youth Fact Sheet<sup>42</sup>**

#### **Crossover Youth Fact Sheet\***

The Children’s Code Reform Task Force has drafted legislation enacting the “Crossover Youth Act” (COYA). The legislation creates a “Crossover Youth Program” within the Children, Youth and Families Department (CYFD), providing duties for the program, requiring training for the Judiciary, CYFD, the Law Offices of the Public Defender and the Administrative Office of the District Attorneys and requiring intra-agency and interagency collaboration. The COYA is borne from the desire to create better communication and collaboration that will assist high-risk, vulnerable crossover youth and prevent them from being overlooked or getting lost in complex systems.

#### **Q: What is a “crossover youth”?**

**A:** A “crossover youth” is a child who is simultaneously involved in both the child welfare and juvenile justice systems, whether or not the child has been adjudicated in those systems.

A child enters the child welfare system, typically, when CYFD receives a report of abuse and neglect and an investigation reveals the need for department involvement. A child enters the juvenile justice system as a result of an arrest or referral for either the commission of a criminal or delinquent act, or an offense related to being a child, such as truancy, underage drinking or drug use, or running away from home. Foster youth are at heightened risk of juvenile justice involvement due to inadequate responses to trauma.

A child is “adjudicated” when a legal process has been used to resolve a dispute or decide a case involving that child.

#### **Q: Why is a “Crossover Youth Program” necessary and what will the program do?**

**A:** The program will facilitate communication and cooperation between participants who serve crossover youth, who are some of the most vulnerable and at-risk youth in the state and who require the most intervention to keep them safe. While there are support systems for crossover youth currently in place, the systems and the people who work in them often don’t talk to each other. The program is necessary to formalize processes that improve outcomes for these most vulnerable youth, who, without assistance and support, are at a higher risk of struggling, being incarcerated, institutionalized, marginalized and forgotten. Providing services for crossover youth now may also prevent the need for expensive state services such as incarceration and institutionalization to be extended to these youth later in life.

#### **Q: How will the program assist a child who is a crossover youth?**

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<sup>42</sup> See <https://childlaw.unm.edu/assets/docs/crossover-youth-fact-sheet.pdf> for fact sheet for distribution, etc.

**A:** Because crossover youth are involved in both the child welfare and juvenile justice systems, they are at a higher risk of being overlooked or getting lost. The program, through system communication and collaboration, will provide earlier and continuing identification and tracking of crossover youth, who are often without family support, at a time when they may be most vulnerable and most at risk.

\*This fact sheet was prepared by the Children’s Code Reform Task Force (<https://childlaw.unm.edu/childrens-code-reform-task-force/index.html> ) and published in June 2024.

**B. Report: *Permanency Timelines and Judicial Review***

See, <https://childlaw.unm.edu/assets/docs/disentangling-poverty-and-neglect-in-the-child-welfare-system-in-nm-and-beyond.pdf>

**C. Report: *Disentangling Poverty and Neglect in the Child Welfare System: In New Mexico and Beyond***

See, <https://childlaw.unm.edu/assets/docs/disentangling-poverty-and-neglect-in-the-child-welfare-system-in-nm-and-beyond.pdf>

**D. Children’s Court Improvement Commission (CCIC) Recommendations to individual entities**

**CCIC Crossover Youth Workgroup Recommendations Adopted by CCIC**

**General information regarding workgroup sent to all recipients July, 2022**

In 2021 the CCIC established a crossover youth work group in support of its strategic plan for 2021-2024. This group, chaired by Judge Catherine Begaye, included professionals from both children welfare and juvenile justice, including various Children, Youth and Families Department staff, in addition to youth and parents with lived experiences. As you know, crossover youth are those young people who are, or at risk of, crossing back and forth between the child welfare and juvenile justice systems. In the largest sense, this includes young people who are victims of abuse and/or neglect who have also engaged in delinquent behavior even if there has been no system involvement. Crossover youth include a smaller group of dually-involved youth and a still smaller group of dually-adjudicated youth. Dually-involved youth are those who are simultaneously being served in both the child welfare and juvenile justice systems whether or not they are adjudicated in both systems. Dually-adjudicated youth are simultaneously adjudicated in both systems.

This group sought to develop a statewide model for working with crossover youth, including the practice of one judge/one family; reduce the number of youth crossing over and becoming dually-involved; reduce the number of youth crossing over and becoming dually adjudicated;

reduce the number of youth placed in out of home care, especially congregate care; and reduce the number of youth later involved in the adult criminal justice system.

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.

### **Recommendations to CCJA**

These recommendations were adopted by the CCIC and include a list of suggestions to build the awareness of and educate Children's Court judges. CCIC is asking the Children's Court Judges Association to consider acting on the following recommendations:

- Create a bench card on crossover youth.
- Require annual mandatory training on crossover youth issues (delinquency, youthful offender, victim's rights, Fostering Connections, negative impact of incarceration on youth who are exiting from the foster care system, Juvenile Detention Alternatives Initiative (JDAI) eight principles that are incorporated into our Children's Code, etc.) for all judges handling either or both delinquency and abuse and neglect cases.
- Mandatory annual training on cultural humility and racial and ethnic disparities for youth who are incarcerated. Understanding the history of racism and oppression are foundational to understanding why it is necessary that courts hear from advocates representing children of color when they argue against barriers, requirements, orders, that compound and result in unequal justice.
- Obtain or create an Odyssey report that shows all crossover youth cases statewide and then provide it to all judges on a monthly basis.

### **Recommendations to Supreme Court/Rule Committee**

These recommendations were adopted by the CCIC and include a list of proposed changes to the Children's Court Rules. CCIC is asking the Supreme Court to refer the following recommendations for rules changes to the Children's Court Rules Committee for consideration. Children's Court Rules should be amended or drafted to consider:

- Strengthening "one family, one judge" to allow a crossover youth's delinquency or youthful offender cases to be assigned to the abuse and neglect judge, regardless of where in the state the incident occurred.
- Amending the confidentiality rules to allow for delinquency professionals to attend abuse and neglect hearings, with the proper advisements.
- Requiring the child's permanency planning worker and the Children's Court Attorney to appear with a child and considering whether the Children, Youth and Families Department (the Department) should be made a party to the petition in order to exercise appropriate oversight for crossover youth.

- Requiring the Department to provide notice to and invite the child’s biological parents, if their parental rights have not been terminated (unless restored or on track for restoration or if the Department is aware the child is living with or supported by the former parent) to hearings and meetings.
- Requiring Youth Attorneys for crossover youth to appear with their client and to allow them to advocate for an appropriate plan of care that comports with the needs of the child in the abuse or neglect case.
- Creating a rule that prevents a judge in a delinquency/youthful offender case from requiring a child to participate in the case plan in an abuse or neglect case or requiring them to cooperate with abuse or neglect placement.
- Requiring the Department to hold a weekly staffing with the crossover youth professions to find placement for crossover youth, and to set weekly hearings until a release plan is created. The court should have discretion to enter orders to gain the Department’s compliance.
- Allowing judges in disposition and amenability hearings to consider (to the benefit of the child only) whether the child has been dually-adjudicated.

### **Recommendations to CYFD**

These recommendations were adopted by the CCIC and include a list of proposed changes to the Department’s policy, procedure, and staffing. CCIC is asking the Department to consider adopting the following recommendations:

- Create an office or unit designed specifically to identify, notify, coordinate, and administer a program to address crossover youth.
- Develop regulations that require Permanency Planning Worker (PPWs) and Juvenile Probation Officers (JPOs) to host monthly meetings on a crossover youth with the goal of reducing the impact of adverse childhood experiences related to being dually-involved. These meetings should also include the tribal representative and CASAs when applicable.
- Create a statewide system to alert a JPO or a PPW immediately that a child in the Department’s legal custody has a referral for a delinquency, youthful offender, or serious youthful offender case.
- Create positions in a new crossover youth unit with duties of trauma-informed case management for youth 16 to 23 years old, rather than supervision and reporting (like JPOs) or monitoring (like PPWs).
- Intentionally hire former youth or families who were system-involved.
- Host intra-agency staffings during the preliminary inquiry process to purposely address diversion of crossover youth from the delinquency system.
- Where the alleged victim of the crime is an employee of the Department, require both divisions to certify to the court that they understand the conflict of interest.

Counsel for the child may file a motion concerning any conflict and the court shall afford the child a hearing on the motion.

- Track and compare crossover youth data concerning race and ethnicity, gender, judicial districts, length of detention prior to an adjudication, and outcomes to the non-crossover youth population involved in delinquency/youthful offender cases.

### **Recommendations to LOPD**

These recommendations were adopted by the CCIC and include a list of proposed changes for how the Law Offices of the Public Defender (LOPD) works with youth and trains attorneys who work with youth. CCIC is asking the LOPD to consider adopting the following recommendations:

- Include in the scope of work provisions of all delinquency, youthful offender, serious youthful offender contractors a requirement that they appear with their clients in abuse and neglect hearings, meetings, staffings, etc.
- In the scoring sheet for requests for proposals for contract work, give weight to attorneys with demonstrated experience representing youth in the abuse and neglect system.
- Require defense counsel representing youth in delinquency, youthful offender, serious youthful offender contractors a requirement that they appear with their clients in abuse and neglect hearings, meetings, staffings, etc.
- Require annual training on crossover youth issues (abuse and neglect, permanency, Indian Child Welfare Act/Indian Family Protection Act, Fostering Connections, negative impact of incarceration on youth who are exiting from the foster care system, Juvenile Detention Alternatives Initiative (JDAI) eight principles that are incorporated into our Children's Code, etc.) for all staff and contractors representing children under 18.
- Require annual training on cultural humility and racial and ethnic disparities for youth who are incarcerated for all staff and contractors representing children under 18. Understanding the history of racism and oppression are foundational to understanding why it is necessary that advocates working with children of color acknowledge and learn how to identify and avoid advocating for or allowing barriers, requirements, orders, that compound and result in unequal justice.
- Encourage or require that defense counsel who work with youth attend the annual Children's Law Institute.
- Hire former youth or parents who were system-involved.

### **Recommendations to AOC (however this task would not be the responsibility of OFRA)**

These recommendations were adopted by the CCIC and include a list of proposed changes to the Administrative Office of the Courts' (AOC) selection of and requirements for Youth Attorneys. CCIC is asking the AOC to consider adopting the following recommendations:



- Include in the scope of work provisions of all Youth Attorney contractors a requirement that they appear with their clients in delinquency hearings, meetings, staffings, etc.
- In the scoring sheet for requests for proposals for Youth Attorney contract work, give weight to attorneys with demonstrated experience representing youth in delinquency or youthful offender cases.
- Require annual mandatory training on crossover youth issues (delinquency, youthful offender, victim's rights, Fostering Connections, negative impact of incarceration on youth who are exiting from the foster care system, Juvenile Detention Alternatives Initiative (JDAI) eight principles that are incorporated into our Children's Code, etc.) for all Youth Attorney contractors.
- Require annual training for Youth Attorney contractors on cultural humility and racial and ethnic disparities for youth who are incarcerated. Understanding the history of racism and oppression are foundational to understanding why it is necessary that advocates representing children of color acknowledge and learn how to argue against barriers, requirements, and orders that compound and result in unequal justice.

### **Recommendations to AODA**

These recommendations were adopted by the CCIC and include a list of proposed changes for how the Administrative Office of the District Attorneys trains prosecutors who work with youth. CCIC is asking the AODA to consider adopting the following recommendations:

- Require annual training on crossover youth issues (abuse and neglect, permanency, Indian Child Welfare Act/Indian Family Protection Act, Fostering Connections, negative impact of incarceration on youth who are exiting from the foster care system, Juvenile Detention Alternatives Initiative (JDAI) eight principles that are incorporated into our Children's Code, etc.) for all attorneys who work with youth.
- Require annual training on cultural humility and racial and ethnic disparities for youth who are incarcerated for prosecutors who work with youth. Understanding the history of racism and oppression are foundational to understanding why it is necessary that advocates working with children of color acknowledge and learn how to identify and avoid advocating for or allowing barriers, requirements, orders, that compound and result in unequal justice.
- Encourage or require that prosecutors who work with youth attend the annual Children's Law Institute.
- Assess how crossover youth processes may affect a crime victim's rights and how those can be protected while working with crossover youth prosecutions.
- Hire former youth or parents who were system-involved.

### **E. Task Force Operating Resolution**

See [https://childlaw.unm.edu/assets/docs/resolution\\_for\\_crtf\\_final\\_signed.pdf](https://childlaw.unm.edu/assets/docs/resolution_for_crtf_final_signed.pdf)

### **F. Joint Letter from the Administration for Children and Families Children's Bureau (CB) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) regarding their commitment to addressing the complex needs of young people who navigate both the child welfare and juvenile justice systems.**

See <https://www.acf.hhs.gov/sites/default/files/documents/cb/joint-letter-cb-ojjdp-dually-involved-youth.pdf>