**Statutory Reference Comparison Chart:**
Indian Child Welfare Act – New Mexico Indian Family Protection Act — New Mexico Children’s Code

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<tbody>
<tr>
<td><strong>I. DEFINITIONS</strong></td>
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<tr>
<td>Active Efforts</td>
<td>“active efforts” means efforts that are affirmative, active, thorough and timely and that represent a higher standard of conduct than reasonable efforts. Section 2(A)</td>
<td>“active efforts” means efforts that are affirmative, active, thorough and timely and that represent a higher standard of conduct than reasonable efforts. Section 2(A)</td>
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<tr>
<td>Adoptive Placement</td>
<td>“adoptive placement” which shall mean the placement of an Indian child for adoption, including any action resulting in a final decree of adoption. 25 U.S.C. § 1903(I)(iv)</td>
<td>“adoptive placement” means a permanent placement of an Indian child for adoption, including an action resulting in a final decree of adoption. Section 2(B)</td>
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<tr>
<td>Adult</td>
<td>“adult” means a person who is eighteen years of age or older. Section 44(A)</td>
<td>“adult” means a person who is eighteen years of age or older. Section 44(A)</td>
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<tr>
<td>Child</td>
<td>“child” means a person who is less than eighteen years old. Section 44(B)</td>
<td>“child” means a person who is less than eighteen years old. Section 44(B)</td>
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<tr>
<td>Child Custody Proceeding</td>
<td>“child custody proceeding” shall mean and include— (i) “foster care placement” which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated; (ii) “termination of parental rights” which shall mean any action resulting in the termination of the parent-child relationship; (iii) “preadoptive placement” which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and</td>
<td>“child custody proceeding” means an action for foster care placement, termination of parental rights, permanent guardianship or adoptive placement or an action pursuant to Section 32A-3A-8 NMSA 1978 or the Family in Need of Court-Ordered Services Act and includes investigations and other preliminary activities preceding the formal initiation of an action, but does not include: (1) delinquency proceedings; and (2) custodial proceedings or kinship guardianships pursuant to Chapter 40 NMSA 1978. Section 2(C)</td>
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</table>
(iv) “adoptive placement” which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents. 25 U.S.C. § 1903(1)

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Council</td>
<td>No definition provided.</td>
</tr>
<tr>
<td>Court</td>
<td>No definition provided.</td>
</tr>
<tr>
<td>Court-Appointed Special Advocate</td>
<td>No definition provided.</td>
</tr>
<tr>
<td>Cultural Compact</td>
<td>No definition provided.</td>
</tr>
<tr>
<td>Custodian</td>
<td>No definition provided.</td>
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</tbody>
</table>

“council” means the substitute care advisory council established pursuant to Section 32A-8-4 NMSA 1978. Section 44(D)

“court”, when used without further qualification, means the children's court division of the district court and includes the judge, special master or commissioner appointed pursuant to the provisions of the Children's Code or supreme court rule. Section 44(E)

“court-appointed special advocate” means a person appointed pursuant to the provisions of the Children's Court Rules to assist the court in determining the best interests of the child by investigating the case and submitting a report to the court. Section 44(F)

“cultural compact” means an agreement that documents how an Indian child placed in an adoptive or guardianship home will continue to actively participate in the child's cultural learning and activities and that is entered into among:
   (1) the adoptive parents or guardians of the Indian child, which parents or guardians are not members of the Indian child's tribe; and
   (2) the Indian child's tribe. Section 2(D)

“custodian” means an adult with whom the child lives who is not a parent or guardian of the child. Section 44(G)
<table>
<thead>
<tr>
<th><strong>Department</strong></th>
<th><strong>No definition provided.</strong></th>
<th><strong>“department” means the children, youth and families department, unless otherwise specified.</strong> Section 44(H)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Discussion With An Indian Tribe</strong></td>
<td><strong>No definition provided.</strong></td>
<td><strong>“discussion with an Indian tribe” means documented good faith efforts to actively communicate and work with an Indian tribe.</strong> Section 2(E)</td>
</tr>
<tr>
<td><strong>Disproportionate Minority Contact</strong></td>
<td><strong>No definition provided.</strong></td>
<td><strong>“disproportionate minority contact” means the involvement of a racial or ethnic group with the criminal or juvenile justice system at a proportion either higher or lower than that group's proportion in the general population.</strong> Section 44(I)</td>
</tr>
<tr>
<td><strong>Extended Family Member</strong></td>
<td><strong>“extended family member” shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. 25 U.S.C. § 1903(2)</strong></td>
<td><strong>“extended family member” means a person who is defined to be an extended family member by law or custom of an Indian child's tribe or, in the absence of such law or custom, means a person who is eighteen years of age or older and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, stepparent or godparent.</strong> Section 2(F)</td>
</tr>
<tr>
<td><strong>Federal Indian Child Welfare Act of 1978</strong></td>
<td><strong>No definition provided.</strong></td>
<td><strong>“federal Indian Child Welfare Act of 1978” means the federal Indian Child Welfare Act of 1978, as that act may be amended or its sections renumbered. Section 44(J)</strong></td>
</tr>
<tr>
<td><strong>Fictive Kin</strong></td>
<td><strong>No definition provided.</strong></td>
<td><strong>“fictive kin” means a person: (1) who is not a relative or an extended family member of an Indian child and who has a significant, family-like relationship with the child or the child's family, which relationship existed prior to the child's entry into foster care; (2) who meets the definition of “fictive kin” as established by an Indian child's tribe's law, custom or tradition; or (3) chosen by an Indian child who is fourteen years of age or older, regardless of when the relationship between the person and the Indian child was established, when it is in the best interest of the child to identify that person as fictive kin.</strong> Section 2(G).</td>
</tr>
</tbody>
</table>
| **Foster Care Placement** | “foster care placement” which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated. 25 U.S.C. § 1903(1)(i) | “foster care placement” means:

1. an action pursuant to the Abuse and Neglect Act removing an Indian child from the child’s parent, guardian or Indian custodian for temporary placement in a foster home or institution or the home of a guardian where the parent or Indian custodian cannot have the child returned upon demand, but in which parental rights have not been terminated; or

2. the temporary placement of an Indian child in foster care pursuant to a voluntary agreement entered into between a parent, guardian or Indian custodian and the department pursuant to the Family Services Act. Section 2(H) |
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<tbody>
<tr>
<td><strong>Foster Parent</strong></td>
<td>No definition provided.</td>
<td>“foster parent” means a person, including a relative of the child, licensed or certified by the department or a child placement agency to provide care for children in the custody of the department or agency. Section 44(K)</td>
</tr>
<tr>
<td><strong>Guardian</strong></td>
<td>No definition provided.</td>
<td>“guardian” means a person appointed as a guardian by a court or Indian tribal authority or a person authorized to care for the child by a parental power of attorney as permitted by law. Section 44(L)</td>
</tr>
<tr>
<td><strong>Guardian ad Litem</strong></td>
<td>No definition provided.</td>
<td>“guardian ad litem” means an attorney appointed by the children’s court to represent and protect the best interests of the child in a case; provided that no party or employee or representative of a party to the case shall be appointed to serve as a guardian ad litem. Section 44(M)</td>
</tr>
</tbody>
</table>
| **Indian** | “Indian” means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 1606 of title 43. 25 U.S.C. § 1903(3) For the purposes of sections 1932 and 1933 of this title, the term “Indian” shall include persons defined in section 1603(c) of this title. 25 U.S.C. § 1934 | “Indian” means, whether an adult or child, a person who is:

1. a member of an Indian tribe; or

2. eligible for membership in an Indian tribe. Section 44(N) |
<p>| <strong>Indian Child</strong> | “Indian child” means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. 25 U.S.C. § 1903(4) | “Indian child” means an Indian person, or a person whom there is reason to know is an Indian person, under eighteen years of age, who is neither: (1) married; or (2) emancipated. Section 44(O) |
| <strong>Indian Child’s Tribe</strong> | “Indian child's tribe” means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts. 25 U.S.C. § 1903(5) | “Indian child's tribe” means: (1) the Indian tribe in which an Indian child is a member or eligible for membership; or (2) in the case of an Indian child who is a member or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts. Section 44(P) |
| <strong>Indian Custodian</strong> | “Indian custodian” means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child. 25 U.S.C. § 1903(6) | “Indian custodian” means an Indian who, pursuant to tribal law or custom or pursuant to state law: (1) is an adult with legal custody of an Indian child; or (2) has been transferred temporary physical care, custody and control by the parent of the Indian child. Section 44(Q) |
| <strong>Indian Organization</strong> | “Indian organization” means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians. 25 U.S.C. § 1903(7) | “Indian organization” means a group, association, partnership, corporation or other legal entity owned or controlled by Indians, or a majority of whose members are Indians. Section 43(F) |
| <strong>Indian Tribe</strong> | “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43. 25 U.S.C. § 1903(8) | “Indian tribe” means an Indian nation, tribe, pueblo or other band, organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including an Alaska native village as defined in 43 U.S.C. Section 1602(c) or a regional corporation as defined in 43 U.S.C. Section 1606. For the purposes of notification to and communication with a tribe as required in the Indian Family Protection Act, “Indian tribe” also includes those tribal officials and staff who are responsible for child welfare and social services matters. Section 44(R) |</p>
<table>
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<tr>
<th><strong>Judge</strong></th>
<th>No definition provided.</th>
<th>“judge”, when used without further qualification, means the judge of the court. Section 44(S)</th>
</tr>
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<tbody>
<tr>
<td><strong>Legal Custody</strong></td>
<td>No definition provided.</td>
<td>“legal custody” means a legal status created by order of the court or other court of competent jurisdiction or by operation of statute that vests in a person, department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food, shelter, personal care, education and ordinary and emergency medical care; the right to consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children’s Mental Health and Developmental Disabilities Act; and the right to consent to the child’s enlistment in the armed forces of the United States. Section 44(T)</td>
</tr>
<tr>
<td><strong>Member</strong></td>
<td>No definition provided.</td>
<td>“member” or “membership” means a determination made by an Indian tribe that a person is a member of or eligible for membership in that Indian tribe. Section 44(U)</td>
</tr>
<tr>
<td><strong>Parent</strong></td>
<td>“parent” means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established. 25 U.S.C. § 1903(9)</td>
<td>“parent” or “parents” means a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child or a person who has lawfully adopted an Indian child pursuant to state law or tribal law or tribal custom. Section 44(V)</td>
</tr>
<tr>
<td><strong>Permanency Plan</strong></td>
<td>No definition provided.</td>
<td>“permanency plan” means a determination by the court that the child’s interest will be served best by: (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. Section 44(W)</td>
</tr>
<tr>
<td>Person</td>
<td>No definition provided.</td>
<td>“person” means an individual or any other form of entity recognized by law. Section 44(X)</td>
</tr>
<tr>
<td>Plan of Care</td>
<td>No definition provided.</td>
<td>“plan of care” means a plan created by a health care professional intended to ensure the safety and well-being of a substance-exposed newborn by addressing the treatment needs of the child and any of the child’s parents, relatives, guardians, family members or caregivers to the extent those treatment needs are relevant to the safety of the child. Section 44(Y)</td>
</tr>
<tr>
<td>Preadoptive Parent</td>
<td>No definition provided.</td>
<td>“preadoptive parent” means a person with whom a child has been placed for adoption. Section 44(Z)</td>
</tr>
<tr>
<td>Preadoptive Placement</td>
<td>“preadoptive placement” which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement. 25 U.S.C. § 1903(i)(iii)</td>
<td>No definition provided.</td>
</tr>
<tr>
<td>Protective Supervision</td>
<td>No definition provided.</td>
<td>“protective supervision” means the right to visit the child in the home where the child is residing, inspect the home, transport the child to court-ordered diagnostic examinations and evaluations and obtain information and records concerning the child. Section 44(AA)</td>
</tr>
<tr>
<td>Relative</td>
<td>No definition provided.</td>
<td>“relative” means a person related to another person: (1) by blood within the fifth degree of consanguinity or through marriage by the fifth degree of affinity; or (2) with respect to an Indian child, as established or defined by the Indian child’s tribe’s custom or law. Section 44(BB)</td>
</tr>
<tr>
<td>Reservation</td>
<td>“reservation” means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. 25 U.S.C. § 1903(10)</td>
<td>“reservation” means: (1) “Indian country” as defined in 18 U.S.C. Section 1151; (2) any lands to which the title is held by the United States in trust for the benefit of an Indian tribe or individual; or (3) any lands held by an Indian tribe or individual subject to a restriction by the United States against alienation. Section 44(CC)</td>
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<tr>
<td>Reunification</td>
<td>No definition provided.</td>
<td>“reunification” means either a return of the child to the parent or to the home from which the child was...</td>
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<tr>
<td>Section</td>
<td>Definition</td>
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<tr>
<td>44(DD)</td>
<td>“Secretary” means the Secretary of the Interior. 25 U.S.C. § 1903(11)</td>
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<tr>
<td>44(EE)</td>
<td>“secretary” means the United States secretary of the interior. Section 44(EE)</td>
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<tr>
<td>44(FF)</td>
<td>“tribal court” means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. 25 U.S.C. § 1903(12)</td>
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<tr>
<td>44(GG)</td>
<td>“tribal court order” means a document issued by a tribal court that is signed by an appropriate authority, including a judge, governor or tribal council member, and that orders an action that is within the tribal court’s jurisdiction.</td>
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<tr>
<td>44(HH)</td>
<td>“tribunal” means any judicial forum other than the court.</td>
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### II. JURISDICTION, DOMICILE AND RESIDENCE, TRANSFER, INTERVENTION & FULL FAITH AND CREDIT

<table>
<thead>
<tr>
<th>Section</th>
<th>Definition</th>
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<tr>
<td>7(A)</td>
<td>An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child. 25 U.S.C. § 1911(a)</td>
</tr>
<tr>
<td>32A-1-8(A)</td>
<td>The court has exclusive original jurisdiction of all proceedings under the Children’s Code in which a person is eighteen years of age or older and was a child at the time the alleged act in question was committed or is a child alleged to be: (1) a delinquent child; (2) a child of a family in need of court-ordered services or a child in need of services pursuant to the Family in Need of Court-Ordered Services Act [Chapter 32A, Article 3B NMSA 1978]; (3) a neglected child; (4) an abused child; (5) a child subject to adoption; or (6) a child subject to placement for a developmental disability or a mental disorder.</td>
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</table>
The court has exclusive original jurisdiction to emancipate a minor. 32A-1-8(B)

Upon transfer the court shall have exclusive jurisdiction over the proceedings and the defendant. The transferring tribunal shall order that the defendant promptly be taken to the court, or taken to a place of detention designated by the court, or released to the custody of a parent, guardian, custodian or other person legally responsible for the defendant to be brought before the court at a time designated by the court. Upon transfer to the court a petition shall be prepared and filed in the court in accordance with the provisions of the Delinquency Act. If the defendant is not a child at the time of transfer the court retains jurisdiction over the matter only until disposition is made by the court. 32A-2-6(B)

The department shall have exclusive jurisdiction and authority to release an adjudicated delinquent child during the term of the child's commitment, consistent with the provisions of the Victims of Crime Act [Chapter 31, Article 26 NMSA 1978]. In determining whether to release a child, the department shall give due consideration to public safety, the extent to which the child has been rehabilitated, the adequacy and suitability of the proposed release plan and the needs and best interests of the child, including the child's need for behavioral health or medical services that are not available in facilities for adjudicated delinquent children. 32A-2-23.1(A)

| Concurrent Jurisdiction | N/A | In a child custody proceeding involving an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court and the tribal court have concurrent jurisdiction. Section 7(B) | N/A |

| Exceptions to Tribal Court Jurisdiction | N/A | The court has exclusive original jurisdiction of all proceedings under the Children's Code in which a person is eighteen years of age or older and was a child at the time the alleged act in question was committed or is a child alleged to be: (1) a delinquent child; | The court has exclusive original jurisdiction of all proceedings under the Children's Code in which a person is eighteen years of age or older and was a child at the time the alleged act in question was committed or is a child alleged to be: (1) a delinquent child; |
(2) a child of a family in need of court-ordered services or a child in need of services pursuant to the Family in Need of Court-Ordered Services Act; 
(3) a neglected child; 
(4) an abused child; 
(5) a child subject to adoption; or 
(6) a child subject to placement for a developmental disability or a mental disorder. Section 45(A) 

The court has exclusive original jurisdiction to emancipate a minor. Section 45(B) 

The provisions of the Indian Family Protection Act govern child custody proceedings involving Indian children. To the extent the provisions of the Indian Family Protection Act conflict with the Children's Code, the provisions of the Indian Family Protection Act shall apply. Section 45(C) 

During abuse or neglect proceedings in which New Mexico is the home state, pursuant to the provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act [40-10A-101 to 40-10A-403 NMSA 1978], the court shall have jurisdiction over both parents to determine the best interest of the child and to decide all matters incident to the court proceedings. Section 45(D) 

The court may acquire jurisdiction over a Motor Vehicle Code or municipal traffic code violation as set forth in Section 32A-2-29 NMSA 1978. Section 45(E) 

(2) a child of a family in need of court-ordered services or a child in need of services pursuant to the Family in Need of Court-Ordered Services Act [Chapter 32A, Article 3B NMSA 1978]; 
(3) a neglected child; 
(4) an abused child; 
(5) a child subject to adoption; or 
(6) a child subject to placement for a developmental disability or a mental disorder. 32A-1-8(A) 

The court has exclusive original jurisdiction to emancipate a minor. 32A-1-8(B) 

During abuse or neglect proceedings in which New Mexico is the home state, pursuant to the provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act, the court shall have jurisdiction over both parents to determine the best interest of the child and to decide all matters incident to the court proceedings. 32A-1-8(C) 

Nothing in this section shall be construed to in any way abridge the rights of any Indian tribe to exercise jurisdiction over child custody matters as defined by and in accordance with the federal Indian Child Welfare Act of 1978. 32A-1-8(D) 

A tribal court order pertaining to an Indian child in an action under the Children's Code shall be recognized and enforced by the district court for the judicial district in which the tribal court is located. A tribal court order pertaining to an Indian child that accesses state resources shall be recognized and enforced pursuant to the provisions of intergovernmental agreements entered into by the Indian child's tribe and the department or another state agency. An Indian child residing on or off a reservation, as a citizen of this state, shall have the same right to services that are available to other children of the state, pursuant to intergovernmental agreements. The
cost of the services provided to an Indian child shall be determined and provided for in the same manner as services are made available to other children of the state, utilizing tribal, state and federal funds and pursuant to intergovernmental agreements. The tribal court, as the court of original jurisdiction, shall retain jurisdiction and authority over the Indian child. 32A-1-8(E)

The court may acquire jurisdiction over a Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] or municipal traffic code violation as set forth in Section 32A-2-29 NMSA 1978. 32A-1-8(F)

| Temporary Emergency Jurisdiction | N/A | The department shall file a petition for temporary emergency removal where the department demonstrates that an Indian child is a resident of or domiciled on a reservation but temporarily located off a reservation. The department shall provide notice and request receipt of notice to the Indian child’s tribe, parents, guardian and Indian custodian within twenty-four hours of the filing of the petition. Section 11(A)  

A court of this state has temporary emergency jurisdiction if the Indian child is present in this state but is domiciled on a reservation and the Indian child has been abandoned or it is necessary in an emergency to protect the Indian child because the Indian child, or a sibling or parent of the Indian child, is subjected to or threatened with abuse or neglect. Section 11(B)  

A child custody determination made under this section remains in effect until an order is obtained from a tribal court. If a child custody proceeding has not been or is not commenced in tribal court, the department may file a petition alleging abuse and neglect. Section 11(C)  

A court of this state that has been asked to make a temporary emergency order for temporary jurisdiction, upon being informed that a child custody proceeding has been commenced in, or a | N/A |
| **Domicile and Residence** | N/A | In a child custody proceeding involving an Indian child, the court shall determine and make an order of the domicile and residence of the Indian child and whether the Indian child is under the jurisdiction of a tribal court. **Section 3(A)**

The department shall communicate with the Indian child's tribe as necessary to assist the court in making a determination pursuant to this section. If it is unclear which tribe is the Indian child's tribe, the department shall communicate with any tribe with which there is reason to know that the Indian child may be a member or eligible for membership. **Section 3(B)** |

| **Transfer of Proceedings/Declination by Tribal Court** | **N/A** | There is established in the district court for each county a division to be known as the children's court. The district court of each judicial district shall designate one or more district judges to sit as judge of the children's court. **32A-1-5(A)**

The supreme court shall adopt rules of procedure not in conflict with the Children's Code governing proceedings in the children's court, including rules and procedures for juries. **32A-1-5(B)**

If, in a criminal action, it appears to a court other than the children's court division of the district court that jurisdiction is properly within the children's court division, the other court shall transfer the matter to the children's court division. Upon transfer, the children's court division obtains jurisdiction over the matter for proceedings in accordance with the provisions of the Children's Code. **32A-1-5(C)**

Proceedings in the court under the provisions of the Children's Code shall begin in the county |

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*At the inception of a child custody proceeding involving an Indian child not domiciled or residing within the reservation of the Indian child's tribe, or upon a motion for transfer at any stage of the proceeding, the department shall, without delay, ask the Indian child's tribe in writing whether the Indian child's tribe will accept jurisdiction over the child custody proceeding. **Section 7(C)**

If the Indian child's tribe declines to accept jurisdiction, the court retains jurisdiction. A parent, guardian, Indian custodian or the Indian child's tribe retains the right to move the court to transfer the proceeding to the tribal court at any stage of the proceeding. A transfer motion may be made orally on the record or in writing. **Section 7(D)**

If the Indian child's tribe accepts jurisdiction in writing provided to the court, the court shall transfer the child custody proceeding to the tribal court unless:

1. either parent of the Indian child objects to the transfer; or*
If any party asserts that good cause to deny the transfer exists, the reasons for that belief or assertion shall be placed on the record in a written motion, and the motion shall be served on the parties and the Indian child's tribe. The court shall hold a hearing on the record in which:

1. all parties and the Indian child's tribe, even if the tribe has not formally intervened in the case, have an opportunity to present facts and legal arguments;
2. the burden to establish good cause is on the party opposing the transfer; and
3. good cause shall be established by clear and convincing evidence. Section 7(F)

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

1. the advanced stage of a child custody proceeding if the parent, guardian, Indian custodian or Indian child's tribe did not receive notice of the proceeding until an advanced stage;
2. the timing of the tribe's intervention;
3. whether there have been prior proceedings in the court involving the Indian child for which no petition to transfer was filed;
4. predictions of whether the transfer could result in a change in the placement of the Indian child;
5. the Indian child's cultural connections with the Indian tribe or its reservation;
6. consideration of any perceived inadequacy of an Indian tribe's judicial systems;
7. consideration of the perceived socioeconomic conditions within an Indian tribe or reservation; or
8. a delay in placing an Indian child with the Indian child's extended family members or adult relatives, regardless of the stage of where the child resides, or in the case of an eligible adult pursuant to the Fostering Connections Act [Chapter 32A, Article 26 NMSA 1978], where the eligible adult resides. If delinquency is alleged, the proceeding may also be begun in the county where the act constituting the alleged delinquent act occurred or in the county in which the child is detained. Neglect, abuse, family in need of court-ordered services or mental health proceedings may also begin in the county where the child is present when the proceeding is commenced. A transfer may be made if the residence of the child or eligible adult changes or for other good cause. 32A-1-9(A)

In neglect, abuse, family in need of court-ordered services or adoption proceedings for the placement of an Indian child, the court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe upon the petition of the Indian child's parent, the Indian child's guardian or the Indian child's tribe. The transfer shall be barred if there is an objection to the transfer by a parent of the Indian child or the Indian child's tribe. 32A-1-9(B)

If it appears to a tribunal in a criminal matter that the defendant was under the age of eighteen years at the time the offense charged was alleged to have been committed and the offense charged is a delinquent act pursuant to the provisions of the Delinquency Act, the tribunal shall promptly transfer jurisdiction of the matter and the defendant to the court together with a copy of the accusatory pleading and other papers, documents and transcripts of testimony relating to the case. The tribunal shall not transfer a serious youthful offender. 32A-2-6(A)

Upon transfer the court shall have exclusive jurisdiction over the proceedings and the defendant. The transferring tribunal shall order
the child custody proceeding. **Section 7(G)**

If the court denies the transfer for good cause, the basis for the decision shall be stated orally on the record and in a written order. **Section 7(H)**

When a court authorizes transfer, the court:
(1) retains jurisdiction and shall not dismiss the case until the tribal court exercises jurisdiction and confirms that the tribe has received all information required by this section;
(2) shall expeditiously transfer to the tribal court all records related to the proceeding, including all pleadings and the court record; and
(3) shall direct the department to:
   (a) coordinate with the tribal court and the Indian child's tribe to ensure that the transfer is accomplished with minimal disruption of services to the Indian child and the Indian child's family; and
   (b) expeditiously provide at no cost to the appropriate tribal agency:
      1) all records and original documents related to the Indian child in the department's possession, including a birth certificate, social security card, certificate of Indian birth and similar documents;
      2) documentation related to the Indian child's eligibility for state and federal assistance; and
      3) the entire case record in the possession of the department.

**Section 7(I)**

that the defendant promptly be taken to the court, or taken to a place of detention designated by the court, or released to the custody of a parent, guardian, custodian or other person legally responsible for the defendant to be brought before the court at a time designated by the court. Upon transfer to the court a petition shall be prepared and filed in the court in accordance with the provisions of the Delinquency Act. If the defendant is not a child at the time of transfer the court retains jurisdiction over the matter only until disposition is made by the court.

**32A-2-6(B)**

The protections set forth in the federal Indian Child Welfare Act of 1978, including provisions concerning notice to the Indian child's tribe, transfer to tribal court and placement preferences, apply to all proceedings involving an Indian child under the Adoption Act. **32A-5-4**

| Court Proceedings/Intervention | In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding. [25 U.S.C. § 1911(c)](https://www.law.cornell.edu/uscode/text/25/1911) | An Indian child's tribe has the right to intervene at any point in a child custody proceeding. **Section 14(A)** | At any stage of an abuse or neglect proceeding, a person described in this subsection may be permitted to intervene as a party with a motion for affirmative relief:

(1) a foster parent whom the child has resided with for at least six months;
(2) a relative within the fifth degree of consanguinity with whom the child has resided; |
the guardian, the Indian custodian or a foster parent with whom the child has resided for at least twelve months may file a motion to intervene at any point in the proceeding. **Section 14(B)**

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

1. the person's rationale for the proposed intervention; and
2. whether intervention is in the best interest of the Indian child. **Section 14(C)**

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

| 32A-4-27(A) | When determining whether a person described in Subsection A of this section should be permitted to intervene, the court shall consider:
1. the person's rationale for the purposed intervention; and
2. whether intervention is in the best interest of the child. **Section 14(A)**

When the court determines that the child's best interest will be served as a result of intervention by a person described in Subsection A of this section, the court may permit intervention unless the party opposing intervention can demonstrate that a viable plan for reunification with the respondents is in progress and that intervention could impede the progress of the reunification plan. **Section 14(B)**

The persons described in this subsection shall be permitted to intervene during any stage of an abuse or neglect proceeding:

1. a parent of the child who is not named in the petition alleging abuse or neglect; and
2. when the child is an Indian child, the child's Indian tribe. **Section 14(C)**

The child's foster parent shall be permitted to intervene when:

1. the foster parent desires to adopt the child;
2. the child has resided with the foster parent for at least six months within the year prior to the termination of parental rights;
3. a motion for termination of parental rights has been filed by a person other than the foster parent; and
(4) bonding between the child and the child's foster parent is alleged as a reason for terminating parental rights in the motion for termination of parental rights. **32A-4-27(E)**

The foster parent, preadoptive parent or relative providing care for the child shall be given notice of, and an opportunity to be heard in, any review or hearing with respect to the child, except that this subsection shall not be construed to require that any foster parent, preadoptive parent or relative providing care for the child be made a party to such a review or hearing solely on the basis of the notice and opportunity to be heard. **32A-4-27(F)**

The department has the authority to intervene in any action filed pursuant to the provisions of the Adoption Act. The intervention shall be effected when legal counsel for the department files a motion for an entry of appearance and an appropriate response. **32A-5-6(C)**

The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In a judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities or actions of the interstate commission, it shall be entitled to receive all service of process in the proceeding and shall have standing to intervene in the proceeding for all purposes. **32A-10-9(ARTICLE VII)(B)**

| Full Faith and Credit | The United States, every State, every territory or possession of the United States, and every | The state shall recognize and give full faith and credit to public acts, records and judicial proceedings | N/A |
| **Severability** | If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby. 25 U.S.C. § 1963 | If any provision of the Indian Family Protection Act, related provisions in other sections of New Mexico law or the application of such laws to any person or circumstances is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions of the Indian Family Protection Act and related laws. Section 72 | The provisions of this compact shall be severable and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable. 32A-10-9(A) The provisions of this compact shall be liberally construed to effectuate its purposes. 32A-10-9(B) The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. 32A-11-1(Article 10) |
| **Implementing Rules and Regulations** | Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter. 25 U.S.C. § 1952 | The department shall promulgate rules for implementing disclosure of records pursuant to the Indian Family Protection Act and in compliance with state and federal law and the Children’s Court Rules. Section 39(I) The department, through discussion with the Indian nations, tribes and pueblos of the state, shall promulgate rules to implement the provisions of the Indian Family Protection Act. The administrative office of the courts shall also discuss with the Indian | The department shall promulgate updated standards for all detention facilities, including standards for site, design, construction, equipment, care, program, personnel and clinical services. The department shall certify as approved all detention facilities in the state meeting the standards promulgated. The department may establish by rule appropriate procedures for provisional certification and the waiving of any of its standards for facilities in existence at the time of the adoption of the standards, except that it |
nations, tribes and pueblos of the state the recommendation of court rules for potential adoption by the courts of the state.

Section 42

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

Section 57(E)

shall not allow waiver of any standard pertaining to adequate health and safety protection of the residents and staff of the facility. No child shall be detained in a detention facility unless it is certified as approved by the department, except as otherwise provided in Chapter 32A, Article 2 NMSA 1978. 32A-2-4(A)

The department shall promulgate rules establishing procedures that provide for prior notice and public hearings on detention facilities' standards adoption and changes. The department shall also promulgate rules establishing procedures for facility certification, renewal of certification, refusal to renew certification and revocation of certification. The procedures adopted on these matters shall provide for adequate prior notice of intended action by the department, opportunity for the aggrieved person to have an administrative hearing and written notification of the administrative decision. Rules promulgated under this subsection shall not be effective unless filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978]. 32A-2-4(C)

The department may provide compensation to a delinquent child engaged in a rehabilitative work program and shall promulgate necessary rules and regulations to provide deductions from that compensation for:

(1) victim restitution ordered by the court and for transmitting those deductions to the clerk of that court;

(2) the crime victims reparation fund and for transmitting those deductions to the state treasurer for credit to that fund; and

(3) the reasonable costs incident to the confinement of the delinquent child. 32A-2-31(B)

The department shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and
federal law and the Children's Court Rules [10-101 NMRA]. 32A-2-32(F)

The department shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and federal law and the Children's Court Rules. 32A-3B-22(D)

The department shall promulgate rules to implement the provisions of this section. 32A-4-4.1(H)

The department shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and federal law and the Children's Court Rules. 32A-4-33(E)

The department may adopt and promulgate necessary rules and forms for the administration of the Adoption Act, including rules for the assessment of fees. The rules shall not conflict with the provisions of the Adoption Act. 32A-5-6(A)

The department of health may promulgate any regulations or forms necessary to implement the provisions of this section. 32A-5-20(N)

The department shall promulgate all necessary regulations for the administration of the program of subsidized adoptions or placement with permanent guardians. 32A-5-45(A)

The department shall work in collaboration with the department of health to promulgate rules for implementing a human rights committee pursuant to this section. 32A-6A-8(F)

The department shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and federal law.
federal law and the Children's Court Rules [10-101 NMRA]. **32A-6A-24(J)**

The department shall promulgate rules for the operation of out-of-home treatment and habilitation programs identified as psychiatric residential treatment facilities or non-medical community-based residential programs in keeping with the purposes of the Children's Mental Health and Developmental Disabilities Act and in conformance with applicable federal law and regulation. **32A-6A-30**

The department shall promulgate necessary rules, regulations, standards and procedures to carry out the purposes of the Children's Shelter Care Act. **32A-9-4**

| Effective Date | None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child. **25 U.S.C. § 1923** | The effective date of the provisions of Sections 1 through 21 and 23 through 73 of this act is July 1, 2022. **Section 74(A)** The effective date of the provisions of Section 22 of this act is July 1, 2023. **Section 74(B)** | The interstate commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact. **32A-10-9(ARTICLE VI)(A)** The interstate commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes between the compacting states. **32A-10-9(ARTICLE VII)(D)** The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff, which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of each **32A-10-9(ARTICLE VII)(D)** |
### III. NOTICE, APPOINTMENT OF COUNSEL & TRIBAL-STATE AGREEMENTS

| Notice | In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child’s tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe. 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No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe. Notice 25 U.S.C. § 1912(a) |
| In a child custody proceeding when the court knows or has reason to know that an Indian child is involved, the department shall notify the parent, guardian or Indian custodian and the Indian child's tribe, by certified mail with return receipt requested, of:

1. The pending proceedings;
2. The right of the Indian child’s parent, guardian, Indian custodian and Indian child's tribe to:
   a. Intervention; and
   b. Petition the court to transfer the proceeding to the tribal court;
3. The right of the Indian child’s parent, guardian or Indian custodian to court-appointed counsel if the court determines that person is unable to afford counsel; and
4. The right of the Indian child’s tribe to participate in the child custody proceeding whether or not the Indian child's tribe intervenes. Section 5(A) |

In the event that the department attempts to enter into discussion with an Indian tribe and the tribe does not respond within the time frame provided for in the Indian Family Protection Act, the department may proceed; provided that the absence of a tribal response does not: | compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states that governs the assessment. 32A-10-9(Article VIII)(B) |

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of the compact. 32A-11-1(Article 7) |
(1) eliminate other requirements of future communication and work with the Indian tribe concerning the child; or
(2) affect the Indian tribe's ability to respond to an action that has not yet been taken. **Section 5(B)**

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

If the identity or location of the parent, guardian or Indian custodian and the Indian tribe cannot be determined, a notice shall be given to the secretary in the same manner as provided in Subsection A of this section. The secretary shall have fifteen days after receipt of the notice to provide the same notice to the parent, guardian or Indian custodian and the Indian tribe. **Section 13(D)**

A foster care placement or termination of parental rights proceeding shall not be held until at least ten days after receipt of notice by the parent, guardian or Indian custodian and the Indian tribe or the secretary pursuant to this section; provided that the parent, guardian or Indian custodian or the Indian tribe shall, upon request, be granted up to twenty additional days to prepare for that proceeding. **Section 13(E)**

| Appointment of Counsel | In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination | The court shall, upon request, appoint counsel for an indigent parent who is unable to obtain counsel or if, in the court's discretion, appointment of counsel for an indigent parent is required in the |
proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title. **25 U.S.C. § 1912(b)**

interest of justice. Payment for the appointed counsel shall be made by the petitioner pursuant to the rate determined by the supreme court of New Mexico for court-appointed attorneys. **Section 61(E)**

| Tribal-State Agreements | States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes. **25 U.S.C. § 1919(a)**

Such agreements may be revoked by either party upon one hundred and eighty days’ written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise. **25 U.S.C. § 1919(b)**

The department shall make a good faith effort to enter into a tribal-state agreement for the coordination of care and custody of Indian children with each Indian tribe within the borders of this state. **Section 8(A)**

The department may enter into a tribal-state agreement with any Indian tribe outside of this state if there are children residing in this state who are members of or are eligible to become members of that Indian tribe. **Section 8(B)**

Any state services requiring a tribal-state agreement based on a funding source shall be negotiated and entered into to meet the provisions of this section. **Section 8(C)**

A tribal-state agreement may include an agreement regarding:

1. whether a case needs to be filed, and whether the case would be filed by the department in court or by the appropriate tribal agency in tribal court;
2. exclusive jurisdiction over cases filed by the department in which the court and tribal court would otherwise have concurrent jurisdiction;
3. the process to transfer cases between a court and tribal court; and
4. procedures for the assessment, removal, placement and custody of Indian children. |
**Section 8(D)**

A tribal-state agreement shall:

1. provide for cooperative delivery of child welfare services to Indian children in this state, including the use, to the extent available, of services provided by the Indian tribe; and
2. if services provided by the Indian tribe are unavailable, provide for the department's use of community services and resources developed specifically for Indian families and that have demonstrated experience and capacity to provide culturally relevant and effective services to children. **Section 8(E)**

The department shall review the tribal-state agreement every five years and invite the tribe to propose updates to the tribal-state agreement. **Section 8(F)**

### IV. CHILD CUSTODY PROCEEDINGS

| **Parental Rights — Voluntary Consent** | Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid. **25 U.S.C. § 1913(a)** | Prior to entering any voluntary placement agreement, the department shall make active efforts to prevent the breakup of the Indian family pursuant to the Indian Family Protection Act. **Section 18(A)**

In a voluntary foster care placement involving an Indian child, an Indian child's parent or guardian may enter into a voluntary placement agreement with the department. An Indian child's parent's or guardian's consent is voidable unless it is executed in writing and recorded before the court. **Section 18(B)**

The department shall notify the Indian child's tribe by certified mail, with return receipt requested, of the pending voluntary placement agreement and of the Indian child's tribe's right to intervene. **Section 18(C)** |
Before approving a voluntary placement agreement, the court shall ensure that the voluntary placement agreement is executed in writing. The court shall certify on the record that:

1. The terms and consequences of the consent were fully explained in detail and in a manner that is understandable to the parent or guardian;
2. The Indian child's parent or guardian fully understands the English language or that the voluntary placement agreement was interpreted into the primary language of the Indian child's parent or guardian;
3. The child is an Indian child;
4. There is no pending child abuse or neglect investigation involving the Indian child;
5. The Indian child's parent or guardian is voluntarily entering into the voluntary placement without any threat of removal of the Indian child by the department;
6. The department provided notice to the Indian child's tribe via certified or registered mail with return receipt requested;
7. Confidentiality has been requested or indicated and execution of consent was made in a closed court proceeding not open to the public;
8. If not represented, the Indian child's parent or guardian is proceeding without an attorney and has the right to consult with an attorney of the Indian child's parent's or guardian's own choosing; and
9. The Indian child's parent or guardian is of sound mind and judgment.

**Section 18(D)**

The request for voluntary placement shall be initiated in writing by the Indian child's parent or guardian, and if good cause is shown and the requirements of Subsection D of this section are met, the department may accept temporary custody or placement and care responsibility. Placement and
<table>
<thead>
<tr>
<th>Section 18(E)</th>
<th>During voluntary placement, the department shall make active efforts to provide tailored case planning to alleviate the causes and conditions leading to the voluntary placement agreement.</th>
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<tr>
<td>Section 18(F)</td>
<td>Any consent to a foster care placement that is given prior to or within ten days after birth of an Indian child is voidable.</td>
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<tr>
<td>Section 18(G)</td>
<td>An Indian child's parent or guardian may withdraw consent to a voluntary foster care placement of an Indian child pursuant to the Children's Code at any time. Upon receipt of a request to withdraw, the Indian child shall be returned to the Indian child's parent or guardian. The department shall have up to forty-eight hours after withdrawal of consent to allow for transition arrangements to be made for the Indian child's return to the Indian child's parent or guardian.</td>
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<tr>
<td>Section 18(H)</td>
<td>An Indian child shall not remain in voluntary placement for longer than one hundred eighty consecutive days or for more than one hundred eighty days in a calendar year; provided that a child may remain in voluntary placement up to an additional one hundred eighty consecutive days upon order of the court. If the Indian child's parent or guardian seeks to extend the voluntary placement, the department shall file a petition for an extension of voluntary placement prior to the expiration of the initial one-hundred-eighty-day period. The court shall hold a hearing and make a finding within the initial one-hundred-eighty-day period that the extension of voluntary placement is in the best interest of the Indian child.</td>
</tr>
</tbody>
</table>
If a request for an extension is not filed with the court prior to the initial one-hundred-eighty-day period, the agreement expires. No later than thirty days before the expiration of the initial agreement, the court shall hold a review hearing to determine if the voluntary placement should be extended. Section 18(J)

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

Any voluntary placement pursuant to this section shall not be considered abandonment, neglect or abuse by an Indian child's parent, guardian or extended family member. Section 18(L)

The parent or guardian whose Indian child is in voluntary placement pursuant to this section shall have the following rights to:

1. have visitation with the child;
2. be informed of changes in the Indian child's school or of changes in the child's placement by the department;
3. authorize decisions regarding medical and dental care and behavioral health services, including decisions that affect the daily care, support, safety and well-being of the child;
4. permit the department to consent to emergency services to ensure the safety and well-being of the Indian child, including medical, dental or behavioral health treatment, if the department is unable to make immediate prior contact with the parent or guardian. The department shall notify the parent or guardian within two hours of making emergency decisions due to inability to make prior contact;
5. consent to all non-emergency and non-routine medical care provided for the child;
6. make decisions regarding participation and attendance in cultural and religious
events, including traditional and cultural events offered by the Indian child’s tribe; and
(7) make decisions of substantial legal significance.

Section 18(M)

If new safety concerns are identified during the voluntary placement, the department shall not extend a voluntary placement agreement, but instead shall make a new report of suspected abuse or neglect to be screened for determination of a new department investigation. **Section 18(N)**

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

Section 18(O)

All records or information concerning the voluntary placement shall be confidential in accordance with the confidentiality provision of the Indian Family Protection Act.

Section 18(P)

Except when consent or relinquishment is implied, a consent or relinquishment by a parent shall be in writing, signed by the parent consenting or relinquishing and shall state the following:

(1) the date, place and time of execution;
(2) the date and place of birth of the adoptee and any names by which the adoptee has been known;
(3) if a consent to adoption is being executed, the identity of the petitioner, if known, or when the adoption is an independent adoption and the identity of the petitioner is unknown, how the petitioner was selected by the consenting parent;
(4) if a relinquishment of parental rights is being executed, the name and address of the agency or the department;
(5) that the person executing the consent or relinquishment has been counseled, as provided in Section 32A-5-22 NMSA 1978, by a certified counselor of the person's choice and with this knowledge the person is voluntarily and unequivocally consenting to the adoption of the named adoptee;

(6) that the consenting party has been advised of the legal consequences of the relinquishment or consent either by independent legal counsel or a judge;

(7) if the adoption is closed, that all parties understand that the court will not enforce any contact, regardless of any informal agreements that have made between the parties;

(8) that the consent to or relinquishment for adoption cannot be withdrawn;

(9) that the person executing the consent or relinquishment has received or been offered a copy of the consent or relinquishment;

(10) that a counseling narrative has been prepared pursuant to department rules and is attached to the consent or relinquishment;

(11) that the person who performed the counseling meets the requirements set forth in the Adoption Act; and

(12) that the person executing the consent or relinquishment waives further notice of the adoption proceedings.

**Section 63(A)**

The consent of an adoptee, if fourteen years of age or older, shall be in writing, signed by the adoptee, consenting to the adoption and shall state the following:

(1) the date, place and time of execution;

(2) the date and place of birth of the adoptee and any names by which the adoptee has been known;

(3) the name of the petitioner;
(4) that the adoptee has been counseled regarding the consent pursuant to department rules;
(5) that the adoptee has been advised of the legal consequences of the consent;
(6) that the adoptee is voluntarily and unequivocally consenting to the adoption;
(7) that the consent or relinquishment cannot be withdrawn;
(8) that a counseling narrative has been prepared pursuant to department rules and is attached to the consent; and
(9) that the person who performed the counseling meets the requirements set forth in the Adoption Act.

Section 63(B)

In cases when the consent or relinquishment is in English and English is not the first language of the consenting or relinquishing person, the person taking the consent or relinquishment shall certify in writing that the document has been read and explained to the person whose consent or relinquishment is being taken in that person's first language, by whom the document was so read and explained and that the meaning and implications of the document are fully understood by the person giving the consent or relinquishment.

Section 63(C)

Unconditional consents or relinquishments are preferred, and, therefore, conditional consents or relinquishments shall be for good cause and approved by the court. However, if the condition is for a specific petitioner or the condition requires the other parent to consent before the decree of adoption is entered, the condition shall be deemed for good cause. In any event, all conditions permitted under this subsection shall be met within one hundred eighty days of the execution of the conditional consent or relinquishment or the conclusion of any litigation concerning the petition for adoption. The court may grant an extension of this time for good cause.
### Section 63(D)

Agency or department consents required pursuant to the provisions of Section 32A-5-17 NMSA 1978 shall state the following:

1. the date, place and time of execution;
2. the date and place of birth of the adoptee and any names by which the adoptee has been known;
3. the name of the petitioner; and
4. the consent of the agency or department.

### Section 63(E)

A consent or relinquishment taken by an individual appointed to take consents or relinquishments by an agency shall be notarized, except that a consent or relinquishment signed in the presence of a judge need not be notarized. A hearing before the court for the purpose of taking a consent or relinquishment shall be heard by the court within seven days of request for setting.

### Section 63(F)

No consent to adoption or relinquishment of parental rights shall be valid if executed within forty-eight hours after the adoptee's birth.

### Section 63(G)

A consent to or relinquishment for adoption shall not be withdrawn prior to the entry of a decree of adoption unless the court finds, after notice and opportunity to be heard is afforded to the petitioner, to the person seeking the withdrawal and to the agency placing a child for adoption, that the consent or relinquishment was obtained by fraud. In no event shall a consent or relinquishment be withdrawn after the entry of a decree of adoption.

### Parental Rights — Foster care Placement

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian. 25 U.S.C. § 1913(b)

An Indian child's parent or guardian may withdraw consent to a voluntary foster care placement of an Indian child pursuant to the Children's Code at any time. Upon receipt of a request to withdraw, the Indian child shall be returned to the Indian child's
In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent. Section 18(H)

The court shall grant a decree of adoption if it finds that:

1. the petitioner has proved by clear and convincing evidence that the placement preferences set forth in the Indian Family Protection Act, or the placement preferences established by the Indian child's tribe, have been followed or, if not followed, good cause for noncompliance has been proved by clear and convincing evidence; and
2. provision has been made to ensure that the Indian child's cultural ties to the Indian child's tribe are protected and fostered. Section 34(A)

In any adoption involving an Indian child, the clerk of the court shall provide the secretary with a copy of the final decree of adoption or adoptive placement order. Section 34(B)

A parent may withdraw consent to a voluntary adoption of the Indian child at any time before entry of the final decree of adoption. Section 34(C)

Within two years after a final decree of adoption of an Indian child, the court may invalidate a voluntary adoption upon finding that the parent's consent was obtained by fraud or duress. Section 34(D)
Upon filing of a petition to vacate the final decree of adoption of the parent's Indian child, the petitioner shall give notice to all parties to the adoption proceedings and the Indian child's tribe, and the court shall hold a hearing on the petition. **Section 34(E)**

Where the court finds that the parent's consent was obtained through fraud or duress, the court shall vacate the final decree of adoption, order the consent revoked and order that the child be returned to the parent. **Section 34(F)**

**Placement of Indian Children — Placement Preferences**

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child’s extended family; (2) other members of the Indian child’s tribe; or (3) other Indian families. 25 U.S.C. § 1915(a)

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

1. most closely approximates a family, taking into consideration the Indian child's sibling attachment;
2. allows the Indian child's special needs, if any, to be met;
3. is in reasonable geographic proximity to the Indian child's home, extended family members or siblings; and
4. is in accordance with the order of preference established by the Indian child's tribe by any means, or, if that Indian tribe has not established placement preferences, preference shall be given in accordance with the following order of preference:
   a. an extended family member of the Indian child;
   b. a foster home licensed, approved or specified by the Indian child's tribe; or
   c. a foster home licensed or approved by a licensing authority in New Mexico and in which one or more of the licensed or approved foster parents is an Indian. **Section 21(A)**

**Placement of Indian Children — Foster**

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most

In the case of a foster care placement of an Indian child, except as provided in Subsection C of this
| Care or Preadoptive Placement Criteria | approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with— (i) a member of the Indian child’s extended family; (ii) a foster home licensed, approved, or specified by the Indian child’s tribe; (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child’s needs. 25 U.S.C. § 1915(b) | section, the child shall be placed in the least restrictive setting that: (1) most closely approximates a family, taking into consideration the Indian child's sibling attachment; (2) allows the Indian child's special needs, if any, to be met; (3) is in reasonable geographic proximity to the Indian child's home, extended family members or siblings; and (4) is in accordance with the order of preference established by the Indian child's tribe by any means, or, if that Indian tribe has not established placement preferences, preference shall be given in accordance with the following order of preference: (a) an extended family member of the Indian child; (b) a foster home licensed, approved or specified by the Indian child's tribe; or (c) a foster home licensed or approved by a licensing authority in New Mexico and in which one or more of the licensed or approved foster parents is an Indian. Section 21(A) |
| Placement of Indian Children — Tribal Preference | In the case of a placement under subsection (a) or (b) of this section, if the Indian child’s tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: Provided, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences. 25 U.S.C. § 1915(c) | If the Indian child's tribe has established a different order of preference than that specified in the Indian Family Protection Act, the Indian child's tribe's placement preferences shall apply. Section 21(G) |
| Placement of Indian Children — Social | The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards | N/A |
| and Cultural Standards | of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties. 25 U.S.C. § 1915(d) |  |
| Placement of Indian Children — Record Availability | A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe. 25 U.S.C. § 1915(e) | The clerk of a court entering a final decree or order in an adoptive placement of an Indian child shall provide the secretary with a copy of that decree, adoptive placement order and any other information necessary to show:  
(1) the birth name and birthdate of the Indian child;  
(2) any information relating to tribal membership or eligibility for membership of the adopted Indian child;  
(3) the tribal affiliation and name of the Indian child after adoption;  
(4) the names and addresses of the biological parents;  
(5) the names and addresses of the adoptive parents;  
(6) the name and contact information of any agency having files or information relating to the adoption; and  
(7) any affidavit signed by the biological parent or parents asking that their identity remain confidential. Section 38(A) |
| Emergency Removal or Placement of Child | Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the | A child may be held or taken into custody:  
(1) by a law enforcement officer when the officer has evidence giving rise to reasonable grounds to believe that the child is abused or neglected and that there is an immediate threat to the child's safety; provided that the law enforcement officer contacts the department to enable the department to conduct an on-site safety assessment to determine whether it is appropriate to take the child into immediate custody, except that a child may be taken into custody by a law enforcement officer without a protective services assessment being conducted if:  
(a) the child's parent, guardian or custodian has attempted, conspired to cause or caused great |
<table>
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<tr>
<th>Return of Custody</th>
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<td><strong>Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child. 25 U.S.C. §1916(a)</strong></td>
<td><strong>Whenever an Indian child has been adopted and the relationship between the adoptive parent and the Indian child has been severed for any reason, a biological parent, guardian or prior Indian custodian may petition for return of custody, and there shall be a presumption that the Indian child shall be returned to the biological parent, guardian or prior Indian custodian, unless the return of custody is not in the best interests of the Indian child. The provisions of this section shall not be deemed to conflict with other provisions pertaining to return of custody in the Indian Family Protection Act. Section 35</strong></td>
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<tr>
<th>25 U.S.C. § 1922</th>
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<tr>
<td>jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.</td>
<td>bodily harm to the child or great bodily harm or death to the child's sibling; (b) the child's parent, guardian or custodian has attempted, conspired to cause or caused great bodily harm or death to another parent, guardian or custodian of the child; (c) the child has been abandoned; (d) the child is in need of emergency medical care; (e) the department is not available to conduct a safety assessment in a timely manner; or (f) the child is in imminent risk of abuse; or (2) by medical personnel when there are reasonable grounds to believe that the child has been injured as a result of abuse or neglect and that the child may be at risk of further injury if returned to the child's parent, guardian or custodian. The medical personnel shall hold the child until a law enforcement officer is available to take custody of the child pursuant to Paragraph (1) of this subsection. Section 48(A)</td>
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<tr>
<th>25 U.S.C. §1916(a)</th>
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<tbody>
<tr>
<td>Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in</td>
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accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed. 25 U.S.C. §1916(b)

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<tr>
<th>Child's Tribal Affiliation</th>
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<tr>
<td>Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship. 25 U.S.C. § 1917</td>
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At the last review or permanency hearing held prior to the Indian child's eighteenth birthday, the court shall determine whether documentation of the Indian child's tribal membership and any information regarding the Indian child's tribal affiliation have been provided to the Indian child.

**Section 25(A)**

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

**Section 25(B)**

Pursuant to the Indian Family Protection Act, an Indian tribe shall have access to the post-decree adoption records that involve an Indian child who is a member or eligible for membership in the Indian tribe.  **Section 37(A)**

Upon application by an Indian person who has reached the age of eighteen and who was the subject of an adoptive placement in this state prior to the enactment of the Indian Family Protection Act, the court that entered the final decree shall inform that Indian person of the tribal affiliation, if any, of the Indian person's biological parents and provide any other information necessary to protect any rights flowing from the Indian person's tribal relationship.  **Section 37(B)**

If the adoption predated enactment of the federal Indian Child Welfare Act of 1978, the court shall attempt to find information related to the adoption and may order the department to assist. If the...
adoption of an Indian person was completed after enactment of the federal Indian Child Welfare Act of 1978, the Indian person may contact the secretary for necessary information regarding the Indian person's adoption. If the secretary certifies that the secretary does not have that information, the state court shall attempt to find the information and may order the department to assist. Section 37(C)

If an Indian person does not know the court that issued the adoption decree, the Indian person may request that information from the department. The department shall provide to the Indian person the name and location of the court that entered the final decree, if known. Section 37(D)

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

1. the birth name and birthdate of the Indian child;
2. any information relating to tribal membership or eligibility for membership of the adopted Indian child;
3. the tribal affiliation and name of the Indian child after adoption;
4. the names and addresses of the biological parents;
5. the names and addresses of the adoptive parents;
6. the name and contact information of any agency having files or information relating to the adoption; and
7. any affidavit signed by the biological parent or parents asking that their identity remain confidential. Section 38(A)

The attorney for the prospective adoptive parent shall provide to the clerk of the court a copy of the decree of adoption, an adoptive placement order or any other information required by the Indian Family
<table>
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<tr>
<th><strong>Tribal Invalidation of Action</strong></th>
<th>Protection Act and a stamped envelope addressed to the secretary marked “Confidential.” Section 38(B)</th>
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<tr>
<td>Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child’s tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title. 25 U.S.C. § 1914</td>
<td>An Indian child who is the subject of a child custody proceeding, a parent, guardian or Indian custodian from whose custody the child was removed or the Indian child's tribe may petition the court to invalidate that action upon a showing that the action violated any provision of Section 4, 5, 7, 9, 12, 13, 14, 16, 17, 18, 19, 21, 28, 34 or 35 of the Indian Family Protection Act. Section 20</td>
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<tr>
<th><strong>Reassumption of Jurisdiction Over Child Custody Proceedings</strong></th>
<th>N/A</th>
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<tr>
<td>Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassert jurisdiction over child custody proceedings. Before any Indian tribe may reassert jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassert such jurisdiction which includes a suitable plan to exercise such jurisdiction. 25 U.S.C. § 1918(a)</td>
<td>(1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider, among other things: (i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassertion of jurisdiction by the tribe; (ii) the size of the reservation or former reservation area which will be affected by retrocession and reassertion of jurisdiction by the tribe; (iii) the population base of the tribe, or distribution of the population in</td>
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homogeneous communities or geographic areas; and
(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

25 U.S.C. § 1918(b)

If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a), the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

25 U.S.C. § 1918(c)

Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

25 U.S.C. § 1918(d)

| Improper Removal of Child From Custody | Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has | N/A |
| Pending Court Proceedings — Examination of Reports | Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based. 25 U.S.C. § 1921 | The Indian child's tribe or any Indian tribe claiming the Indian child as a member, whether or not the Indian tribe has intervened, shall have the right to examine all reports or other documents filed with the court upon which a decision with respect to the action may be based. Section 16(G) |
| Pending Court Proceedings — Remedial Services and Rehabilitative Programs | Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. 25 U.S.C. § 1912(d) | Before filing a petition related to an Indian child, the department shall notify the Indian child's tribe of the results of the investigation, including the active efforts that have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful, resulting in the department's intention to file the petition. Section 12(D) |
| Pending Court Proceedings — | No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and | For a foster care placement at adjudication or termination of parental rights, the evidence shall show a causal relationship between the particular |

improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger. 25 U.S.C. § 1920

State or Federal Law Applicability | In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard. 25 U.S.C. § 1921 | N/A |
| Foster Care Placement | convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.  
25 U.S.C. § 1912(e) | conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child custody proceeding[.]  
Section 13(B)(3) |
| Pending Court Proceedings — Parental Rights Termination | No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.  
25 U.S.C. § 1912(f) | The court shall not order a termination of parental rights for an Indian child unless evidence beyond a reasonable doubt is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent, guardian or Indian custodian is likely to result in serious emotional or physical damage to the child[.]  
Section 13(B)(2) |

V. INFORMATION AVAILABILITY & INFORMATION DISCLOSURE

| Information Availability | Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show—  
(1) the name and tribal affiliation of the child;  
(2) the names and addresses of the biological parents;  
(3) the names and addresses of the adoptive parents; and  
(4) the identity of any agency having files or information relating to such adoptive placement.  
Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.  
25 U.S.C. § 1951(a) | The clerk of a court entering a final decree or order in an adoptive placement of an Indian child shall provide the secretary with a copy of that decree, adoptive placement order and any other information necessary to show:  
(1) the birth name and birthdate of the Indian child;  
(2) any information relating to tribal membership or eligibility for membership of the adopted Indian child;  
(3) the tribal affiliation and name of the Indian child after adoption;  
(4) the names and addresses of the biological parents;  
(5) the names and addresses of the adoptive parents;  
(6) the name and contact information of any agency having files or information relating to the adoption; and  
(7) any affidavit signed by the biological parent or parents asking that their identity remain confidential.  
Section 38(A) |
| Information Disclosure | Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child’s tribe, where the information warrants, that the child’s parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe. *25 U.S.C. § 1951(b)* | The department shall promulgate rules for implementing disclosure of records pursuant to the Indian Family Protection Act and in compliance with state and federal law and the Children’s Court Rules. *Section 39(I)* The department shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and federal law and the Children’s Court Rules. *Section 57(E)* |

| VI. LEGISLATIVE INTENT & MISCELLANEOUS PROVISIONS |
| Congressional Findings | Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds— *(1)* that clause 3, section 8, article I of the United States Constitution provides that “The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes [1]” and, through this and other constitutional authority, Congress has plenary power over Indian affairs; *(2)* that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources; *(3)* that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are N/A | The legislature finds and declares that appropriate and distinct programs of supervision and care for children are required to fulfill the purposes of the Children’s Code; that many children are needlessly detained in secured facilities on charges for acts that would not be criminal if they were committed by an adult; that these children would benefit from either immediate return to the family or placement in shelter-care homes or nonsecured shelter-care facilities; and that certain alleged delinquents will benefit from nonsecured placements and do not require secure detention. *32A-9-2 (A)* The purpose of the Children's Shelter Care Act is: *(1)* to provide funding for the establishment of shelter-care facilities or programs; and *(2)* to divert children out of the juvenile justice system and provide for their supervision and care in community-based shelter-care homes and facilities when the immediate return to the child's family is not feasible or when intervention programs alone are not |
members of or are eligible for membership in an Indian tribe; (4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

25 U.S.C. § 1901

sufficient for the care and treatment of the child. 32A-9-2 (B)

It is the purpose of the Emancipation of Minors Act to provide a clear statement defining emancipation and its consequences and to permit an emancipated minor to obtain a court declaration of his status. 32A-21-2

The legislature finds that:
A. special needs are present among the state's population of three- and four-year-old children and those needs warrant the provision of early pre-kindergarten and pre-kindergarten programs;
B. participation in quality early pre-kindergarten and pre-kindergarten has a positive effect on children's intellectual, emotional, social and physical development; and
C. early pre-kindergarten and pre-kindergarten will advance governmental interests and childhood development and readiness. 32A-23-2(A)-(C)

The legislature finds that an early childhood care and education system is vital in ensuring that every New Mexico child is eager to learn and ready to succeed by the time that child enters kindergarten, that high-quality early learning experiences have been proven to prepare children for success in school and later in life and that cost-benefit research demonstrates a high return on investment for money spent on early childhood care and education for at-risk children. 32A-23A-3(A)

The legislature further finds that, to be successful, an early childhood care and education system should be:
(1) developmentally, culturally and linguistically appropriate and include the implementation of program models,
standards and curriculum based on research and best practices;  
(2) data-driven, including the identification and prioritization of communities most at risk while striving to make the system universally available to all those who wish to participate;  
(3) accountable through developmentally appropriate methods of measuring, reporting and tracking a child's growth and development and the improvement of the system's programs;  
(4) accessible, especially to those children most at risk for school failure;  
(5) of the highest possible quality through the utilization of qualified practitioners who have completed specialized training in early childhood growth, development and learning that is specific to the practitioner's role in the system and the maintenance of quality rating methods for the programs in the system;  
(6) fully aligned within each community to ensure the most efficient and effective use of resources by combining funding sources and supporting seamless transitions for children within the system and for children transitioning into kindergarten;  
(7) family-centered by recognizing that parents are the first and most important teachers of their children and providing the support and referrals necessary for parents to assume this critical role in their child's development; and  
(8) a partnership between the state and private individuals or institutions with an interest or expertise in early childhood care and education. 32A-23A-3(B)

The purpose of the Early Childhood Care and Education Act is to establish a comprehensive early childhood care and education system...
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<tr>
<th>Congressional Declaration of Policy</th>
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<td><strong>The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.</strong></td>
<td><strong>25 U.S.C. § 1902</strong></td>
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<td><strong>N/A</strong></td>
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<td><strong>The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in doing so have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime. 32A-10-9(A)</strong></td>
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<td><strong>It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to:</strong></td>
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<td><strong>(1) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;</strong></td>
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<td><strong>(2) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;</strong></td>
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<td><strong>(3) return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return;</strong></td>
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(4) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;
(5) provide for the effective tracking and supervision of juveniles;
(6) equitably allocate the costs, benefits and obligations of the compacting states;
(7) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments or any other criminal or juvenile justice agency that has jurisdiction over juvenile offenders;
(8) ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;
(9) establish procedures to resolve pending charges against juvenile offenders prior to transfer or release to the community under the terms of this compact; establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial and legislative branches and (4) juvenile and criminal justice administrators;
(11) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;
(12) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in that activity; and
(13) coordinate the implementation and operation of the compact with the Interstate Compact on the Placement of
Children [32A 11-1 NMSA 1978], the Interstate Compact for Adult Offender Supervision [31-5-20 NMSA 1978] and other compacts affecting juveniles, particularly in those cases where concurrent or overlapping supervision issues arise. 32A-10-9(B)

It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. 32A-10-9(C)

The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact. 32A-10-9(D)

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

A. each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care;

B. the appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with requirements for the protection of the child;

C. the proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a
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<tr>
<th>Locally Convenient Day Schools</th>
<th>It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families. 25 U.S.C. § 1961(a)</th>
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<td>The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades. 25 U.S.C. § 1961(b)</td>
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<td>Copies to the States</td>
<td>Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter. 25 U.S.C. § 1962</td>
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| Grants for Reservation Programs | The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an
Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

1. a system for licensing or otherwise regulating Indian foster and adoptive homes;
2. the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;
3. family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;
4. home improvement programs;
5. the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;
6. education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;
7. a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and
8. guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

25 U.S.C. § 1931(a)

Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection
with funds provided under titles IV–B and XX of the Social Security Act [42 U.S.C. 620 et seq., 1397 et seq.] or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this chapter. The provision or possibility of assistance under this chapter shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV–B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

**25 U.S.C. § 1931(b)**