UNANNOTATED

CHAPTER 40
Domestic Affairs

ARTICLE 1
Marriage in General

40-1-1. [Marriage is civil contract requiring consent of parties.]

Marriage is contemplated by the law as a civil contract, for which the consent of the contracting parties, capable in law of contracting, is essential.

History: Laws 1862-1863, p. 64; C.L. 1865, ch. 75, § 2; C.L. 1884, § 978; C.L. 1897, § 1415; Code 1915, § 3425; C.S. 1929, § 87-101; 1941 Comp., § 65-101; 1953 Comp., § 57-1-1.

40-1-2. Marriages solemnized; ordained clergy or civil magistrates may solemnize.

A. The civil contract of marriage is entered into when solemnized as provided in Chapter 40, Article 1 NMSA 1978. As used in Chapter 40, Article 1 NMSA 1978, "solemnize" means to join in marriage before witnesses by means of a ceremony.

B. A person who is an ordained member of the clergy or who is an authorized representative of a federally recognized Indian nation, tribe or pueblo may solemnize the contract of marriage without regard to sect or rites and customs the person may practice.

C. Active or retired judges, justices and magistrates of any of the courts established by the constitution of New Mexico, United States constitution, laws of the state or laws of the United States are civil magistrates having authority to solemnize contracts of marriage. Civil magistrates solemnizing contracts of marriage shall charge no fee therefor.

History: Laws 1859-1860, p. 120; C.L. 1865, ch. 75, § 1; C.L. 1884, § 977; C.L. 1897, § 1414; Code 1915, § 3426; C.S. 1929, § 87-102; 1941 Comp., § 65-102; 1953 Comp., § 57-1-2; Laws 1983, ch. 193, § 1; 1989, ch. 78, § 1; 2001, ch. 99, § 1; 2013, ch. 144, § 2.

40-1-3. Ceremony by religious society.

It is lawful for any religious society or federally recognized Indian nation, tribe or pueblo to solemnize marriage conformably with its rites and customs, and the secretary

of the society or the person authorized by the society or federally recognized Indian nation, tribe or pueblo shall make and transmit a transcript to the county clerk certifying to the marriages solemnized.

History: Laws 1862-1863, p. 66; C.L. 1865, ch. 75, § 8; C.L. 1884, § 984; C.L. 1897, § 1421; Code 1915, § 3428; C.S. 1929, § 87-104; 1941 Comp., § 65-103; 1953 Comp., § 57-1-3; Laws 1983, ch. 193, § 2; 1989, ch. 78, § 2; 2013, ch. 144, § 3.

40-1-4. [Lawful marriages without the state recognized.]

All marriages celebrated beyond the limits of this state, which are valid according to the laws of the country wherein they were celebrated or contracted, shall be likewise valid in this state, and shall have the same force as if they had been celebrated in accordance with the laws in force in this state.

History: Laws 1862-1863, p. 64; C.L. 1865, ch. 75, § 10; C.L. 1884, § 986; C.L. 1897, § 1423; Code 1915, § 3429; C.S. 1929, § 87-105; 1941 Comp., § 65-104; 1953 Comp., § 57-1-4.

40-1-5. Repealed.

History: Laws 1862-1863, p. 64; C.L. 1865, ch. 75, § 3; C.L. 1884, § 979; C.L. 1897, § 1416; Code 1915, § 3427; Laws 1923, ch. 100, § 1; C.S. 1929, § 87-103; 1941 Comp., § 65-105; 1953 Comp., § 57-1-5; Laws 1973, ch. 51, § 1; 1975, ch. 32, § 1; 1978 Comp., § 40-1-5, repealed by Laws 2013, ch. 144, § 14.

40-1-6. Restrictions on marriage of minors.

A. The county clerk shall not issue a marriage license to an unemancipated person sixteen or seventeen years of age, and no person authorized by the laws of this state to solemnize marriages shall knowingly unite in marriage any person sixteen or seventeen years of age, unless the minor first receives the written consent of each of the minor's living parents as shown on the minor's certificate of birth, or the district court has authorized the marriage of such person upon request of a parent or legal guardian of the person for good cause shown, and a certified copy of the judicial authorization is filed with the county clerk.

B. The county clerk shall not issue a marriage license to any person under sixteen years of age, and no person authorized by the laws of this state to solemnize marriages shall knowingly unite in marriage any person under sixteen years of age, unless the children's or family court division of the district court has first authorized the marriage of the person upon request of a parent or legal guardian of the person in settlement of proceedings to compel support and establish parentage, or where an applicant for the marriage license is pregnant, and a certified copy of the judicial authorization is filed with the county clerk.

History: Laws 1876, ch. 31, § 2; C.L. 1884, § 993; C.L. 1897, § 1426; Code 1915, § 3431; Laws 1923, ch. 100, § 2; C.S. 1929, § 87-107; 1941 Comp., § 65-106; Laws 1953, ch. 112, § 1; 1953 Comp., § 57-1-6; Laws 1972, ch. 97, § 70; 1975, ch. 32, § 2; repealed and reenacted by Laws 2013, ch. 144, § 4.

40-1-7. Incestuous marriages.

All marriages between relations and children, including grandparents and grandchildren of all degrees; between brothers and sisters of full blood or of half blood; between uncles and nieces; and between aunts and nephews are declared incestuous and absolutely void.

History: Laws 1876, ch. 31, § 1; C.L. 1884, § 992; C.L. 1897, § 1425; Code 1915, § 3430; C.S. 1929, § 87-106; 1941 Comp., § 65-107; 1953 Comp., § 57-1-7; 2013, ch. 144, § 5.

40-1-8. Repealed.

History: Laws 1876, ch. 31, § 3; C.L. 1884, § 994; C.L. 1897, § 1427; Code 1915, § 3432; C.S. 1929, § 87-108; 1941 Comp., § 65-108; 1953 Comp., § 57-1-8; 1978 Comp., § 40-1-8, repealed by Laws 2013, ch. 144, § 14.

40-1-9. Prohibited marriages.

No marriage between relatives within the prohibited degrees or between or with persons under the prohibited ages shall be declared void except by a decree of the district court upon proper proceedings. A cause of action may be instituted by the minor, by next friend, by either parent or legal guardian of the minor or by the district attorney. In the case of minors, no party to the marriage who may be over the prohibited age shall be allowed to apply for or obtain a decree of the court declaring the marriage void; but the minor may do so, and the court may, in its discretion, grant alimony until the minor becomes of age or remarries. If the parties should live together until they arrive at the age under which marriage is permitted by statute, then the marriage shall be deemed legal and binding.

History: Laws 1876, ch. 32, § 1; C.L. 1884, § 997; C.L. 1897, § 1430; Code 1915, § 3434; Laws 1927, ch. 110, § 1; C.S. 1929, § 87-110; 1941 Comp., § 65-109; 1953 Comp., § 57-1-9; Laws 1973, ch. 51, § 2; 2013, ch. 144, § 6.

40-1-10. License required; county clerk.

A. Each couple desiring to marry pursuant to the laws of New Mexico shall first obtain a license from a county clerk of this state and following a ceremony conducted in this state file the license for recording in the county issuing the license.

B. To obtain a marriage license, the couple shall personally appear at the office of the county clerk issuing the license and provide sufficient identification to satisfy the county clerk as to each person's identity and qualification to receive a marriage license pursuant to Chapter 40, Article 1 NMSA 1978. On application to a judge of the district court, the court, for good cause, may authorize a person unable to appear personally to obtain a license from the county clerk, and a certified copy of the judicial authorization shall be filed with the county clerk.

C. The county clerk:

(1) shall collect the social security number of an applicant for a marriage license only as provided for in Section 27-1-10 NMSA 1978;

(2) shall not make available a social security number to another person except as provided for in Section 27-1-10 NMSA 1978; and

(3) may, thirty days after the commencement of each fiscal year, dispose of, in a secure manner, those social security numbers collected in the previous fiscal year that have not been requested as provided for in Section 27-1-10 NMSA 1978.

History: Laws 1905, ch. 65, § 1; Code 1915, § 3435; C.S. 1929, § 87-111; Laws 1939, ch. 25, § 1; 1941 Comp., § 65-110; 1953 Comp., § 57-1-10; Laws 1969, ch. 104, § 1; 1973, ch. 51, § 3; 2013, ch. 144, § 7.

40-1-11. Fees; disposition.

The county clerk shall receive a fee of twenty-five dollars ($25.00) for issuing, acknowledging and recording a marriage license and marriage certificate. Fifteen dollars ($15.00) of each fee shall be remitted by the county treasurer to the state treasurer, within fifteen days of the last day of each month, for credit to the children's trust fund.

History: 1953 Comp., § 57-1-10.1, enacted by Laws 1957, ch. 33, § 1; 1977, ch. 253, § 64; 1979, ch. 131, § 1; 1985, ch. 52, § 1; 1986, ch. 15, § 10; 2013, ch. 144, § 8.

40-1-12. Repealed.

History: 1953 Comp., § 57-1-10.2, enacted by Laws 1957, ch. 33, § 2; 1978 Comp., § 40-1-12, repealed by Laws 2013, ch. 144, § 14.

40-1-13. Repealed.

History: 1953 Comp., § 57-1-10.3, enacted by Laws 1957, ch. 33, § 3; 1978 Comp., § 40-1-13, repealed by Laws 2013, ch. 144, § 14.

40-1-14. Production of license and proof of legal qualifications.

Prior to a ceremony, all persons authorized to solemnize marriage shall require the parties contemplating marriage to produce a license signed and sealed by the county clerk issuing the license. Nothing in Chapter 40, Article 1 NMSA 1978 shall excuse any person authorized by the laws of this state to solemnize the contract of marriage from being satisfied as to the legal qualifications of any parties desiring to be married, in addition to the authority conferred by the license.

History: Laws 1905, ch. 65, § 3; Code 1915, § 3437; C.S. 1929, § 87-113; 1941 Comp., § 65-112; 1953 Comp., § 57-1-12; 2013, ch. 144, § 9.

40-1-15. Certification of marriage; recording and indexing.

A. It is the duty of all persons solemnizing the contract of marriage in this state to certify the marriage to the county clerk within ninety days from the date of the marriage ceremony. Upon ensuring the information on the certificate is complete and legible, the county clerk shall immediately upon receipt of the certificate cause it to be properly recorded and indexed in a permanent record as a part of the county records.

B. The county clerk may issue a certificate of correction or correct or reissue an application for a marriage license, a marriage license or a certificate of marriage as a result of a typographical or data entry error by the office of the county clerk. The county clerk shall issue a certificate of correction or correct or reissue an application for a marriage license, a marriage license or a certificate of marriage to correct an error on the document upon order of the district court.

History: Laws 1905, ch. 65, § 4; Code 1915, § 3438; C.S. 1929, § 87-114; 1941 Comp., § 65-113; 1953 Comp., § 57-1-13; 2013, ch. 144, § 10.

40-1-16. Application of law.

A. A child born to parents who are not married to each other has the same rights pursuant to the law as a child born to parents who are married to each other.

B. Nothing in Chapter 40, Article 1 NMSA 1978 shall be construed to in any manner interfere with the records kept by any civil magistrate, religious society, church organization or federally recognized Indian nation, tribe or pueblo or with any additional form of ceremony, regulation or requirement prescribed by them.

History: Laws 1905, ch. 65, § 5; Code 1915, § 3439; C.S. 1929, § 87-118; 1941 Comp., § 65-114; 1953 Comp., § 57-1-14; 2013, ch. 144, § 11.

40-1-17. Uniform use form.

To ensure a uniform system of records of all marriages contracted and the better preservation of the records for future reference, the form of application, license and certificate shall be substantially as provided in Section 40-1-18 NMSA 1978, each blank to be numbered consecutively corresponding with the page number of the record book in the clerk's office; provided that the medical evaluation language shall not be printed on the application until such time as the secretary of health deems such evaluation necessary through the issuance of rules.

History: Laws 1905, ch. 65, § 7; Code 1915, § 3441; C.S. 1929, § 87-120; 1941 Comp., § 65-116; 1953 Comp., § 57-1-15; 2013, ch. 144, § 12.

40-1-18. Form of application, license and certificate.

APPLICATION FOR MARRIAGE LICENSE

No. _____ STATEMENTS

RECEIVED AND FILED

IN COUNTY CLERK'S OFFICE

at _____ o'clock _____ m.

_____ 19 _____

DATE OF PREMARITAL PHYSICAL EXAMINATION

Bride _____

Groom _____

COUNTY CLERK _____ COUNTY

By _____ Deputy

To the County Clerk: We the undersigned hereby make application to be united in marriage and certify that we are not related within the degree prohibited by the laws of this state; that neither is bound by marriage to another; that there exists no legal impediment to this marriage; and that the information contained herein is correct.

Male Applicant	Female Applicant
Date of Birth _____	Date of Birth _____
Place of Birth _____	Place of Birth _____
Present Address _____	Present Address

_____

_____ _____
Signature Signature

Subscribed and sworn to before me this _____ day of _____
A.D. 19 ___

(seal)

_____ by _____ Deputy
Signature County Clerk

CONSENT OF PARENT OR GUARDIAN

(Where either party is under age)

I, the parent (guardian) of _____, hereby consent to the granting of a license to marry, waiving the question of minority.

_____
Signature Parent (Guardian)

I, the parent (guardian) of _____, hereby consent to the granting of a license to marry, waiving the question of minority.

_____
Signature Parent (Guardian)

MARRIAGE LICENSE

State of New Mexico)
County of _____) ss.

To any Person Authorized by Law to Perform the Marriage Ceremony:

Greeting:

You are hereby authorized to join in marriage _____ of _____ and _____ of _____ and of this license you will make due return to my office within the time prescribed by law.

Witness my hand and the seal of said court at _____ this _____ day of _____, 19 ____.

_____
County Clerk

Recorded _____, 19 ____, at ____ .m.
In marriage record book no. ____, page ____.

_____
County Clerk

MARRIAGE CERTIFICATE

State of New Mexico)
County of _____) ss.

I hereby certify that on the _____ day of _____, A.D., 19 ____, at _____ in said county and state, I, the undersigned, a _____, did join in the Holy Bonds of Matrimony in accordance with the laws of the state of New Mexico and the authorization of the foregoing license _____ of _____ and _____ of _____.

Witness my hand and seal the day and year last above written.

_____
(Official Title)

WITNESSES:

_____
_____

Signed _____ Groom.

Signed _____ Bride.

Recorded this _____ day of _____, A.D., 19 ____, at ____M.

Marriage Record Book No. _____, Page No. _____.

_____
County Clerk

History: 1953 Comp., § 57-1-16, enacted by Laws 1961, ch. 99, § 1.

40-1-19. Offenses; penalties.

A. For failure to perform the county clerk's responsibilities and duties pursuant to Chapter 40, Article 1 NMSA 1978, a county clerk is responsible on the county clerk's official bond for damages suffered by the injured party.

B. A person who performs the marriage ceremony or certifies a marriage to the county clerk, who neglects or fails to comply with the provisions of Chapter 40, Article 1 NMSA 1978 and any person who willfully violates the law by deceiving or attempting to deceive or mislead any officer or person in order to obtain a marriage license or to be married contrary to law is upon conviction guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1905, ch. 65, § 9; Code 1915, § 3443; C.S. 1929, § 87-122; 1941 Comp., § 65-118; 1953 Comp., § 57-1-17; 2013, ch. 144, § 13.

40-1-20. [Marriages without license in 1905 validated.]

All marriages celebrated or contracted in the territory of New Mexico, during the year A.D. 1905, without the persons entering into the marriage relation, having first obtained a license from the probate clerk of the proper county, but which marriages were valid according to the law as it existed prior to April 13, 1905, are hereby validated and legalized and shall have the same force and effect as if such marriages had been celebrated or contracted after the parties contracting such marriage had first obtained a license to marry from the probate clerk of the county wherein such marriage occurred.

History: Laws 1909, ch. 91, § 1; Code 1915, § 3444; C.S. 1929, § 87-123; 1941 Comp., § 65-119; 1953 Comp., § 57-1-18.

ARTICLE 2
Rights of Married Persons Generally

40-2-1. [Mutual obligations of husband and wife.]

Husband and wife contract toward each other obligations of mutual respect, fidelity and support.

History: Laws 1907, ch. 37, § 1; Code 1915, § 2744; C.S. 1929, § 68-101; 1941 Comp., § 65-201; 1953 Comp., § 57-2-1.

40-2-2. [Contract rights of married persons.]

Either husband or wife may enter into any engagement or transaction with the other, or with any other person respecting property, which either might, if unmarried; subject, in transactions between themselves, to the general rules of common law which control the actions of persons occupying confidential relations with each other.

History: Laws 1907, ch. 37, § 4; Code 1915, § 2750; C.S. 1929, § 68-201; 1941 Comp., § 65-206; 1953 Comp., § 57-2-6.

40-2-3. [Powers of attorney; joinder of spouse unnecessary.]

It shall not be necessary in any case for the husband to join with the wife when she executes a power of attorney for herself; nor shall it be necessary for the wife to join with the husband when he executes a power of attorney for himself.

History: Laws 1901, ch. 62, § 20; Code 1915, § 2751; C.S. 1929, § 68-202; 1941 Comp., § 65-207; 1953 Comp., § 57-2-7.

40-2-4. [Execution of marriage settlement and separation contracts.]

All contracts for marriage settlements and contracts for separation, must be in writing, and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved.

History: Laws 1907, ch. 37, § 22; Code 1915, § 2752; C.S. 1929, § 68-203; 1941 Comp., § 65-208; 1953 Comp., § 57-2-8.

40-2-5. [Recording of marriage settlement or separation contract.]

When such contract is acknowledged or proved it must be recorded in the office of the recorder of every county in which any real estate may be situated which is granted or affected by such contract.

History: Laws 1907, ch. 37, § 23; Code 1915, § 2753; C.S. 1929, § 68-204; 1941 Comp., § 65-209; 1953 Comp., § 57-2-9.

40-2-6. [Effect of recording or failure to record settlement or separation contract.]

The recording or nonrecording of such contract has a like effect as the recording or nonrecording of a grant of real property.

History: Laws 1907, ch. 37, § 24; Code 1915, § 2754; C.S. 1929, § 68-205; 1941 Comp., § 65-210; 1953 Comp., § 57-2-10.

40-2-7. Persons who may make marriage settlements.

Any person capable of contracting marriage may make a valid marriage settlement.

History: Laws 1907, ch. 37, § 25; Code 1915, § 2755; C.S. 1929, § 68-206; 1941 Comp., § 65-211; 1953 Comp., § 57-2-11; Laws 1973, ch. 138, § 23.

40-2-8. [Extent of mutual alteration of legal relations.]

A husband and wife cannot by any contract with each other alter their legal relations, except of their property, and except that they may agree in writing, to an immediate separation, and may make provisions for the support of either of them and of their children during their separation.

History: Laws 1907, ch. 37, § 5; Code 1915, § 2782; C.S. 1929, § 68-510; 1941 Comp., § 65-212; 1953 Comp., § 57-2-12.

40-2-9. [Consideration in separation contract.]

The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section [40-2-8 NMSA 1978].

History: Laws 1907, ch. 37, § 6; Code 1915, § 2783; C.S. 1929, § 68-511; 1941 Comp., § 65-213; 1953 Comp., § 57-2-13.

ARTICLE 3
Property Rights

40-3-1. [Law applicable to property rights.]

The property rights of husband and wife are governed by this chapter unless there is a marriage settlement containing stipulations contrary thereto.

History: Laws 1907, ch. 37, § 21; Code 1915, § 2772; C.S. 1929, § 68-409; 1941 Comp., § 65-301; 1953 Comp., § 57-3-1.

40-3-2. [Methods for holding property.]

Husband and wife may hold property as joint tenants, tenants in common or as community property.

History: Laws 1907, ch. 37, § 7; Code 1915, § 2756; C.S. 1929, § 68-301; 1941 Comp., § 65-302; 1953 Comp., § 57-3-2.

40-3-3. [Separation of property; admission to dwelling of spouse.]

Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling.

History: Laws 1907, ch. 37, § 3; Code 1915, § 2749; C.S. 1929, § 68-106; 1941 Comp., § 65-303; 1953 Comp., § 57-3-3.

40-3-4. Contracts of indemnity; no obligation of community property unless signed by both husband and wife.

It is against the public policy of this state to allow one spouse to obligate community property by entering into a contract of indemnity whereby he will indemnify a surety company in case of default of the principal upon a bond or undertaking issued in consideration of the contract of indemnity. No community property shall be liable for any indebtedness incurred as a result of any contract of indemnity made after the effective date of this section, unless both husband and wife sign the contract of indemnity.

History: 1953 Comp., § 57-4-10, enacted by Laws 1965, ch. 74, § 1.

40-3-5. Disposition of real property without joinder where spouse is prisoner of war/person missing-in-action.

A. If a spouse is reported by the United States department of defense to be a prisoner of war/person missing-in-action, the other spouse may, not less than six months after such report, file a petition of the facts which make it desirable for the petitioning spouse to engage in a transaction for which joinder of both spouses is required by Section 57-4-3 NMSA 1953.

B. The petition shall be filed in a district court of any county in which real property described in the petition is located.

C. The district court shall appoint a guardian ad litem for the prisoner of war/person missing-in-action and shall allow such guardian a reasonable fee for his services.

D. A notice, stating that the petition has been filed and specifying the date of the hearing, accompanied by a copy of the petition shall be issued and served on the guardian ad litem and shall be published once each week for four successive weeks in a newspaper of general circulation in the county in which the proceeding is pending. The last such publication shall be made at least twenty days before the hearing.

E. After the hearing, the district court may allow the petitioning spouse alone to engage in a transaction for which joinder of both spouses is required by Section 57-4-3 NMSA 1953 upon such terms and conditions as may be appropriated [appropriate] or necessary to protect the interests of the absent spouse.

F. Any sale, lease, conveyance or encumbrance authorized by the district court pursuant to Subsection E of this section shall be confirmed by order of the district court, and that order of confirmation may be recorded in the office of the county clerk of the county where any property affected thereby is situated.

History: 1953 Comp., § 57-4-11, enacted by Laws 1973, ch. 105, § 1.

40-3-6. Short title.

This act [40-3-6 to 40-3-17 NMSA 1978] may be cited as the "Community Property Act of 1973".

History: 1953 Comp., § 57-4A-1, enacted by Laws 1973, ch. 320, § 1.

40-3-7. Purpose of act.

The purpose of the Community Property Act of 1973 [40-3-6 to 40-3-17 NMSA 1978] is to comply with the provisions of Section 18 of Article 2 of the constitution of New Mexico, as it was amended in 1972 and became effective on July 1, 1973, by making the provisions of the community property law of New Mexico apply equally to all persons regardless of sex.

History: 1953 Comp., § 57-4A-1.1, enacted by Laws 1975, ch. 246, § 2.

40-3-8. Classes of property.

A. "Separate property" means:

(1) property acquired by either spouse before marriage or after entry of a decree of dissolution of marriage;

(2) property acquired after entry of a decree entered pursuant to Section 40-4-3 NMSA 1978, unless the decree provides otherwise;

(3) property designated as separate property by a judgment or decree of any court having jurisdiction;

(4) property acquired by either spouse by gift, bequest, devise or descent; and

(5) property designated as separate property by a written agreement between the spouses, including a deed or other written agreement concerning property held by the spouses as joint tenants or tenants in common in which the property is designated as separate property.

B. Except as provided in Subsection C of this section, "community property" means property acquired by either or both spouses during marriage which is not separate property. Property acquired by a husband and wife by an instrument in writing whether as tenants in common or as joint tenants or otherwise shall be presumed to be held as community property unless such property is separate property within the meaning of Subsection A of this section.

C. "Quasi-community property" means all real or personal property, except separate property as defined in Subsection A of this section, wherever situated, heretofore or hereafter acquired in any of the following ways:

(1) by either spouse while domiciled elsewhere which would have been community property if the spouse who acquired the property had been domiciled in this state at the time of its acquisition; or

(2) in exchange for real or personal property, wherever situated, which would have been community property if the spouse who acquired the property so exchanged had been domiciled in this state at the time of its acquisition.

D. For purposes of division of property incident to a dissolution of marriage or a legal separation under Section 40-4-3 NMSA 1978, quasi-community property shall be treated as community property, if both parties are domiciliaries of New Mexico at the time of the dissolution or legal separation proceeding.

E. "Property" includes the rents, issues and profits thereof.

F. The right to hold property as joint tenants or as tenants in common and the legal incidents of so holding, including but not limited to the incident of the right of survivorship of joint tenancy, are not altered by the Community Property Act of 1973 [40-3-6 to 40-3-17 NMSA 1978], except as provided in Sections 40-3-10, 40-3-11 and 40-3-13 NMSA 1978.

G. The provisions of the 1984 amendments to this section shall not affect the right of any creditor, which right accrued prior to the effective date of those amendments.

History: 1953 Comp., § 57-4A-2, enacted by Laws 1973, ch. 320, § 3; 1984, ch. 122, § 1; 1990, ch. 38, § 1.

40-3-9. Definition of separate and community debts.

A. "Separate debt" means:

(1) a debt contracted or incurred by a spouse before marriage or after entry of a decree of dissolution of marriage;

(2) a debt contracted or incurred by a spouse after entry of a decree entered pursuant to Section 40-4-3 NMSA 1978, unless the decree provides otherwise;

(3) a debt designated as a separate debt of a spouse by a judgment or decree of any court having jurisdiction;

(4) a debt contracted by a spouse during marriage which is identified by a spouse to the creditor in writing at the time of its creation as the separate debt of the contracting spouse;

(5) a debt which arises from a tort committed by a spouse before marriage or after entry of a decree of dissolution of marriage or a separate tort committed during marriage; or

(6) a debt declared to be unreasonable pursuant to Section 2 [40-3-10.1 NMSA 1978] of this act.

B. "Community debt" means a debt contracted or incurred by either or both spouses during marriage which is not a separate debt.

History: 1953 Comp., § 57-4A-3, enacted by Laws 1973, ch. 320, § 4; 1983, ch. 75, § 1.

40-3-9.1. Gambling debts are separate debts of spouse incurring debt.

A gambling debt incurred by a married person as a result of legal gambling is a separate debt of the spouse incurring the debt.

History: Laws 1997, ch. 190, § 67.

40-3-10. Priorities for satisfaction of separate debts.

A. The separate debt of a spouse shall be satisfied first from the debtor spouse's separate property, excluding that spouse's interest in property in which each of the spouses owns an undivided equal interest as a joint tenant or tenant in common. Should such property be insufficient, then the debt shall be satisfied from the debtor spouse's one-half interest in the community property or in property in which each spouse owns an undivided equal interest as a joint tenant or tenant in common, excluding the residence of the spouses. Should such property be insufficient, then the debt shall be satisfied from the debtor spouse's interest in the residence of the spouses, except as provided in Subsection B of this section or Section 42-10-9 NMSA 1978. Neither spouse's interest in community property or separate property shall be liable for the separate debt of the other spouse.

B. Unless both spouses join in writing in the creation of the underlying debt or obligation incurred after the marriage, a judgment or other process arising out of such post-marital debt against one spouse alone or both spouses shall not create a lien or otherwise be subject to execution against the interest of the nonjoining spouse in the marital residence, whether held by the spouses as community property, joint tenants or tenants in common.

C. The priorities or exemptions established in this section for the satisfaction of a separate debt must be claimed by either spouse under the procedure set forth in Section 42-10-13 NMSA 1978, or the right to claim such priorities or exemptions is waived as between a spouse and the creditor.

D. This section shall apply only while both spouses are living and shall not apply to the satisfaction of debts after the death of one or both spouses.

History: 1953 Comp., § 57-4A-4, enacted by Laws 1973, ch. 320, § 5; 1975, ch. 246, § 3; 1995, ch. 184, § 1.

40-3-10.1. Unreasonable debt.

The court, at the time of the final decree of dissolution of marriage, may declare, as between the parties, a debt to be unreasonable if it was incurred by a spouse while the spouse was living apart and the debt did not contribute to the benefit of both spouses or their dependents.

History: Laws 1983, ch. 75, § 2.

40-3-11. Priorities for satisfaction of community debts.

A. Community debts shall be satisfied first from all community property and all property in which each spouse owns an undivided equal interest as a joint tenant or tenant in common, excluding the residence of the spouses. Should such property be insufficient, community debts shall then be satisfied from the residence of the spouses, except as provided in Subsection B of this section or Section 42-10-9 NMSA 1978. Should such property be insufficient, only the separate property of the spouse who contracted or incurred the debt shall be liable for its satisfaction. If both spouses contracted or incurred the debt, the separate property of both spouses is jointly and severally liable for its satisfaction.

B. Unless both spouses join in writing in the creation of the underlying debt or obligation incurred after the marriage, a judgment or other process arising out of such post-marital debt against one spouse alone or both spouses shall not create a lien or otherwise be subject to execution against the interest of the nonjoining spouse in the marital residence, whether held by the spouses as community property, joint tenants or tenants in common.

C. The priorities or exemptions established in this section for the satisfaction of community debts must be claimed by either spouse under the procedure set forth in Section 42-10-13 NMSA 1978, or the right to claim such priorities or exemptions is waived as between a spouse and the creditor.

D. This section shall apply only while both spouses are living and shall not apply to the satisfaction of debts after the death of one or both spouses.

History: 1953 Comp., § 57-4A-5, enacted by Laws 1973, ch. 320, § 6; 1975, ch. 246, § 4; 1995, ch. 184, § 2.

40-3-12. Presumption of community property; presumption of separate property where property acquired by married woman prior to July 1, 1973.

A. Property acquired during marriage by either husband or wife, or both, is presumed to be community property.

B. Property or any interest therein acquired during marriage by a woman by an instrument in writing, in her name alone, or in her name and the name of another person not her husband, is presumed to be the separate property of the married woman if the instrument in writing was delivered and accepted prior to July 1, 1973. The date of execution or, in the absence of a date of execution, the date of acknowledgment, is presumed to be the date upon which delivery and acceptance occurred.

C. The presumptions contained in Subsection B of this section are conclusive in favor of any person dealing in good faith and for valuable consideration with a married woman or her legal representative or successor in interest.

History: 1953 Comp., § 57-4A-6, enacted by Laws 1973, ch. 320, § 7.

40-3-13. Transfers, conveyances, mortgages and leases of real property; when joinder required.

A. Except for purchase-money mortgages and except as otherwise provided in this subsection, the spouses must join in all transfers, conveyances or mortgages or contracts to transfer, convey or mortgage any interest in community real property and separate real property owned by the spouses as cotenants in joint tenancy or tenancy in common. The spouses must join in all leases of community real property or separate real property owned by the spouses as cotenants in joint tenancy or tenancy in common if the initial term of the lease, together with any option or extension contained in the lease or provided for contemporaneously, exceeds five years or if the lease is for an indefinite term.

Any transfer, conveyance, mortgage or lease or contract to transfer, convey, mortgage or lease any interest in the community real property or in separate real property owned by the spouses as cotenants in joint tenancy or tenancy in common attempted to be made by either spouse alone in violation of the provisions of this section shall be void and of no effect, except that either spouse may transfer, convey, mortgage or lease directly to the other without the other joining therein.

Except as provided in this section, either spouse may transfer, convey, mortgage or lease separate real property without the other's joinder.

B. Nothing in this section shall affect the right of one of the spouses to transfer, convey, mortgage or lease or contract to transfer, convey, mortgage or lease any community real property or separate real property owned by the spouses as cotenants in joint tenancy or tenancy in common without the joinder of the other spouse, pursuant to a validly executed and recorded power of attorney as provided in Section 47-1-7 NMSA 1978. Nothing in this section shall affect the right of a spouse not joined in a transfer, conveyance, mortgage, lease or contract to validate an instrument at any time by a ratification in writing.

History: 1953 Comp., § 57-4A-7, enacted by Laws 1973, ch. 320, § 8; 1975, ch. 246, § 5; 1993, ch. 165, § 1.

40-3-14. Management and control of other community personal property.

A. Except as provided in Subsections B and C of this section, either spouse alone has full power to manage, control, dispose of and encumber the entire community personal property.

B. Where only one spouse is:

(1) named in a document evidencing ownership of community personal property; or

(2) named or designated in a written agreement between that spouse and a third party as having sole authority to manage, control, dispose of or encumber the community personal property which is described in or which is the subject of the agreement, whether the agreement was executed prior to or after July 1, 1973; only the spouse so named may manage, control, dispose of or encumber the community personal property described in such a document evidencing ownership or in such a written agreement.

C. Where both spouses are:

(1) named in a document evidencing ownership of community personal property; or

(2) named or designated in a written agreement with a third party as having joint authority to dispose of or encumber the community personal property which is described in or the subject of the agreement, whether the agreement was executed prior to or after July 1, 1973; both spouses must join to dispose of or encumber such community personal property where the names of the spouses are joined by the word "and." Where the names of the spouses are joined by the word "or," or by the words "and/or," either spouse alone may dispose of or encumber such community personal property.

History: 1953 Comp., § 57-4A-8, enacted by Laws 1973, ch. 320, § 10; 1975, ch. 246, § 6.

40-3-15. Joinder of minor spouse in conveyances, mortgages and leases.

A married person under the age of majority may join with his or her spouse in all transactions for which joinder is required by Section 40-3-13 NMSA 1978 and such joinder shall have the same force and effect as if the minor spouse had attained his or her majority at the time of the execution of the instrument.

History: 1953 Comp., § 57-4A-9, enacted by Laws 1973, ch. 320, § 11.

40-3-16. Disposition and management of real property without joinder and management of community personal property subject to management of one spouse alone where spouse has disappeared.

A. If a spouse disappears and his location is unknown to the other spouse, the other spouse may, not less than thirty days after such disappearance, file a petition setting forth the facts which make it desirable for the petitioning spouse to engage in a transaction for which joinder of both spouses is required by Section 40-3-13 NMSA 1978 or to manage, control, dispose of or encumber community personal property which the disappearing spouse alone has sole authority to manage, control, dispose of or encumber under Section 40-3-14 NMSA 1978.

B. The petition shall be filed in a district court of any county in which real property described in the petition is located or, if only community personal property is involved, in the district court of the county where the disappearing spouse resided.

C. The district court shall appoint a guardian ad litem for the spouse who has disappeared and shall allow a reasonable fee for his services.

D. A notice, stating that the petition has been filed and specifying the date of the hearing, accompanied by a copy of the petition, shall be issued and served on the guardian ad litem and shall be published once each week for four successive weeks in a newspaper of general circulation in the county in which the proceeding is pending. The last such publication shall be made at least twenty days before the hearing.

E. After the hearing, and upon determination of the fact of disappearance by one spouse, the district court may allow the petitioning spouse alone to engage in the transaction for which joinder of both spouses is required by Section 40-3-13 NMSA 1978 or to manage, control, dispose of or encumber community personal property which the disappearing spouse alone has authority to manage, control, dispose of or encumber under Section 40-3-14 NMSA 1978.

F. Any transfer, conveyance, mortgage or lease authorized by the district court pursuant to Subsection E of this section shall be confirmed by order of the district court, and that order of confirmation may be recorded in the office of the county clerk of the county where any real property affected thereby is situated.

History: 1953 Comp., § 57-4A-10, enacted by Laws 1973, ch. 320, § 12.

40-3-17. Judgments to be recorded.

All orders rendered pursuant to Section 32-2-7 NMSA 1953 authorizing the transfer, conveyance, mortgage or lease of community real property or other real property owned by the spouses as co-tenants in joint tenancy or tenancy in common may be recorded in the office of the county clerk of the county where any real property affected thereby is situated.

History: 1953 Comp., § 57-4A-11, enacted by Laws 1973, ch. 320, § 13.

ARTICLE 3A
Uniform Premarital Agreement

40-3A-1. Short title.

This act [40-3A-1 to 40-3A-10 NMSA 1978] may be cited as the "Uniform Premarital Agreement Act".

History: Laws 1995, ch. 61, § 1.

40-3A-2. Definitions.

As used in the Uniform Premarital Agreement Act:

A. "premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage; and

B. "property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

History: Laws 1995, ch. 61, § 2.

40-3A-3. Formalities.

A premarital agreement must be in writing, signed by both parties and acknowledged. It is enforceable without consideration.

History: Laws 1995, ch. 61, § 3.

40-3A-4. Content.

A. Parties to a premarital agreement may contract with respect to:

(1) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

(2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(3) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(4) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(5) the ownership rights in and disposition of the death benefit from a life insurance policy;

(6) the choice of law governing the construction of the agreement; and

(7) any other matter not in violation of public policy.

B. A premarital agreement may not adversely affect the right of a child or spouse to support, a party's right to child custody or visitation, a party's choice of abode or a party's freedom to pursue career opportunities.

History: Laws 1995, ch. 61, § 4.

40-3A-5. Effect of marriage.

A premarital agreement becomes effective upon marriage.

History: Laws 1995, ch. 61, § 5.

40-3A-6. Amendment; revocation.

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed and acknowledged by the parties or by a consistent and mutual course of conduct, which evidences an amendment to or revocation of the premarital agreement. The amended agreement or the revocation is enforceable without consideration.

History: Laws 1995, ch. 61, § 6.

40-3A-7. Enforcement.

A. A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(1) that party did not execute the agreement voluntarily; or

(2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(a) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(b) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(c) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

B. An issue of unconscionability or voluntariness of a premarital agreement shall be decided by the court as a matter of law.

History: Laws 1995, ch. 61, § 7.

40-3A-8. Enforcement; void marriage.

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

History: Laws 1995, ch. 61, § 8.

40-3A-9. Limitation of actions.

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

History: Laws 1995, ch. 61, § 9.

40-3A-10. Application and construction.

The Uniform Premarital Agreement Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of that act among states enacting it.

History: Laws 1995, ch. 61, § 10.

ARTICLE 4
Dissolution of Marriage

40-4-1. Dissolution of marriage.

On the petition of either party to a marriage, a district court may decree a dissolution of marriage on any of the following grounds:

A. incompatibility;

B. cruel and inhuman treatment;

C. adultery; or

D. abandonment.

History: 1953 Comp., § 22-7-1, enacted by Laws 1973, ch. 319, § 1.

40-4-2. Incompatibility.

Incompatibility exists when, because of discord or conflict of personalities, the legitimate ends of the marriage relationship are destroyed preventing any reasonable expectation of reconciliation.

History: 1953 Comp., § 22-7-1.1, enacted by Laws 1973, ch. 319, § 2.

40-4-3. Proceeding for division of property, disposition of children or alimony without the dissolution of marriage.

Whenever the husband and wife have permanently separated and no longer live or cohabit together as husband and wife, either may institute proceedings in the district court for a division of property, disposition of children or alimony, without asking for or obtaining in the proceedings, a dissolution of marriage.

History: Laws 1901, ch. 62, § 23; Code 1915, § 2774; C.S. 1929, § 68-502; 1941 Comp., § 25-702; 1953 Comp., § 22-7-2; Laws 1973, ch. 319, § 3.

40-4-4. Venue; jurisdiction over property.

Any proceeding for the dissolution of marriage, division of property, disposition of children or alimony, as provided for in this chapter, may be instituted in the county where either of the parties resides. In such proceedings, the court shall have jurisdiction of all property of the parties, wherever located or situated in the state.

History: Laws 1901, ch. 62, § 24; Code 1915, § 2775; C.S. 1929, § 68-503; 1941 Comp., § 25-703; 1953 Comp., § 22-7-3; Laws 1967, ch. 112, § 1; 1973, ch. 319, § 4.

40-4-5. Dissolution of marriage; jurisdiction; domicile.

The district court has jurisdiction to decree a dissolution of marriage when at the time of filing the petition either party has resided in this state for at least six months immediately preceding the date of the filing and has a domicile in New Mexico. As used in this section, "domicile" means that the person to whom it applies:

A. is physically present in this state and has a place of residence in this state;

B. has a present intention in good faith to reside in this state permanently or indefinitely;

C. provided further, persons serving in any military branch of the United States government who have been continuously stationed in any military base or installation in New Mexico for such period of six months shall, for the purposes hereof, be deemed to have a domicile of the state and county where such military base or installation is located; and

D. provided further, any person who had resided continuously in New Mexico for at least six months immediately prior to his or his spouse's entry into any military branch of the United States government, who is stationed or whose spouse is stationed at any military base or installation outside of New Mexico and who has a present intention in good faith to return and to reside in this state permanently or indefinitely, shall for the purposes hereof, be deemed to have a domicile of the state and county of his residence immediately prior to his or his spouse's entry into the military branch.

History: 1953 Comp., § 22-7-4, enacted by Laws 1971, ch. 273, § 1; 1973, ch. 319, § 5; 1977, ch. 101, § 1.

40-4-6. Verification of petition.

The petition in all proceedings for the dissolution of marriage, division of property, disposition of children or alimony, must be verified by the affidavit of the petitioner.

History: Laws 1901, ch. 62, § 26; Code 1915, § 2777; C.S. 1929, § 68-505; 1941 Comp., § 25-705; 1953 Comp., § 22-7-5; Laws 1973, ch. 319, § 6.

40-4-7. Proceedings; spousal support; support of children; division of property.

A. In any proceeding for the dissolution of marriage, division of property, disposition of children or spousal support, the court may make and enforce by attachment or otherwise an order to restrain the use or disposition of the property of either party or for the control of the children or to provide for the support of either party during the pendency of the proceeding, as in its discretion may seem just and proper. The court may make an order, relative to the expenses of the proceeding, as will ensure either party an efficient preparation and presentation of his case.

B. On final hearing, the court:

(1) may allow either party such a reasonable portion of the spouse's property or such a reasonable sum of money to be paid by either spouse either in a single sum or in installments, as spousal support as under the circumstances of the case may seem just and proper, including a court award of:

(a) rehabilitative spousal support that provides the receiving spouse with education, training, work experience or other forms of rehabilitation that increases the receiving spouse's ability to earn income and become self-supporting. The court may include a specific rehabilitation plan with its award of rehabilitative spousal support and may condition continuation of the support upon compliance with that plan;

(b) transitional spousal support to supplement the income of the receiving spouse for a limited period of time; provided that the period shall be clearly stated in the court's final order;

(c) spousal support for an indefinite duration;

(d) a single sum to be paid in one or more installments that specifies definite amounts, subject only to the death of the receiving spouse; or

(e) a single sum to be paid in one or more installments that specifies definite amounts, not subject to any contingencies, including the death of the receiving spouse;

(2) may:

(a) modify and change any order in respect to spousal support awarded pursuant to the provisions of Subparagraph (a), (b) or (c) of Paragraph (1) of this subsection whenever the circumstances render such change proper; or

(b) designate spousal support awarded pursuant to the provisions of Subparagraph (a) or (b) of Paragraph (1) of this subsection as nonmodifiable with respect to the amount or duration of the support payments;

(3) may set apart out of the property or income of the respective parties such portion for the maintenance and education of:

(a) their unemancipated minor children as may seem just and proper; or

(b) their children until the children's graduation from high school if the children are emancipated only by age, are under nineteen and are attending high school; and

(4) may make such an order for the guardianship, care, custody, maintenance and education of the minor children, or with reference to the control of the property of the respective parties to the proceeding, or with reference to the control of the property decreed or fund created by the court for the maintenance and education of the minor children, as may seem just and proper.

C. The court may order and enforce the payment of support for the maintenance and education after high school of emancipated children of the marriage pursuant to a written agreement between the parties.

D. An award of spousal support made pursuant to the provisions of Subparagraph (a), (b), (c) or (d) of Paragraph (1) of Subsection B of this section shall terminate upon the death of the receiving spouse, unless the court order of spousal support provides otherwise.

E. When making determinations concerning spousal support to be awarded pursuant to the provisions of Paragraph (1) or (2) of Subsection B of this section, the court shall consider:

(1) the age and health of and the means of support for the respective spouses;

(2) the current and future earnings and the earning capacity of the respective spouses;

(3) the good-faith efforts of the respective spouses to maintain employment or to become self-supporting;

(4) the reasonable needs of the respective spouses, including:

(a) the standard of living of the respective spouses during the term of the marriage;

(b) the maintenance of medical insurance for the respective spouses; and

(c) the appropriateness of life insurance, including its availability and cost, insuring the life of the person who is to pay support to secure the payments, with any

life insurance proceeds paid on the death of the paying spouse to be in lieu of further support;

(5) the duration of the marriage;

(6) the amount of the property awarded or confirmed to the respective spouses;

(7) the type and nature of the respective spouses' assets; provided that potential proceeds from the sale of property by either spouse shall not be considered by the court, unless required by exceptional circumstances and the need to be fair to the parties;

(8) the type and nature of the respective spouses' liabilities;

(9) income produced by property owned by the respective spouses; and

(10) agreements entered into by the spouses in contemplation of the dissolution of marriage or legal separation.

F. The court shall retain jurisdiction over proceedings involving periodic spousal support payments when the parties have been married for twenty years or more prior to the dissolution of the marriage, unless the court order or decree specifically provides that no spousal support shall be awarded.

G. The court may modify and change any order or agreement merged into an order in respect to the guardianship, care, custody, maintenance or education of the children whenever circumstances render such change proper. The district court shall have exclusive jurisdiction of all matters pertaining to the guardianship, care, custody, maintenance and education of the children until the parents' obligation of support for their children terminates. The district court shall also have exclusive, continuing jurisdiction with reference to the property decreed or funds created for the children's maintenance and education.

History: Laws 1901, ch. 62, § 27; Code 1915, § 2778; C.S. 1929, § 68-506; 1941 Comp., § 25-706; Laws 1943, ch. 46, § 1; 1953 Comp., § 22-7-6; Laws 1973, ch. 319, § 7; 1993, ch. 144, § 1; 1997, ch. 56, § 1.

40-4-7.1. Use of life insurance policy as security.

In any proceeding brought pursuant to the provisions of Section 40-4-7 NMSA 1978 or in any other proceeding for the division of property or spousal or child support brought pursuant to the provisions of Chapter 40 NMSA 1978, the court may require either party or both parties to the proceeding to maintain the minor children of the parties or a spouse or former spouse as beneficiaries on a life insurance policy as security for the payment of:

(1) support for the benefit of the minor children;

(2) spousal support; or

(3) the cost to equalize a property division in the event of the death of the insured on the life insurance policy.

The court may also allocate the cost of the premiums of the life insurance policy between the parties.

History: 1978 Comp., § 40-4-7.1, enacted by Laws 1993, ch. 110, § 1.

40-4-7.2. Binding arbitration option; procedure.

A. Parties to an action for divorce, separation, custody or time-sharing, child support, spousal support, marital property and debt division or attorney fees related to such matters, including any post-judgment proceeding, may stipulate to binding arbitration by a signed agreement that provides for an award with respect to one or more of the following issues:

(1) valuation and division of real and personal property;

(2) child support, custody, time-sharing or visitation;

(3) spousal support;

(4) costs, expenses and attorney fees;

(5) enforceability of prenuptial and post-nuptial agreements;

(6) determination and allocation of responsibility for debt as between the parties;

(7) any civil tort claims related to any of the foregoing; or

(8) other contested domestic relations matters.

B. A court may not order a party to participate in arbitration except to the extent a party has agreed to participate pursuant to a written arbitration agreement. When the party involved is a minor, then his parent must consent to arbitration. When the party involved is a minor with a guardian ad litem, the guardian ad litem must provide written consent. When the party involved is a minor without a guardian ad litem, then in order for arbitration to proceed the court must find that arbitration is in the best interest of the minor.

C. Arbitration pursuant to this section shall be heard by one or more arbitrator. The court shall appoint an arbitrator agreed to by the parties if the arbitrator consents to the appointment.

D. If the parties have not agreed to an arbitrator, the court shall appoint an arbitrator who:

(1) is an attorney in good standing with the state bar of New Mexico;

(2) has practiced as an attorney for not less than five years immediately preceding the appointment and actively practiced in the area of domestic relations during three of those five years. Any period of time during which a person serves as a judge, special master or child support hearing officer is considered as actively practicing in the area of domestic relations; or

(3) is another professional licensed and experienced in the subject matter that is the area of the dispute.

E. An arbitrator appointed pursuant to this section is immune from liability in regard to the arbitration proceeding to the same extent as the judge who has jurisdiction of the action that is submitted to arbitration.

F. Objections to the qualifications of an arbitrator must be raised in connection with the appointment by the court or they are waived. The court will permit parties to raise objections based on qualifications within ten days of appointment of an arbitrator. Parties who agree on an arbitrator waive objections to his qualifications.

G. An arbitrator appointed pursuant to this section:

(1) shall hear and make an award on each issue submitted for arbitration pursuant to the arbitration agreement subject to the provisions of the agreement; and

(2) has all of the following powers and duties:

(a) to administer an oath or issue a subpoena as provided by court rule;

(b) to issue orders regarding discovery proceedings relative to the issues being arbitrated, including appointment of experts; and

(c) to allocate arbitration fees and expenses between the parties, including imposing a fee or expense on a party or attorney as a sanction for failure to provide information, subject to provisions of the arbitration agreement.

H. An arbitrator, attorney or party in an arbitration proceeding pursuant to this section shall disclose in writing any circumstances that may affect an arbitrator's impartiality, including, bias, financial interests, personal interests or family relationships.

Upon disclosure of such a circumstance, a party may request disqualification of the arbitrator. If the arbitrator does not withdraw within seven days after a request for disqualification, the party may file a motion for disqualification with the court.

I. If the court finds that the arbitrator is disqualified, the court may appoint another arbitrator, subject to the provisions of the arbitration agreement.

J. As soon as practicable after the appointment of the arbitrator, the parties and attorneys shall confer with the arbitrator to consider all of the following:

(1) scope of the issues submitted;

(2) date, time and place of the hearing;

(3) witnesses, including experts, who may testify;

(4) appointment of experts and a schedule for exchange of expert reports or summary of expert testimony; and

(5) subject to the provisions of Subsection K of this section, exhibits, documents or other information each party considers material to the case and a schedule for production or exchange of the information. An objection not made before the hearing to production or lack of production of information is waived.

K. The arbitrator shall order reasonable access to information for each party that is material to the arbitration issues prior to the hearing, including the following:

(1) a current complete sworn financial disclosure statement, when financial matters are at issue;

(2) if a court has issued an order concerning an issue subject to arbitration, a copy of the order;

(3) any relevant documents related to the arbitration issues defined by the arbitrator;

(4) proposed award by each party for each issue subject to arbitration; and

(5) expert opinions of experts to be used by either party or appointed by the arbitrator.

L. Except as provided by this section, court rule or the arbitration agreement, a record shall not ordinarily be made of an arbitration hearing pursuant to this section unless either party requests it. If a record is not required, an arbitrator may make a record to be used only by the arbitrator to aid in reaching the decision.

M. Unless waived by the parties, a record shall be made of that portion of the hearing that concerns child custody, visitation or time-sharing.

N. The arbitration agreement may set forth any standards on which an award should be based, including the law to be applied. An arbitration agreement shall provide that in deciding child support issues, the arbitrator shall apply Section 40-4-11.1 NMSA 1978 when setting or modifying a child support order.

O. Unless otherwise agreed to by the parties and arbitrator in writing or on the record, the arbitrator shall issue the written award on each issue within sixty days after the end of the hearing and after receipt of proposed findings of fact and conclusions of law if requested by the arbitrator.

P. If the parties reach an agreement regarding child custody, time-sharing or visitation, the agreement shall be placed on the record by the parties under oath and shall be included in the arbitrator's written award.

Q. The arbitrator retains jurisdiction to correct errors or omissions in an award upon motion by a party to the arbitrator within twenty days after the award is issued or upon the arbitrator's own motion. Another party to the arbitration may respond to the motion within seven days after the motion is made. The arbitrator shall make a decision on the motion within seven days after the expiration of the response time period.

R. The court shall enforce an arbitrator's award or other order issued pursuant to this section in the same manner as an order issued by the court. A party may make a motion to the court to enforce an arbitrator's award or order.

S. Any party in an action that was submitted to arbitration pursuant to this section shall file with the court a stipulated order, or a motion to enforce the award within twenty-one days after the arbitrator's award is issued unless otherwise agreed to by the parties in writing or unless the arbitrator or court grants an extension.

T. If a party applies to the court for vacation of an arbitrator's award in binding arbitration issued pursuant to this section that concerns child custody, time-sharing or visitation, the court shall review the award based only upon the record of the arbitration hearing and factual matters that have arisen since the arbitration hearing that are relevant to the claim. The court may vacate an award of custody, time-sharing or visitation made in binding arbitration if the court finds that circumstances have changed since issuance of the award that are adverse to the best interests of the child, upon a finding that the award will cause harm or be detrimental to a child, or pursuant to Subsections U and V of this section. An arbitration agreement may provide a broader scope of review of custody, time-sharing or visitation issues by the court, and such review will apply if broader than this section.

U. If a party applies to the court for vacation or modification of an arbitrator's award issued pursuant to this section, the court shall review the award only as provided in Subsections T and V of this section.

V. If a party applies under this section, the court may vacate, modify or correct an award under any of the following circumstances:

(1) the award was procured by corruption, fraud or other undue means;

(2) there was evident partiality by an arbitrator, or misconduct prejudicing a party's rights;

(3) the arbitrator exceeded his powers; or

(4) the arbitrator refused to postpone the hearing on a showing of sufficient cause or refused to hear evidence substantial and material to the controversy.

W. An application to vacate an award on grounds stated in Subsections U and V of this section shall be decided by the court. If an award is vacated on grounds stated in Paragraph (3) or (4) of Subsection V of this section, the court may order a rehearing before the arbitrator who made the award when both parties consent to the rehearing before the arbitrator who made the award.

X. An appeal from an arbitration award pursuant to this section that the court confirms, vacates, modifies or corrects shall be taken in this same manner as from an order or judgment in other domestic relations actions.

Y. No arbitrator may decide issues of a criminal nature or make decisions on petitions pursuant to the Family Violence Protection Act [Chapter 40, Article 13, NMSA 1978].

History: Laws 1999, ch. 123, § 1.

40-4-7.3. Accrual of interest; delinquent child and spousal support.

A. Interest shall accrue on delinquent child support at the rate of four percent and spousal support at the rate set forth in Section 56-8-4 NMSA 1978 in effect when the support payment becomes due and shall accrue from the date the support is delinquent until the date the support is paid.

B. Interest shall accrue on a consolidated judgment for delinquent child support at the rate of four percent when the consolidated judgment is entered until the judgment is satisfied.

C. Unless the order, judgment, decree or wage withholding order specifies a due date other than the first day of the month, support shall be due on the first day of each month and, if not paid by that date, shall be delinquent.

D. In calculation of support arrears, payments of support shall be first applied to the current support obligation, next to any delinquent support, next to any consolidated judgment of delinquent support, next to any accrued interest on delinquent support and next to any interest accrued on a consolidated judgment of delinquent support.

E. The human services department [health care authority department] shall have the authority to forgive accrued interest on delinquent child support assigned to the state not otherwise specified in an order, judgment, decree or income withholding order if, in the judgment of the secretary of human services, forgiveness will likely result in the collection of more child support, spousal support or other support and will likely result in the satisfaction of the judgment, decree or wage withholding order. This authority shall include the ability to authorize the return of suspended licenses.

History: Laws 1999, ch. 299, § 1; 2004, ch. 41, § 2.

40-4-8. Contested custody; appointment of guardian ad litem.

A. In any proceeding for the disposition of children when custody of minor children is contested by any party, the court may appoint an attorney at law as guardian ad litem on the court's motion or upon application of any party to appear for and represent the minor children. Expenses, costs and attorneys' fees for the guardian ad litem may be allocated among the parties as determined by the court.

B. When custody is contested, the court:

(1) shall refer that issue to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend mediation unless the court specifically finds that:

(a) the following three conditions are satisfied: 1) the mediator has substantial training concerning the effects of domestic violence or child abuse on victims; 2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering from an imbalance of power as a result of the alleged domestic violence; and 3) the mediation process contains appropriate provisions and conditions to protect against an imbalance of power between the parties resulting from the alleged domestic violence or child abuse; or

(b) in the case of domestic violence involving parents, the parent who is or alleges to be the victim requests mediation and the mediator is informed of the alleged domestic violence;

(2) may order, in addition to or in lieu of the provisions of Paragraph (1) of this subsection, that each of the parties undergo individual counseling in a manner that the court deems appropriate, if the court finds that the parties can afford the counseling; and

(3) may use, in addition to or in lieu of the provisions of Paragraph (1) of this subsection, auxiliary services such as professional evaluation by application of Rule 11-706 of the New Mexico Rules of Evidence or Rule 1-053 of the Rules of Civil Procedure for the District Courts.

C. As used in this section:

(1) "child abuse" means:

(a) that a child has been physically, emotionally or psychologically abused by a parent;

(b) that a child has been: 1) sexually abused by a parent through criminal sexual penetration, incest or criminal sexual contact of a minor as those acts are defined by state law; or 2) sexually exploited by a parent through allowing, permitting or encouraging the child to engage in prostitution and allowing, permitting, encouraging or engaging the child in obscene or pornographic photographing or filming or depicting a child for commercial purposes as those acts are defined by state law;

(c) that a child has been knowingly, intentionally or negligently placed in a situation that may endanger the child's life or health; or

(d) that a child has been knowingly or intentionally tortured, cruelly confined or cruelly punished; provided that nothing in this paragraph shall be construed to imply that a child who is or has been provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner of the church or denomination, is for that reason alone a victim of child abuse within the meaning of this paragraph; and

(2) "domestic violence" means one parent causing or threatening physical harm or assault or inciting imminent fear of physical, emotional or psychological harm to the other parent.

History: 1953 Comp., § 22-7-7, enacted by Laws 1977, ch. 286, § 1; 1993, ch. 241, § 1.

40-4-9. Standards for the determination of child custody; hearing.

A. In any case in which a judgment or decree will be entered awarding the custody of a minor, the district court shall, if the minor is under the age of fourteen, determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including, but not limited to:

(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

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

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

(5) the mental and physical health of all individuals involved.

B. If the minor is fourteen years of age or older, the court shall consider the desires of the minor as to with whom he wishes to live before awarding custody of such minor.

C. Whenever testimony is taken from the minor concerning his choice of custodian, the court shall hold a private hearing in his chambers. The judge shall have a court reporter in his chambers who shall transcribe the hearing; however, the court reporter shall not file a transcript unless an appeal is taken.

History: 1953 Comp., § 22-7-7.1, enacted by Laws 1977, ch. 172, § 1.

40-4-9.1. Joint custody; standards for determination; parenting plan.

A. There shall be a presumption that joint custody is in the best interests of a child in an initial custody determination. An award of joint custody does not imply an equal division of financial responsibility for the child. Joint custody shall not be awarded as a substitute for an existing custody arrangement unless there has been a substantial and material change in circumstances since the entry of the prior custody order or decree, which change affects the welfare of the child such that joint custody is presently in the best interests of the child. With respect to any proceeding in which it is proposed that joint custody be terminated, the court shall not terminate joint custody unless there has been a substantial and material change in circumstances affecting the welfare of the child, since entry of the joint custody order, such that joint custody is no longer in the best interests of the child.

B. In determining whether a joint custody order is in the best interests of the child, in addition to the factors provided in Section 40-4-9 NMSA 1978, the court shall consider the following factors:

(1) whether the child has established a close relationship with each parent;

(2) whether each parent is capable of providing adequate care for the child throughout each period of responsibility, including arranging for the child's care by others as needed;

(3) whether each parent is willing to accept all responsibilities of parenting, including a willingness to accept care of the child at specified times and to relinquish care to the other parent at specified times;

(4) whether the child can best maintain and strengthen a relationship with both parents through predictable, frequent contact and whether the child's development will profit from such involvement and influence from both parents;

(5) whether each parent is able to allow the other to provide care without intrusion, that is, to respect the other's parental rights and responsibilities and right to privacy;

(6) the suitability of a parenting plan for the implementation of joint custody, preferably, although not necessarily, one arrived at through parental agreement;

(7) geographic distance between the parents' residences;

(8) willingness or ability of the parents to communicate, cooperate or agree on issues regarding the child's needs; and

(9) whether a judicial adjudication has been made in a prior or the present proceeding that either parent or other person seeking custody has engaged in one or more acts of domestic abuse against the child, a parent of the child or other household member. If a determination is made that domestic abuse has occurred, the court shall set forth findings that the custody or visitation ordered by the court adequately protects the child, the abused parent or other household member.

C. In any proceeding in which the custody of a child is at issue, the court shall not prefer one parent as a custodian solely because of gender.

D. In any case in which the parents agree to a form of custody, the court should award custody consistent with the agreement unless the court determines that such agreement is not in the best interests of the child.

E. In making an order of joint custody, the court may specify the circumstances, if any, under which the consent of both legal custodians is required to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent.

F. When joint custody is awarded, the court shall approve a parenting plan for the implementation of the prospective custody arrangement prior to the award of joint custody. The parenting plan shall include a division of a child's time and care into periods of responsibility for each parent. It may also include:

(1) statements regarding the child's religion, education, child care, recreational activities and medical and dental care;

(2) designation of specific decision-making responsibilities;

(3) methods of communicating information about the child, transporting the child, exchanging care for the child and maintaining telephone and mail contact between parent and child;

(4) procedures for future decision making, including procedures for dispute resolution; and

(5) other statements regarding the welfare of the child or designed to clarify and facilitate parenting under joint custody arrangements.

In a case where joint custody is not agreed to or necessary aspects of the parenting plan are contested, the parties shall each submit parenting plans. The court may accept the plan proposed by either party or it may combine or revise these plans as it deems necessary in the child's best interests. The time of filing of parenting plans shall be set by local rule. A plan adopted by the court shall be entered as an order of the court.

G. Where custody is contested, the court shall refer that issue to mediation if feasible. The court may also use auxiliary services such as professional evaluation by application of Rule 706 [Rule 11-706 NMRA] of the New Mexico Rules of Evidence or Rule 53 [Rule 1-053 NMRA] of the Rules of Civil Procedure for the District Courts.

H. Notwithstanding any other provisions of law, access to records and information pertaining to a minor child, including medical, dental and school records, shall not be denied to a parent because that parent is not the child's physical custodial parent or because that parent is not a joint custodial parent.

I. Whenever a request for joint custody is granted or denied, the court shall state in its decision its basis for granting or denying the request for joint custody. A statement that joint custody is or is not in the best interests of the child is not sufficient to meet the requirements of this subsection.

J. An award of joint custody means that:

(1) each parent shall have significant, well-defined periods of responsibility for the child;

(2) each parent shall have, and be allowed and expected to carry out, responsibility for the child's financial, physical, emotional and developmental needs during that parent's periods of responsibility;

(3) the parents shall consult with each other on major decisions involving the child before implementing those decisions; that is, neither parent shall make a decision or take an action which results in a major change in a child's life until the matter has been discussed with the other parent and the parents agree. If the parents, after

discussion, cannot agree and if one parent wishes to effect a major change while the other does not wish the major change to occur, then no change shall occur until the issue has been resolved as provided in this subsection;

(4) the following guidelines apply to major changes in a child's life:

(a) if either parent plans to change his home city or state of residence, he shall provide to the other parent thirty days' notice in writing stating the date and destination of move;

(b) the religious denomination and religious activities, or lack thereof, which were being practiced during the marriage should not be changed unless the parties agree or it has been otherwise resolved as provided in this subsection;

(c) both parents shall have access to school records, teachers and activities. The type of education, public or private, which was in place during the marriage should continue, whenever possible, and school districts should not be changed unless the parties agree or it has been otherwise resolved as provided in this subsection;

(d) both parents shall have access to medical and dental treatment providers and records. Each parent has authority to make emergency medical decisions. Neither parent may contract for major elective medical or dental treatment unless both parents agree or it has been otherwise resolved as provided in this subsection; and

(e) both parents may attend the child's public activities and both parents should know the necessary schedules. Whatever recreational activities the child participated in during the marriage should continue with the child's agreement, regardless of which of the parents has physical custody. Also, neither parent may enroll the child in a new recreational activity unless the parties agree or it has been otherwise resolved as provided in this subsection; and

(5) decisions regarding major changes in a child's life may be decided by:

(a) agreement between the joint custodial parents;

(b) requiring that the parents seek family counseling, conciliation or mediation service to assist in resolving their differences;

(c) agreement by the parents to submit the dispute to binding arbitration;

(d) allocating ultimate responsibility for a particular major decision area to one legal custodian;

(e) terminating joint custody and awarding sole custody to one person;

(f) reference to a master pursuant to Rule 53 [Rule 1-053 NMRA] of the Rules of Civil Procedure for the District Courts; or

(g) the district court.

K. When any person other than a natural or adoptive parent seeks custody of a child, no such person shall be awarded custody absent a showing of unfitness of the natural or adoptive parent.

L. As used in this section:

(1) "child" means a person under the age of eighteen;

(2) "custody" means the authority and responsibility to make major decisions in a child's best interests in the areas of residence, medical and dental treatment, education or child care, religion and recreation;

(3) "domestic abuse" means any incident by a household member against another household member resulting in:

(a) physical harm;

(b) severe emotional distress;

(c) a threat causing imminent fear of physical harm by any household member;

(d) criminal trespass;

(e) criminal damage to property;

(f) stalking or aggravated stalking, as provided in Sections 30-3A-3 and 30-3A-3.1 NMSA 1978; or

(g) harassment, as provided in Section 30-3A-2 NMSA 1978;

(4) "joint custody" means an order of the court awarding custody of a child to two parents. Joint custody does not imply an equal division of the child's time between the parents or an equal division of financial responsibility for the child;

(5) "parent" means a natural parent, adoptive parent or person who is acting as a parent who has or shares legal custody of a child or who claims a right to have or share legal custody;

(6) "parenting plan" means a document submitted for approval of the court setting forth the responsibilities of each parent individually and the parents jointly in a joint custody arrangement;

(7) "period of responsibility" means a specified period of time during which a parent is responsible for providing for a child's physical, developmental and emotional needs, including the decision making required in daily living. Specified periods of responsibility shall not be changed in an instance or more permanently except by the methods of decision making described under Subsection L [Subsection J] of this section;

(8) "sole custody" means an order of the court awarding custody of a child to one parent; and

(9) "visitation" means a period of time available to a noncustodial parent, under a sole custody arrangement, during which a child resides with or is under the care and control of the noncustodial parent.

History: 1978 Comp., § 40-4-9.1, enacted by Laws 1981, ch. 112, § 1; reenacted by Laws 1986, ch. 41, § 1; 1999, ch. 242, § 1.

40-4-10. Appointment of guardian ad litem.

After service of summons and copy of petition on any insane spouse and on the guardian of his or her estate, the court shall appoint an attorney at law as guardian ad litem to appear for and represent the insane spouse.

History: Laws 1933, ch. 27, § 2; 1941 Comp., § 25-711; 1953 Comp., § 22-7-8; Laws 1973, ch. 319, § 8.

40-4-11. Determination of award of child support; notice to withhold income.

In any proceeding before a court in which the court has the duty or authority to determine liability of a parent for the support of minor children or the amount of that support, the court:

A. shall make a specific determination and finding of the amount of support to be paid by a parent in accordance with the provisions of Section 40-4-11.1 NMSA 1978;

B. shall not consider present or future welfare financial assistance payments to or on behalf of the children in making its determination under Subsection A of this section; and

C. for good cause may order the parent liable for support of a minor child to assign to the person or public office entitled to receive the child support that portion of the

parent's periodic income or other periodic entitlements to money. The assignment of that portion of the parent's periodic income or other periodic entitlements to money may be ordered by the court by the issuance of a notice to withhold income against the income of the parent. The procedures for the issuance of the notice to withhold income, the content of the notice to withhold income, the duties of the parent liable for child support and the duties of the employer responsible for withholding income shall be the same as provided for in the Support Enforcement Act [40-4A-1 to 40-4A-20 NMSA 1978], except that delinquency in payment under an order for support need not be a pre-existing condition to effectuate the procedures of the Support Enforcement Act for purpose of withholding income under this section.

History: 1953 Comp., § 22-7-11.1, enacted by Laws 1971, ch. 185, § 1; 1987, ch. 340, § 1; 1988, ch. 87, § 1.

40-4-11. Determination of award of child support; disregard of welfare payments; notice to withhold income.

In any proceeding before a court in which the court has the duty or authority to determine liability of a parent for the support of minor children or the amount of that support, the court:

A. shall make a specific determination and finding of the amount of support to be paid by a parent to provide properly for the care, maintenance and education of the minor children, considering the financial resources of the parent;

B. shall not consider present or future welfare financial assistance payments to or on behalf of the children in making its determination under Subsection A of this section; and

C. for good cause may order the parent liable for support of a minor child to assign to the person or public office entitled to receive the child support that portion of the parent's periodic income or other periodic entitlements to money. The assignment of that portion of the parent's periodic income or other periodic entitlements to money may be ordered by the court by the issuance of a notice to withhold income against the income of the parent. The procedures for the issuance of the notice to withhold income, the content of the notice to withhold income, the duties of the parent liable for child support and the duties of the employer responsible for withholding income shall be the same as provided for in the Support Enforcement Act [40-4A-1 to 40-4A-20 NMSA 1978], except that delinquency in payment under an order for support need not be a pre-existing condition to effectuate the procedures of the Support Enforcement Act for purpose of withholding income under this section.

History: 1978 Comp., § 40-4-11, enacted by Laws 1988, ch. 87, § 3.

40-4-11.1. Child support; guidelines.

A. In any action to establish or modify child support, the child support guidelines as set forth in this section and the child support schedule promulgated by the department shall be applied to determine the child support due and shall be a rebuttable presumption for the amount of such child support. Every decree or judgment or stipulation of child support that deviates from the guideline amount shall contain a statement of the reasons for the deviation.

B. The purposes of the child support guidelines are to:

(1) establish as state policy an adequate standard of support for children, subject to the ability of parents to pay;

(2) make awards more equitable by ensuring more consistent treatment of persons in similar circumstances; and

(3) improve the efficiency of the court process by promoting settlements and giving courts and the parties guidance in establishing levels of awards.

C. For purposes of the guidelines specified in this section:

(1) "income" means actual gross income of a parent if employed to full capacity or potential income if unemployed or underemployed. The gross income of a parent means only the income and earnings of that parent and not the income of subsequent spouses, notwithstanding the community nature of both incomes after remarriage; and

(2) "gross income" includes income from any source and includes but is not limited to income from salaries, wages, tips, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, significant in-kind benefits that reduce personal living expenses, prizes and alimony or maintenance received, provided:

(a) "gross income" shall not include benefits received from: 1) means-tested public assistance programs, including but not limited to temporary assistance for needy families, supplemental security income and general assistance; 2) the earnings or public assistance benefits of a child who is the subject of a child support award; or 3) child support received by a parent for the support of other children;

(b) for income from self-employment, rent, royalties, proprietorship of a business or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required to produce such income, but ordinary and necessary expenses do not include expenses determined by the court to be inappropriate for purposes of calculating child support;

(c) "gross income" shall not include the amount of alimony payments actually paid in compliance with a court order;

(d) "gross income" shall not include the amount of child support actually paid by a parent in compliance with a court order for the support of prior children; and

(e) "gross income" shall not include a reasonable amount for a parent's obligation to support prior children who are in that parent's custody. A duty to support subsequent children is not ordinarily a basis for reducing support owed to children of the parties but may be a defense to a child support increase for the children of the parties. In raising such a defense, a party may use Table A as set forth in Subsection M of this section to calculate the support for the subsequent children.

D. If a court finds that a parent has willfully failed to obtain or maintain appropriate employment or is willfully underemployed, the court may impute to that parent an income equal to that parent's earning and employment potential.

(1) The following criteria shall be used:

(a) availability of employment opportunities for the parent;

(b) the parent's employment history;

(c) the parent's income history;

(d) the parent's job skills;

(e) the parent's education;

(f) the parent's age and health;

(g) the parent's history of convictions and incarceration; and

(h) the parent's ability to obtain or maintain employment due to providing care for a child of the parties who is under the age of six or is disabled.

(2) Minimum wage may be imputed if a parent has no recent employment or earnings history and that parent has the capacity to earn minimum wage. The minimum wage to be imputed to that parent is the prevailing minimum wage in the locality where that parent resides.

E. Income may not be imputed to a parent if the parent is incarcerated for a period of one hundred eighty days or longer. Incarceration is not considered a voluntary unemployment.

F. As used in this section:

(1) "department" means the human services department [health care authority department];

(2) "children of the parties" means the natural or adopted child or children of the parties to the action before the court but shall not include the natural or adopted child or children of only one of the parties;

(3) "basic visitation" means a custody arrangement whereby one parent has physical custody and the other parent has visitation with the children of the parties less than thirty-five percent of the time. Such arrangements can exist where the parties share responsibilities pursuant to Section 40-4-9.1 NMSA 1978;

(4) "shared responsibility" means a custody arrangement whereby each parent provides a suitable home for the children of the parties, when the children of the parties spend at least thirty-five percent of the year in each home and the parents significantly share the duties, responsibilities and expenses of parenting; and

(5) "schedule" means the child support schedule promulgated by the department.

G. The basic child support obligation shall be calculated based on the combined income of both parents and shall be paid by them proportionately pursuant to Subsection L of this section.

H. Physical custody adjustments shall be made as follows:

(1) for basic visitation situations, the basic child support obligation shall be calculated using the basic child support schedule promulgated by the department, Worksheet A and instructions contained in Subsection M of this section. The court may provide for a partial abatement of child support for visitations of one month or longer; and

(2) for shared responsibility arrangements, the basic child support obligation shall be calculated using the basic child support schedule promulgated by the department, Worksheet B and instructions contained in Subsection M of this section.

I. In shared responsibility situations, each parent retains the percentage of the basic support obligation equal to the number of twenty-four-hour days of responsibility spent by each child with each respective parent divided by three hundred sixty-five.

J. The cost of providing medical and dental insurance for the children of the parties and the net reasonable child-care costs incurred on behalf of these children due to employment or job search of either parent shall be paid by each parent in proportion to that parent's income, in addition to the basic obligation.

K. The child support may also include the payment of the following expenses not covered by the basic child support obligation:

(1) any extraordinary medical, dental and counseling expenses incurred on behalf of the children of the parties. Such extraordinary expenses are uninsured expenses in excess of one hundred dollars ($100) per child per year;

(2) any extraordinary educational expenses for children of the parties; and

(3) transportation and communication expenses necessary for long distance visitation or time sharing.

L. Whenever application of the child support guidelines set forth in this section requires a person to pay to another person more than forty percent of the paying person's gross income for a single child support obligation for current support, there shall be a presumption of a substantial hardship, justifying a deviation from the guidelines.

M. The department shall:

(1) establish the basic child support schedule by rule, using the recommendations of the child support guidelines review commission as the initial proposed rules; and

(2) update and adjust the basic child support schedule when such a change is necessary to ensure that the child support schedule complies with the child support guidelines set forth in this section. The basic child support schedule shall be promulgated pursuant to the State Rules Act and shall be published and available to the public through the New Mexico Administrative Code, the New Mexico supreme court's website and the department's website. When the department is developing or updating the child support schedule, it shall consider:

(a) all of the earnings and income of the noncustodial and custodial parent;

(b) the basic subsistence needs of a noncustodial parent who may have a limited ability to pay by incorporating a mechanism that adjusts the basic support obligation for low-income parents;

(c) economic data on the costs of raising children;

(d) state and local labor market data; and

(e) regional and national trends in child support schedule adjustments.

WORKSHEET A - BASIC VISITATION

_____ JUDICIAL DISTRICT COURT

COUNTY OF _____

STATE OF NEW MEXICO

NO. _____

_____,
Petitioner,

vs.

_____,
Respondent.

MONTHLY CHILD SUPPORT OBLIGATION

		Custodial Parent		Other Parent		Combined
1.	Gross Monthly Income	$_____	+	$_____	=	$_____
2.	Percentage of Combined Income (Each parent's income divided by combined income)	_____%	+	_____%	=	100%
3.	Number of Children _____					
4.	Basic Support from Schedule (Use combined income from Line 1)			=	_____	
5.	Children's Health and Dental Insurance Premium	_____	+	_____	=	_____
6.	Work-Related Child Care	_____	+	_____	=	_____
7.	Additional Expenses	_____	+	_____	=	_____
8.	Total Support (Add Lines 5, 6 and 7 for each parent and Lines 4, 5, 6 and 7 for combined column)	_____	=	_____	=	_____
9.	Each Parent's Obligation (Combined Column Line 8 x each parent's Line 2)	_____		_____		
10.	Enter amount for each parent from Line 8	-_____	-_____			
11.	Each Parent's Net Obligation (Subtract Line 10 from Line 9 for each parent).	_____		_____	Other	

Parent pays Custodial
Parent this Amount

_____PAYS_____ EACH MONTH $_____

_____ _____
Petitioner's Signature Respondent's Signature

Date: _____

BASIC VISITATION
INSTRUCTIONS FOR WORKSHEET A

Line 1. Gross monthly income:

Includes all income, except temporary assistance for needy families, food stamps and supplemental security income. If a parent pays child support by court order to other children, subtract from gross income. Use current income if steady. If income varies a lot from month to month, use an average of the last twelve months, if available, or last year's income tax return. Add both parents' gross incomes and put total under the combined column.

Line 2. Percentage of Combined Income:

Divide each parent's income by combined income to get that parent's percentage of combined income.

Lines 3 and 4. Basic Support:

Fill in number of children on worksheet (Line 3). Round combined income to nearest fifty dollars ($50.00). Look at the basic child support schedule. In the far left-hand column of the basic child support schedule, find the rounded combined income figure. Read across to the column with the correct number of children. Enter that amount on Line 4.

Line 5. Children's Health and Dental Insurance Premium:

Enter the cost paid by a parent for covering these children with medical and dental insurance under that parent's column on Line 5. Add costs paid by each parent and enter under the combined column on Line 5.

Line 6. Work-Related Child Care:

Enter the cost paid by each parent for work-related child care. If the cost varies (for example, between school year and summer), take the total yearly cost and divide by twelve. Enter each parent's figure in that parent's column on Line 6. Add the cost for both parents and enter in the combined column on Line 6.

Line 7. Additional Expenses:

Enter the amounts paid by each parent for additional expenses provided by Subsection J of this section on Line 7. Add the cost for both parents and enter in the combined column on Line 7.

Line 8. Total Support:

Total the basic support amount from Line 4 in the combined column with the combined column on Lines 5, 6 and 7 and enter the totals in the combined column on Line 8.

Line 9. Each Parent's Obligation:

Multiply the total child support amount on Line 8 by each parent's percentage share on Line 2, and enter each parent's dollar share under that parent's column on Line 9.

Line 10. Total Support:

Enter the total amount shown for each parent on Line 8 beside the "minus" marks on Line 10.

Line 11. Each Parent's Net Obligation:

For each parent, subtract the amount on Line 10 from the amount on Line 9. Enter the difference for each parent in that parent's column on Line 11. The amount in the box "other parent" is what that parent pays to the custodial parent each month. Do not subtract the amount on the custodial parent's Line 11 from the amount in the other parent's box. The custodial parent is presumed to use the amount in that parent's column on Line 11 for the children.

WORKSHEET B - SHARED RESPONSIBILITY

_____ JUDICIAL DISTRICT COURT

COUNTY OF _____

STATE OF NEW MEXICO

NO. _____

_____,
Petitioner,

vs.

_____,
Respondent.

MONTHLY CHILD SUPPORT OBLIGATION

Part 1 - Basic Support:	Parent One		Parent Two		Combined
1. Gross Monthly Income	$_____	+	$_____	=	$_____
2. Percentage of Combined Income (Each parent's income divided by combined income)	_____ %	+	_____%	=	100%
3. Number of Children _____					
4. Basic Support from Schedule (Use combined income from Line 1)				=	_____
5. Shared Responsibility Basic Obligation (Line 4 x 1.5)				=	_____
6. Each Parent's Share (Line 5 x each parent's Line 2)	_____		_____		
7. Number of 24-Hour Days with Each Parent (must total 365)	_____	+	_____	=	365
8. Percentage with Each Parent (Line 7 divided by 365)	_____%	+	_____%	=	100%
9. Amount Retained (Line 6 x Line 8 for Each Parent)	_____		_____		
10. Each Parent's Basic Obligation (subtract Line 9 from Line 6)	_____		_____		
11. Amount Transferred (subtract smaller amount on Line 10 from larger amount on Line 10). Parent with larger amount on Line 10 pays other parent the difference.					_____
Part 2 - Additional Payments:					
12. Children's Health and Dental Insurance Premium	_____	+	_____	=	_____
13. Work-Related Child Care	_____	+	_____	=	_____
14. Additional					

	Expenses	_____	+	_____	=	_____
15.	Total Additional Payments (Add Lines 12, 13 and 14 for each parent and for combined column)	_____	+	_____	=	_____
16.	Each Parent's Obligation (Combined Column Line 15 x each parent's Line 2)	_____		_____		
17.	Amount Transferred (Subtract each parent's Line 16 from that parent's Line 15). Parent with "minus" figure pays that amount to other parent.	_____		_____		

Part 3 - Net Amount Transferred:

18. Combine Lines 11 and 17 by addition if same parent pays on both lines, otherwise by subtraction. _____

_____ PAYS_____EACH MONTH $ _____

_____ _____

Petitioner's Signature Respondent's Signature

Date: _____

SHARED RESPONSIBILITY
INSTRUCTIONS FOR WORKSHEET B

Part 1 - Basic Support:

Line 1. Gross Monthly Income:

Includes all income, except temporary assistance for needy families, food stamps and supplemental security income. See text for allowed deductions from income. Use current income if steady. If income varies a lot from month to month, use an average of the last twelve months, if available, or last year's income tax return. Add both parents' gross incomes and put total under the combined column.

Line 2. Percentage of Combined Income:

Divide each parent's income by combined income to get that parent's percentage of combined income.

Lines 3 and 4. Basic Support:

Fill in the number of children on the worksheet (Line 3). Round combined income to nearest fifty dollars ($50.00). Look at the basic child support schedule. In the far left-hand column of that schedule, find the rounded combined income figure. Read across to the column with the correct number of children. Enter that amount on Line 4.

Line 5. Shared Responsibility Basic Obligation:

Multiply the basic obligation on Line 4 by 1.5.

Line 6. Each Parent's Share:

Multiply the support amount on Line 5 by each parent's percentage share on Line 2, and enter each parent's dollar share under that parent's column on Line 6.

Line 7. Each Parent's Time of Care for Children:

Enter the number of twenty-four-hour days of responsibility that each parent has each child in a year according to the parenting plan.

Line 8. Percentage of Twenty-Four-Hour Days With Each Parent:

Divide each parent's number of twenty-four-hour days (Line 7) by three hundred sixty-five to obtain a percentage.

Line 9. Amount Retained:

Under shared responsibility arrangements, each parent retains the percentage of the basic support obligation equal to the number of twenty-four-hour days of responsibility spent by each child with each respective parent divided by three hundred sixty-five. Multiply each parent's share of basic support (Line 6) by the percentage in that parent's Line 8 and enter the result on that parent's Line 9. This is the amount that each parent retains to pay the children's expenses during that parent's periods of responsibility.

Line 10. Each Parent's Basic Obligation:

Subtract the amount retained by each parent for direct expenses (Line 9) from that parent's share (Line 6) and enter the difference on that parent's Line 10.

Line 11. Amount Transferred for Basic Support:

In shared responsibility situations, both parents are entitled not only to retain money for direct expenses but also to receive contributions from the other parent toward those expenses. Therefore, subtract the smaller amount on Line 10 from the larger amount on Line 10 to arrive at a net amount transferred for basic support.

Part 2 - Additional Payments:

Line 12. Children's Health and Dental Insurance Premium: Enter the cost paid by a parent for covering these children with medical and dental insurance under that parent's column on Line 12. Add costs paid by each parent and enter under the combined column on Line 12.

Line 13. Work-Related Child Care:

Enter the cost paid by each parent for work-related child care. If the cost varies (for example, between school year and summer), take the total yearly cost and divide by twelve. Enter each parent's figure in that parent's column on Line 13. Add the cost for both parents and enter in the combined column on Line 13.

Line 14. Additional Expenses:

Enter the cost paid by each parent for additional expenses provided by Subsection J of this section on Line 14.

Line 15. Total Additional Payments:

For each parent, total the amount paid by that parent for insurance, child care and additional expenses (Lines 12, 13 and 14). Enter the total in that parent's column on Line 15 and the total of both parents' expenses under the combined column on Line 15.

Line 16. Each Parent's Obligation:

Multiply the total additional payments (combined column on Line 15) by each parent's percentage share of income on Line 2, and enter each parent's dollar share of the additional payments on that parent's Line 16.

Line 17. Amount Transferred:

Subtract each parent's obligation for additional expenses (that parent's Line 16) from the total additional payments made by that parent (that parent's Line 15). The parent with a "minus" figure pays the other parent the amount on Line 17.

Part 3 - Net Amount Transferred:

Line 18. Combine Lines 11 and 17:

Combine the amount owed by one parent to the other for basic support (Line 11) and the amount owed by one parent to the other for additional payments (Line 17). If the same parent owes for both obligations, add Lines 11 and 17, and enter the total on Line 18. If one parent owes for basic support and the other owes for additional payments,

subtract the smaller amount from the larger and enter on Line 18. Fill in the blanks by stating which parent pays and which parent receives the net amount transferred.

History: 1978 Comp., § 40-4-11.1, enacted by Laws 1988, ch. 87, § 2; 1991, ch. 206, § 1; 1995, ch. 142, § 1; 2008, ch. 48, § 1; 2021, ch. 20, § 1; 2023, ch. 106, § 1.

40-4-11.2. Grounds for deviation from child support guidelines.

Any deviation from the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 and the basic child support schedule promulgated by the human services department [health care authority department] shall be supported by a written finding in the decree, judgment or order of child support that application of the guidelines and basic child support schedule would be unjust or inappropriate. A finding that rebuts the child support guidelines and basic child support schedule shall state the amount of support that would have been required under the guidelines and basic child support schedule and the justification of why the order varies from the guidelines and the basic child support schedule. Circumstances creating a substantial hardship in the obligor, obligee or subject children may justify a deviation upward or downward from the amount that would otherwise be payable under the guidelines and basic child support schedule.

History: 1978 Comp., § 40-4-11.2, enacted by Laws 1989, ch. 36, § 1; 2021, ch. 20, § 2; 2023, ch. 106, § 2.

40-4-11.3. Child support guidelines review commission; created; review of child support guidelines.

A. There is created the "child support guidelines review commission", which is administratively attached to the human services department [health care authority department]. The commission shall consist of seven members who shall be appointed by the secretary of human services. The commission shall be organized once every four years for a term not to exceed thirty days. The commission shall, within four years of the effective date of this section and every four years thereafter:

(1) review the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 to ensure that the application of the guidelines results in the determination of appropriate child support order amounts; and

(2) provide a report of its findings to the secretary of human services.

B. The human services department [health care authority department] shall publish online and make accessible to the public the:

(1) findings of the child support guidelines review commission;

(2) membership of the commission; and

(3) date of the next quadrennial review.

C. Members of the child support guidelines review commission shall not be paid but shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: 1978 Comp., § 40-4-11.3, enacted by Laws 1989, ch. 36, § 2; 2021, ch. 20, § 3.

40-4-11.4. Modification of child support orders; exchange of financial information.

A. A court may modify a child support obligation upon a showing of material and substantial changes in circumstances subsequent to the adjudication of the pre-existing order, including the health care needs of a child, to include the availability of health care coverage. There shall be a presumption of material and substantial changes in circumstances if application of the child support guidelines in Section 40-4-11.1 NMSA 1978 would result in a deviation upward or downward of more than twenty percent of the existing child support obligation and the petition for modification is filed more than one year after the filing of the pre-existing order.

B. All child support orders shall contain a provision for the annual exchange of financial information by the obligor and obligee upon a written request by either party. The financial information to be furnished shall include:

(1) federal and state tax returns, including all schedules, for the year preceding the request;

(2) W-2 statements for the year preceding the request;

(3) Internal Revenue Service Form 1099s for the year preceding the request;

(4) work-related daycare statements for the year preceding the request;

(5) dependent medical insurance premiums for the year preceding the request; and

(6) wage and payroll statements for four months preceding the request.

For the purposes of this subsection, the wages of a subsequent spouse may be omitted from the financial information provided by either the obligor or the obligee.

C. The requirement to provide for the child's health care needs in the order, through insurance or other means, shall be a basis to initiate an adjustment of an order, regardless of whether an adjustment in the amount of child support is necessary.

History: Laws 1990, ch. 58, § 1; 1991, ch. 206, § 2; 2021, ch. 20, § 4.

40-4-11.5. Modification of child support orders in cases enforced by the state Title IV-D agency.

A. For child support cases being enforced by the human services department [health care authority department] acting as the state's Title IV-D child support enforcement agency as provided in Section 27-2-27 NMSA 1978, the department shall implement a process for the periodic review of child support orders that shall include:

(1) a review of support orders every three years upon the request of either the obligor or obligee or, if there is an assignment of support rights pursuant to the Public Assistance Act [27-2-1 to 27-2-34 NMSA 1978], upon the request of the department or of either the obligor or obligee;

(2) notification by the department of its review to the obligor and obligee; and

(3) authorization to require financial information from the obligor and the obligee to determine whether the support obligation should be presented to the court for modification.

B. In carrying out its duties under this section, the secretary of human services, or the secretary's authorized representative, has the power to issue subpoenas:

(1) to compel the attendance of the obligor or the obligee at a hearing on the child support order;

(2) to compel production by the obligor or the obligee of financial or wage information, including federal or state tax returns;

(3) to compel the obligor or the obligee to disclose the location of employment of the payor party; and

(4) to compel the employer of the obligor or the obligee to disclose information relating to the employee's wages.

C. A subpoena issued by the human services department [health care authority department] under this section shall state with reasonable certainty the nature of the information required, the time and place where the information shall be produced, whether the subpoena requires the attendance of the person subpoenaed or only the production of information and records and the consequences of failure to obey the subpoena.

D. A subpoena issued by the human services department [health care authority department] under this section shall be served upon the person to be subpoenaed or, at the option of the secretary or the secretary's authorized representative, by certified mail

addressed to the person at his last known address. The service of the subpoena shall be at least ten days prior to the required production of the information or the required appearance. If the subpoena is served by certified mail, proof of service is the affidavit of mailing. After service of a subpoena upon a person, if the person neglects or refuses to comply with the subpoena, the department may apply to the district court of the county where the subpoena was served or the county where the subpoena was responded to for an order compelling compliance. Failure of the person to comply with the district court's order shall be punishable as contempt.

E. If a review by the human services department [health care authority department] results in a finding that a child support order should be modified in accordance with the guidelines, it should be presented to the court for modification and the obligor and the obligee shall be notified of their respective rights and shall have thirty days to respond to the department's finding. The right to seek modification shall rest with the department in the case of obligations being enforced as a result of a public assistance recipient's assignment of support rights to the state as provided in the Social Security Act, 42 U.S.C. 602(a)(26).

F. At the request of the obligor or the obligee or upon the filing of a motion to modify child support, the human services department [health care authority department] shall furnish any information it has obtained in its review process regarding wages or other information pertaining to the obligor or the obligee.

G. Nothing in this section shall be construed to restrict the right of either party to petition the court to modify a child support obligation. The human services department [health care authority department] shall not be required to conduct a review of any party's obligation more than once every three years.

History: Laws 1990, ch. 58, § 2; 1997, ch. 237, § 21.

40-4-11.6. Attachment of guideline worksheet to order.

A completed child support obligation guideline worksheet shall be attached to all orders that establish or modify child support. The completed worksheet shall be signed by the obligor and obligee or their attorneys. The completed worksheet shall be incorporated as part of the child support order. The worksheet shall also be attached to the child support order unless the court decrees that the worksheet be sealed or unless the obligor and obligee agree that it should be sealed.

History: 1978 Comp., § 40-4-11.6, enacted by Laws 1991, ch. 206, § 3.

40-4-12. Allowance from spouse's separate property as alimony.

In proceedings for the dissolution of marriage, separation or support between husband and wife, the court may make an allowance to either spouse of the other

spouse's separate property as alimony and the decree making the allowance shall have the force and effect of vesting the title of the property so allowed in the recipient.

History: 1941 Comp., § 25-716, enacted by Laws 1947, ch. 16, § 1; 1953 Comp., § 22-7-13; Laws 1973, ch. 319, § 9.

40-4-13. Spousal support to constitute lien on real estate.

A. The decree making the allowance for spousal support to either spouse shall be a lien on the real estate of the obligor spouse from the date of filing of a notice of order or decree in the office of the county clerk of each county where any of the property is situated.

B. The notice of order or decree shall contain:

(1) the caption of the case from which the duty of spousal support arose, including the state, county and court in which the case was heard, the case number and the names of the parties when the case was heard;

(2) the date of entry of the judgment, order or decree from which the duty of spousal support arose;

(3) the current names, social security numbers and dates of birth of the parties; and

(4) each party's last known address, unless ordered otherwise in the judgment, order or decree from which the duty of spousal support arose.

C. The notice shall be executed and acknowledged in the same manner as a grant of land is executed and acknowledged.

D. A copy of the recorded notice shall be sent to the obligor spouse at his last known address.

History: 1941 Comp., § 25-717, enacted by Laws 1947, ch. 16, § 2; 1953 Comp., § 22-7-14; Laws 1973, ch. 319, § 10; 1993, ch. 111, § 1.

40-4-14. Allowance in property; appointment and removal of guardian.

In proceedings for the dissolution of marriage, separation or support between husband and wife, the court may make an allowance of certain property or properties of either party or of both parties for the maintenance, education and support of the minor children of the parties, and may vest title to the part of the property so allowed in a conservator appointed by the court. The conservator must qualify and serve in such

capacity as provided in Sections 5-101 through 5-502 [45-5-101 to 45-5-502 NMSA 1978] of the [Uniform] Probate Code.

History: 1941 Comp., § 25-718, enacted by Laws 1947, ch. 16, § 3; 1953 Comp., § 22-7-15; Laws 1973, ch. 319, § 11; 1975, ch. 257, § 8-114.

40-4-15. Child support to constitute lien on real and personal property.

A. In case a sum of money is allowed to the children by the decree for the support, education or maintenance of the children, the decree shall become a lien on the real and personal property of the obligor party from the date of filing of a notice of order or decree in the office of the county clerk of each county where any of the property may be situated.

B. The notice of order or decree shall contain:

(1) the caption of the case from which the duty of child support arose, including the state, county and court in which the case was heard, the case number and the names of the parties when the case was heard;

(2) the date of entry of the judgment, order or decree from which the duty of child support arose;

(3) the current names and years of birth of the parties; and

(4) each party's last known address, unless ordered otherwise in the judgment, order or decree from which the duty of child support arose.

C. The notice shall be executed and acknowledged in the same manner as a grant of land is executed and acknowledged.

D. A copy of the recorded notice shall be sent to the obligor spouse at the obligor's last known address.

History: 1941 Comp., § 25-719, enacted by Laws 1947, ch. 16, § 4; 1953 Comp., § 22-7-16; Laws 1985, ch. 105, § 15; 1993, ch. 111, § 2; 2011, ch. 134, § 17.

40-4-16. [Satisfaction of liens.]

The liens created by this act [40-4-12 to 40-4-19 NMSA 1978] may be satisfied by execution or may be foreclosed under the same procedure as is now allowed for the foreclosure of judgment liens.

History: 1941 Comp., § 25-720, enacted by Laws 1947, ch. 16, § 5; 1953 Comp., § 22-7-17.

40-4-17. [Motion to remove lien; bond for alimony or support payments.]

The district court upon motion made in the cause wherein the decree was rendered may remove the liens created by this act [40-4-12 to 40-4-19 NMSA 1978] upon notice and upon good cause shown from any or all of the real estate, subject to such lien; and the judge, in his discretion, upon the removal of such lien, may require bond for the faithful performance of the payment of alimony or support money in accordance with the decree.

History: 1941 Comp., § 25-722, enacted by Laws 1947, ch. 16, § 7; 1953 Comp., § 22-7-19.

40-4-18. [Limitation of liens under Laws 1901, ch. 62, 28, 29.]

All liens created by a decree rendered under Sections 28 and 29 of Chapter 62, Laws of 1901, (Sections 25-707 and 25-708, New Mexico Statutes, 1941, Annotated) against any property of a person shall be of no force and effect against any of said property after six months from the effective date of this act. Provided, however, that a certified copy of any such decree rendered prior to the effective date of this act may be filed for record with the county clerk as herein provided during said six months' period in which case it shall be a lien from the date of the decree and any such decree filed for record after such period shall be a lien only from and after the date of filing with the county clerk.

History: 1941 Comp., § 25-723, enacted by Laws 1947, ch. 16, § 8; 1953 Comp., § 22-7-20.

40-4-19. Enforcement of decree by attachment, garnishment, execution or contempt proceedings.

Nothing in Sections 40-4-12 through 40-4-19 NMSA 1978 shall prevent a person or persons entitled to benefits of any decree for alimony or support from enforcing the decree by attachment, garnishment, execution or contempt proceedings as is now provided by statute, except that the filing of an affidavit that the defendant has no property within the state subject to execution to satisfy the judgment shall not be a prerequisite to the issuance of a garnishment.

History: 1941 Comp., § 25-724, enacted by Laws 1947, ch. 16, § 9; 1953 Comp., § 22-7-21; Laws 1973, ch. 319, § 12; 1979, ch. 252, § 1.

40-4-19.1, 40-4-19.2. Repealed.

40-4-20. Failure to divide or distribute property on the entry of a decree of dissolution of marriage or separation; distribution of

spousal or child support and determination of paternity when death occurs during proceedings for dissolution of marriage, separation, annulment of marriage or paternity.

A. The failure to divide or distribute property on the entry of a decree of dissolution of marriage or of separation shall not affect the property rights of either the husband or wife, and either may subsequently institute and prosecute a suit for division and distribution or with reference to any other matter pertaining thereto that could have been litigated in the original proceeding for dissolution of marriage or separation.

B. Upon the filing and service of a petition for dissolution of marriage, separation, annulment, division of property or debts, spousal support, child support or determination of paternity pursuant to the provisions of Chapter 40, Article 4 or 11 [repealed] NMSA 1978, if a party to the action dies during the pendency of the action, but prior to the entry of a decree granting dissolution of marriage, separation, annulment or determination of paternity, the proceedings for the determination, division and distribution of marital property rights and debts, distribution of spousal or child support or determination of paternity shall not abate. The court shall conclude the proceedings as if both parties had survived. The court may allow the spouse or any children of the marriage support as if the decedent had survived, pursuant to the provisions of Chapter 40, Article 4 or 11 [repealed] NMSA 1978. In determining the support, the court shall, in addition to the factors listed in Chapter 40, Article 4 NMSA 1978, consider the amount and nature of the property passing from the decendent [decedent] to the person for whom the support would be paid, whether by will or otherwise.

History: Laws 1901, ch. 62, § 31; Code 1915, § 2781; C.S. 1929, § 68-509; 1941 Comp., § 25-709; 1953 Comp., § 22-7-22; Laws 1973, ch. 319, § 13; 1993, ch. 90, § 1.

ARTICLE 4A
Support Enforcement

40-4A-1. Short title.

This act may be cited as the "Support Enforcement Act".

History: Laws 1985, ch. 105, § 1.

40-4A-2. Definitions.

As used in the Support Enforcement Act:

A. "authorized quasi-judicial officer" means a person appointed by the court pursuant to rule 53(a) [Rule 1-053A NMRA] of the Rules of Civil Procedure for the District Courts;

B. "consumer reporting agency" means any person who, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports;

C. "delinquency" means any payment under an order for support which has become due and is unpaid;

D. "department" means the human services department [health care authority department];

E. "income" means any form of periodic payment to an obligor, regardless of source, including but not limited to wages, salary, commission, compensation as an independent contractor, workers' compensation benefits, disability benefits, annuity and retirement benefits or other benefits, bonuses, interest or any other payments made by any person, but does not include:

(1) any amounts required by law to be withheld, other than creditor claims, including but not limited to federal, state and local taxes, social security and other retirement and disability contributions;

(2) union dues;

(3) any amounts exempted by federal law; or

(4) public assistance payments;

F. "notice of delinquency" means the notice of delinquency as provided for in Section 40-4A-4 NMSA 1978;

G. "notice to withhold income" means a notice that requires the payor to withhold from the obligor money necessary to meet the obligor's duty under an order for support and, in the event of a delinquency, requires the payor to withhold an additional amount to be applied towards the reduction of the delinquency;

H. "obligor" means the person who owes a duty to make payments under an order for support;

I. "obligee" means any person who is entitled to receive support under an order for support or that person's legal representative;

J. "order for support" means any order which has been issued by any judicial, quasi-judicial or administrative entity of competent jurisdiction of any state and which order provides for:

(1) periodic payment of funds for the support of a child or a spouse;

(2) modification or resumption of payment of support;

(3) payment of delinquency; or

(4) reimbursement of support;

K. "payor" means any person or entity who provides income to an obligor;

L. "person" means an individual, corporation, partnership, governmental agency, public office or other entity; and

M. "public office" means the state disbursement unit of the department as defined in Section 454B of the Social Security Act.

History: Laws 1985, ch. 105, § 2; 1993, ch. 254, § 1; 1997, ch. 237, § 6.

40-4A-3. Purpose of income withholding.

Income withholding is intended to ensure compliance with the order for support and provide for the liquidation of any delinquency which may have accrued.

History: Laws 1985, ch. 105, § 3.

40-4A-4. Notice of delinquency.

A. When an obligor accrues a delinquency, the obligee or public office may prepare and serve upon the obligor a copy of a verified notice of delinquency. The income of a person with a support obligation imposed by a support order issued or modified in the state before January 1, 1994, if not otherwise subject to immediate withholding under Section 40-4A-4.1 NMSA 1978, shall become subject to immediate withholding as provided in Section 40-4A-4.1 NMSA 1978 if arrearages occur, without the need for a judicial or administrative hearing.

B. If the date upon which payment is due under an order for support is not stated in the order for support, the due date shall be deemed to be the last day of the month.

C. The notice of delinquency shall:

(1) recite those terms of the order for support which enumerate the support obligation;

(2) contain a current computation of the period and total amount of the delinquency;

(3) inform the obligor of the amount to be withheld;

(4) inform the obligor of the procedures available to contest the income withholding on the grounds that the withholding or the amount withheld is improper due to a mistake of fact;

(5) state that, unless the obligor complies with the procedures to contest the income withholding, a notice to withhold income shall be served upon the payor;

(6) state that the notice to withhold income shall be applicable to any current or subsequent payor; and

(7) state the name and address of the public office to which withheld income shall be sent.

D. The original notice of delinquency shall be filed with the clerk of the district court.

E. Service of the notice of delinquency upon the obligor shall be effected by sending the notice by prepaid certified mail addressed to the obligor at his last known address or by any method provided by law for service of a summons. Proof of service shall be filed with the clerk of the district court.

History: Laws 1985, ch. 105, § 4; 1997, ch. 237, § 7.

40-4A-4.1. Immediate child support income withholding.

A. In any judicial proceeding in which child support is ordered, modified or enforced and which proceeding is brought or enforced pursuant to Title IV-D of the Social Security Act as provided in Section 27-2-27 NMSA 1978, the income of the support obligor shall be subject to immediate income withholding regardless of the existence of any child support arrearage or delinquency. Effective January 1, 1994, in proceedings in which child support services are not being provided pursuant to Title IV-D and the initial child support order is issued in the state on or after January 1, 1994, the income of the support obligor shall be subject to immediate income withholding regardless of the existence of any child support arrearage or delinquency.

B. As part of the court or administrative order establishing, modifying or enforcing the child support obligation, the court shall issue the order to withhold.

C. The order to withhold shall state:

(1) the style, docket number and court having jurisdiction of the cause;

(2) the name, address and, if available, the social security number of the obligor;

(3) the amount and duration of the child support payments. If any of the ordered amount is toward satisfaction of an arrearage or delinquency up to the date of the order, the amount payable to current and past-due support shall be specified, together with the total amount of the delinquency or arrearage, including judgment interest, if any;

(4) the name and date of birth of the child for whom support is ordered and the name of the obligee;

(5) the name and address of the person or agency to whom the payment is to be made, together with the agency's internal case number; and

(6) any other information deemed necessary to effectuate the order.

D. All Title IV-D payments shall be made through the public office. All non-Title IV-D payments shall be made through the public office to be effective on October 1, 1998.

E. The maximum amount withheld pursuant to this section and any other garnishment shall not exceed fifty percent of the obligor's income.

F. The order of a withholding shall be mailed by the Title IV-D agency or the support obligee, obligee's attorney or court by certified mail to the payor. The payor shall pay over income as provided by and in compliance with the procedures of Section 40-4A-8 NMSA 1978.

G. The court may provide an exception to the immediate income withholding required by this section if it finds good cause for not ordering immediate withholding. The burden shall be on the party claiming good cause to raise the issue and demonstrate the existence of good cause to the court. In the event of a finding of good cause, the court shall make a written finding in the order specifying the reasons or circumstances justifying the good-cause exception and why income withholding would not be in the best interest of the child. If the order is one modifying a support obligation and immediate income withholding is not ordered, the order shall include a finding that the obligor has timely paid support in the past. The order shall provide that the obligor shall be subject to withholding if a one-month support delinquency accrues.

H. The court shall make an exception to the immediate income withholding required by this section if the parties to the proceeding enter into a written agreement providing for alternative means of satisfying the child support obligation. Such an agreement shall be incorporated into the order of the court. For the purposes of this subsection, the support obligee shall be considered to be the department in the case of child support obligations that the state is enforcing pursuant to an assignment of support rights to it as a condition of the assignor's receipt of public assistance. The agreement shall contain the signatures of a representative of the department and the custodial parent.

I. Notwithstanding the provisions of Subsection G of this section, immediate income withholding shall take place if the child support obligor so requests. The notice to withhold shall be filed with the clerk of the district court and the requirements of Subsection C of this section, Subsections D, E and F of Section 40-4A-5 and Sections 40-4A-6, 40-4A-8, 40-4A-10 and 40-4A-11 NMSA 1978 shall apply.

J. A court shall order a wage withholding effective on the date on which a custodial parent requests such withholding to begin if the court determines, in accordance with such procedures and standards as it may establish, that the request should be approved, notwithstanding:

(1) the absence of a support delinquency of at least one month;

(2) a finding of good cause under Subsection G of this section; or

(3) an agreement under Subsection H of this section.

K. The standards and procedures established for purposes of Subsection J of this section shall provide for the protection of the due process rights of the support obligor, appropriate notices and the right to a hearing under the Support Enforcement Act.

L. Wages not subject to withholding under Subsection J of this section shall still be subject to withholding on an earlier date as provided by law.

M. Notwithstanding any other provision of this section, wages not subject to withholding because of a finding of good cause under Subsection G of this section shall not be subject to withholding at the request of a custodial parent unless the court changes its determination of good cause not to initiate immediate wage withholding.

N. In the event a child support obligor accrues a delinquency in an amount equal to at least one month's support obligation and notwithstanding any previous agreement or court finding to the contrary, income withholding shall issue against the support obligor and the procedures set out in Section 40-4A-4 NMSA 1978 shall be followed. Such withholding shall terminate only upon the termination of all obligations imposed by the order of support and payment in full of all enforceable child support delinquencies.

History: 1978 Comp., § 40-4A-4.1, enacted by Laws 1990, ch. 30, § 1; 1992, ch. 26, § 1; 1993, ch. 254, § 2; 1997, ch. 237, § 8.

40-4A-5. Notice to withhold income.

A. The obligee or public office shall file an affidavit with the clerk of the district court showing that notice of delinquency has been duly served upon the obligor.

B. Upon filing of the affidavit required by Subsection A of this section, the notice to withhold income shall be filed with the clerk of the district court and served upon the

payor by certified mail or personal delivery, and proof of service shall be filed with the clerk of the district court.

C. A conformed copy of the notice to withhold income shall be mailed to the obligor at his last known address.

D. The notice to withhold income shall be verified by the obligee or public office and shall:

(1) state the amount of income to be withheld from the obligor; provided, however, the amount to be applied to satisfy the monthly obligation under the order for support, the amount of the delinquency which is set forth in the notice of delinquency and the amount to be applied to reduce the delinquency set forth in the notice of delinquency shall be stated separately;

(2) state that payments due from multiple obligors may be combined into one remittance so long as each withholding is separately identified;

(3) state that the maximum amount of an obligor's income subject to withholding pursuant to the Support Enforcement Act and pursuant to any garnishment shall not exceed fifty percent;

(4) state the duties of the payor as set forth in Section 40-4A-8 NMSA 1978; and

(5) require that all payments be made through the public office to ensure accurate recordkeeping.

E. The termination of the obligations imposed by the order of support and payment in full of any delinquency shall revoke the notice to withhold income.

History: Laws 1985, ch. 105, § 5; 1987, ch. 26, § 1; 1997, ch. 237, § 9.

40-4A-6. Amount of income subject to withholding.

A. The income of an obligor shall be subject to withholding in an amount:

(1) equal to the monthly support obligation set forth in the order for support; and

(2) in the event of a delinquency, the additional amount of twenty percent of the monthly support obligation set forth in the order for support, or such amount as the court may order after notice and hearing, until payment in full of any delinquency set forth in the notice of delinquency.

B. The maximum amount of an obligor's income which may be subject to withholding pursuant to the Support Enforcement Act and pursuant to any garnishment shall not exceed fifty percent.

History: Laws 1985, ch. 105, § 6.

40-4A-7. Procedure to avoid income withholding.

Except as provided in Section 40-4A-4.1 NMSA 1978, the obligor may contest the notice to withhold income by filing a petition with the clerk of the district court within twenty days after service of the notice of delinquency. Grounds for the contest shall be limited to a dispute concerning the existence or amount of the delinquency or noncompliance with the Support Enforcement Act. The clerk of the district court shall notify the obligor and the obligee or public office, as appropriate, of the time and place of the hearing on the petition. The court shall hold the hearing pursuant to the provisions of Section 40-4A-9 NMSA 1978.

History: Laws 1985, ch. 105, § 7; 1987, ch. 26, § 2; 1990, ch. 30, § 2; 1997, ch. 237, § 10.

40-4A-8. Duties of payor.

A. Any payor who has been served with a notice to withhold income shall deduct and pay over income as provided in this section. The payor shall deduct the amount designated in the notice to withhold income no later than the next payment of income that is payable to the obligor following service of the notice to withhold income and shall forward the amount withheld to the public office or in the case of non-Title IV-D support payments, pursuant to the court order until October 1, 1998, within seven business days of the employee's normal pay date. For each withholding of income, the payor shall be entitled to and may deduct a one dollar ($1.00) fee to be taken from the income to be paid to the obligor.

B. Whenever the obligor is no longer receiving income from the payor, the payor shall notify the public office, and the payor shall inform the obligee and public office of the last known address of the obligor and any subsequent payor, if known.

C. Withholding of income under the Support Enforcement Act shall have priority over any other legal process under the laws of this state against the same income. Where there is more than one order for withholding against a single obligor pursuant to the Support Enforcement Act, the payor shall allocate support among obligees, but in no case shall the allocation result in a withholding for one of the support obligations not being implemented.

D. No payor shall discharge, discipline, refuse to hire or otherwise penalize any obligor because of the duty to withhold income.

E. The payor shall terminate or modify withholding within fourteen days of receipt of a conformed copy of a notice to terminate or modify a withholding.

F. Any order or notice for income withholding made pursuant to Section 40-4A-4.1 or 40-4A-5 NMSA 1978 shall be binding against future payors by operation of law upon actual knowledge of the contents of the order or notice or upon receipt by personal delivery or certified mail of a filed copy of the order or notice to the payor.

History: Laws 1985, ch. 105, § 8; 1990, ch. 30, § 3; 1997, ch. 237, § 11.

40-4A-9. Petitions to modify, suspend or terminate notice of withholding.

A. When an obligor files a petition pursuant to Section 40-4A-7 NMSA 1978, the court, after due notice to all parties, shall hear and resolve the matter no later than forty-five days following the service of the notice of delinquency. Where the court cannot promptly resolve the issues alleged in the petition, the court may order immediate execution of an amended notice to withhold income as to any undisputed amounts and may continue the hearing on the disputed issues for such reasonable length of time as required under the circumstances. Failure to meet the time requirements shall not constitute a defense to the notice to withhold income.

B. At any time, an obligor or obligee or the public office may petition the court to:

(1) modify, suspend or terminate the notice to withhold income because of a corresponding modification, suspension or termination of the underlying order for support;

(2) modify the amount of income to be withheld to increase the rate of payment of the delinquency; or

(3) suspend the notice to withhold income because of the inability of the public office to deliver income withheld to the obligee due to the obligee's failure to provide a mailing address or other means of delivery.

C. Except for orders to withhold issued pursuant to Section 40-4A-4.1 NMSA 1978, an obligor may petition the court at any time to terminate the withholding of income because payments pursuant to the notice to withhold income have been made for at least three years and all delinquencies have been paid. The court shall suspend the notice to withhold income, absent good cause for denying the petition. If the obligor subsequently becomes delinquent in payment of the order for support, the obligee or public office may serve another notice to withhold income by complying with all requirements for notice and service pursuant to the Support Enforcement Act.

History: 1978 Comp., § 40-4A-9, enacted by Laws 1985, ch. 105, § 9; 1987, ch. 26, § 3; 1990, ch. 30, § 4; 1997, ch. 237, § 12.

40-4A-10. Additional duties.

A. An obligee who is receiving income withholding payments under the Support Enforcement Act shall notify the public office forwarding such payments of any change of address within seven days of such change.

B. Within seven days of change of payor or residence, an obligor whose income is being withheld or who has been served with a notice of delinquency pursuant to the Support Enforcement Act shall notify the obligee and the public office of the new payor or new residence address.

C. Any public office that collects, disburses or receives payments pursuant to a notice to withhold income shall maintain complete, accurate and clear records of all payments and their disbursements.

D. The department shall take all actions necessary to institute income withholding upon the request of an obligor.

E. All new orders for support or modifications of orders for support shall provide notice that if an obligor accrues a delinquency in an amount equal to at least one month's support obligation, his income shall be subject to withholding in an amount sufficient to satisfy the order for support and that an additional amount shall be withheld to reduce and retire any delinquency.

F. In addition to any other materials provided to an obligee at the time the obligee applies to the department for assistance, the department shall make available to the obligee a list of the types of services available, and a copy of federal time frames concerning child support enforcement.

History: Laws 1985, ch. 105, § 10; 1987, ch. 26, § 4; 1990, ch. 30, § 5; 1993, ch. 148, § 1.

40-4A-11. Penalties.

If any person willfully fails to withhold or pay over income pursuant to the Support Enforcement Act, willfully discharges, disciplines, refuses to hire or otherwise penalizes an obligor as prohibited by Subsection D of Section 40-4A-8 NMSA 1978, or otherwise fails to comply with any duty imposed by that act, the court, upon due notice and hearing:

A. shall impose a fine against the payor for the total amount that the payor willfully failed to withhold or pay over;

B. shall order reinstatement of or award damages to the obligor, or both, where the obligor has been discharged, disciplined or otherwise penalized by the payor; or

C. may take such other action, including action for contempt of court, as may be appropriate.

History: Laws 1985, ch. 105, § 11; 1997, ch. 237, § 13.

40-4A-12. Interstate withholding by registration of foreign support order.

A. Upon filing of a certified copy of a foreign order for support containing an income withholding provision, the clerk of the district court shall docket the case and inform the obligee of this action. The foreign order for support filed in accordance with this section shall constitute a legal basis for income withholding in this state. Upon filing the order, together with a notice to withhold income, the order may be served upon the payor and obligor by prepaid certified mail or by any method provided by law for service of summons. The payor shall promptly notify the obligor of receipt of service. Proof of service shall be filed with the clerk of the district court. The obligor may contest the validity or enforcement of the income withholding by filing a petition to stay income withholding within twenty days after service of the order and notice. If the obligor files a petition to stay, the court shall hear and resolve the matter no later than forty-five days following service of the order and notice to withhold. The procedure and grounds for contesting the validity and enforcement of the income withholding are the same as those available for contesting an income withholding notice and order in this state. The obligor shall give notice of the petition to stay to the support enforcement agency providing services to the obligee, the person or agency designated to receive payments in the income withholding notice, or if there is no designated person or agency, the obligee.

B. Filing of the order for support shall not confer jurisdiction on the courts of this state for any purpose other than income withholding.

C. If the obligor presents evidence that constitutes a full or partial defense, the court shall, on the request of the obligee, continue the case to permit further evidence relative to the defense to be adduced by either party; provided, however, the court shall order immediate execution as to any undisputed amounts as set forth in Subsection A of Section 40-4A-9 NMSA 1978.

D. In addition to other procedural devices available to a party, any party to the proceeding may adduce testimony of witnesses in another state, including the parties and any of the children, by deposition, written discovery, photographic discovery such as videotaped depositions, telephone or photographic means. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner and terms upon which the testimony shall be taken.

E. A court of this state may request the appropriate court or agency of another state to hold a hearing to adduce evidence, to permit a deposition to be taken before the court or agency or to order a party to produce or give evidence under other procedures

of that state and may request that certified copies of the evidence adduced in compliance with the request be forwarded to the court of this state.

F. Upon request of a court or agency of another state, a court of this state may order a person in this state to appear at a hearing or deposition before the court to adduce evidence or to produce or give evidence under other procedures available in this state. A certified copy of the evidence adduced, such as a transcript or videotape, shall be forwarded by the clerk of the district court to the requesting court or agency.

G. A person within this state may voluntarily testify by statement or affidavit in this state for use in a proceeding to obtain income withholding outside this state.

History: Laws 1985, ch. 105, § 12; 1990, ch. 30, § 6; 1993, ch. 254, § 3.

40-4A-13. Expedited process.

A. Any action for enforcement, establishment or modification of a child support obligation shall be given priority in scheduling for hearing. A hearing or trial shall be scheduled before the court or an authorized quasi-judicial officer within sixty days of the filing of the request for hearing; provided, however, a petition to stay service shall be resolved in accordance with Subsection A of Section 9 [40-4A-9 NMSA 1978] of the Support Enforcement Act.

B. The powers of an authorized quasi-judicial officer shall include at a minimum:

(1) authority to take testimony and establish a record;

(2) authority to evaluate evidence and make initial decisions and recommendations; and

(3) authority to accept voluntary acknowledgement of support liability and to approve stipulated agreements to pay support.

C. If a party seeks to invoke the contempt powers of the court, the matter shall not be delegated to an authorized quasi-judicial officer.

D. Failure to meet the time requirements shall not constitute a defense to the action for support.

History: Laws 1985, ch. 105, § 13.

40-4A-14. Bonding.

Upon notice, hearing and a showing of good cause, an obligor shall be ordered to post a bond or other sufficent [sufficient] surety to guarantee the payment to or on behalf of the obligee of any delinquency.

History: Laws 1985, ch. 105, § 16.

40-4A-15. Consumer reporting agencies.

At the request of a consumer reporting agency, as defined in Section 603(f) of the Fair Credit Reporting Act, 15 U.S.C. 1681(a)(f), and upon thirty days' advance notice to the obligor, the department, in accordance with its regulations, may release information regarding the delinquency of an obligor. The department may charge a reasonable fee to the consumer reporting agency.

History: Laws 1985, ch. 105, § 17; 1997, ch. 237, § 23.

40-4A-16. Remedies in addition to other laws.

The rights, remedies, duties and penalties created by the Support Enforcement Act are in addition to any other rights, remedies, duties and penalties created by any other law.

History: Laws 1985, ch. 105, § 19.

40-4A-17. Publication of names of obligors; amount owed.

The department shall publish, once every three months in a newspaper with statewide circulation, the names and last known addresses of at least twenty-five delinquent obligors. In addition to publication of the obligors' names and last known addresses, the department shall publish the respective amounts of delinquency accrued by the individual obligors as of the date of publication.

History: Laws 1993, ch. 148, § 2.

40-4A-18. Information regarding delinquency payments.

Upon a request from an obligee, the department shall make available a written statement of:

A. payments made to the obligee by the obligor pursuant to an order for support; and

B. the amount of any delinquency still owed to the obligee by the obligor.

History: Laws 1993, ch. 148, § 3.

40-4A-19. Liens.

The state Title IV-D agency must have and use procedures under which:

A. liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the state; and

B. the state courts and tribunals accord full faith and credit to liens arising in another state, when the state Title IV-D agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the state, except that such rules may not require judicial notice or hearing prior to the enforcement of such a lien.

History: Laws 1997, ch. 237, § 24.

40-4A-20. Unpaid child support interest arrears management program.

The department shall designate an arrears management program starting on or after December 15, 2004 to provide amnesty for child support arrears, pursuant to procedures adopted by the department. The arrears management program shall not exceed more than twelve months and shall only be authorized thereafter every two years. The department shall, before renewing the next arrears management program, provide to the interim welfare reform oversight committee a report on the previous arrears management program.

History: Laws 2004, ch. 41, § 3.

ARTICLE 4B
Child Support Hearing Officers

40-4B-1. Short title.

Sections 1 through 10 [40-4B-1 to 40-4B-10 NMSA 1978] of this act may be cited as the "Child Support Hearing Officer Act".

History: Laws 1988, ch. 127, § 1.

40-4B-2. Purpose.

The purpose of the Child Support Hearing Officer Act is to provide the personnel and procedures necessary to insure prompt and full payment by obligated parties of child support obligations for their dependent children and, where applicable, attendant spousal support obligations. It is further the purpose of the Child Support Hearing Officer Act to insure that support payments are made in compliance with federal regulations governing the state's federally mandated program pursuant to Title IV D of the federal Social Security Act requiring a state plan and program to enforce child

support obligations. Such compliance will speed up the processing of cases and completion of enforcement actions, thereby reducing expenditures for aid to families with dependent children.

History: Laws 1988, ch. 127, § 2.

40-4B-3. Definitions.

As used in the Child Support Hearing Officer Act:

A. "department" means the child support enforcement bureau of the human services department [health care authority department]; and

B. "secretary" means the secretary of human services.

History: Laws 1988, ch. 127, § 3.

40-4B-4. Child support hearing officers; appointment; terms; qualifications; compensation.

A. Child support hearing officers shall be appointed by and serve at the pleasure of the judges of the judicial districts determined pursuant to Subsection D of this section. Each hearing officer shall be selected by a majority of the district court judges in the judicial district to which he is assigned. The child support hearing officers shall be paid pursuant to a cooperative agreement between the human services department [health care authority department] and the judicial districts.

B. Child support hearing officers shall be lawyers who are licensed to practice law in this state and who have a minimum of five years experience in the practice of law, with at least twenty percent of that practice having been in family law or domestic relations matters. Child support hearing officers shall devote full time to their duties under the Child Support Hearing Officer Act and shall not engage in the private practice of law or in any employment, occupation or business interfering with or inconsistent with the discharge of their duties as a full-time child support hearing officer.

C. A child support hearing officer is required to conform to Canons 21-100 through 21-500 and 21-700 of the Code of Judicial Conduct as adopted by the supreme court. Violation of any such canon shall be grounds for dismissal of any child support hearing officer. Child support hearing officers shall be employees of the judicial branch of government and shall not be subject to the Personnel Act [Chapter 10, Article 9 NMSA 1978]. Their compensation shall be set by the judges who appoint them, but such compensation shall not exceed eighty percent of the current salary for district court judges.

D. Child support hearing officers shall serve in such judicial districts as the secretary deems appropriate considering the case loads and case needs of the state's Title IV D program.

History: Laws 1988, ch. 127, § 4; 1993, ch. 124, § 1.

40-4B-5. Reference.

Actions covered under the Child Support Hearing Officer Act include but are not limited to petitions to establish support obligations, petitions to enforce court orders establishing support obligations, petitions to recover unpaid child support arrearages and post-judgment interest, actions pursuant to the Support Enforcement Act [40-4A-1 to 40-4A-16 NMSA 1978], actions brought to modify existing support obligations, actions to establish parentage and actions under the Revised Uniform Reciprocal Enforcement of Support Act [Uniform Interstate Family Support Act, Chapter 40, Article 6A NMSA 1978]; provided the Child Support Hearing Officer Act does not apply to proceedings for the establishment of custody. The presiding judge or his designee shall refer only matters concerning the establishment and enforcement of support obligations to a child support hearing officer in all of those proceedings in which:

A. the department as the state's Title IV D agency is acting as the enforcing party pursuant to an assignment of support rights under Section 27-2-27 NMSA 1978;

B. the department, pursuant to Section 27-2-27 NMSA 1978, is acting as the representative of a custodial parent who is not receiving aid to families with dependent children; and

C. the department is the enforcing Title IV D party pursuant to a written request for enforcement of a support obligation received from an agency in another state responsible for administering that state's federal Title IV D program.

History: Laws 1988, ch. 127, § 5; 1993, ch. 124, § 2.

40-4B-6. Hearings; powers of child support hearing officers.

A. Child support hearing officers have the adjudicatory powers possessed by district courts under the Support Enforcement Act [40-4A-1 to 40-4A-16 NMSA 1978], the Revised Uniform Reciprocal Enforcement of Support Act [Uniform Interstate Family Support Act, 40-6A-1 NMSA 1978] and any other law allowing the enforcement and establishment of support obligations by the state Title IV D agency.

B. Hearings shall be held in the judicial district in which the claim arose or in the judicial district where one of the parties resides.

C. The child support hearing officer shall have the power to preserve and enforce order during hearings; administer oaths; issue subpoenas to compel the attendance and

testimony of witnesses, the production of books, papers, documents and other evidence or the taking of depositions before a designated individual competent to administer oaths; examine witnesses; and do all things conformable to law which may be necessary to enable him to discharge the duties of his office effectively.

D. Any person committing any of the following acts in a proceeding before a child support hearing officer may be held accountable for his conduct in accordance with the provisions of Subsection E of this section:

(1) disobedience of or resistance to any lawful order or process;

(2) misbehavior during a hearing or so near the place of the hearing as to obstruct it;

(3) failure to produce any pertinent book, paper or document after having been ordered to do so;

(4) refusal to appear after having been subpoenaed;

(5) refusal to take the oath or affirmation as a witness; or

(6) refusal to be examined according to law.

E. The child support hearing officer may certify to the district court the fact that an act specified in Paragraphs (1) through (6) of Subsection C [D] of this section was committed in that court. The court shall hold a hearing and if the evidence so warrants may punish the offending person in the same manner and to the same extent as for contempt committed before the court, or the court may commit the person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

History: Laws 1988, ch. 127, § 6.

40-4B-7. Proceedings.

A. When a reference is made, the clerk of the court shall furnish the hearing officer with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the hearing officer shall proceed in lieu of the district court in accordance with the Rules of Civil Procedure.

B. The parties may procure the attendance of witnesses before the hearing officer by the issuance and service of subpoenas as provided in Section 6 [40-4B-6 NMSA 1978] of the Child Support Hearing Officer Act. If without adequate excuse a witness fails to appear or give evidence, he may be punished by the district judge as for a contempt and be subjected to the consequences, penalties and remedies provided in Section 6 of the Child Support Hearing Officer Act and the Rules of Civil Procedure.

History: Laws 1988, ch. 127, § 7.

40-4B-8. Report.

A. The child support hearing officer shall prepare a report with a decision upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, shall set them forth in the report. He shall file the report with the clerk of the court and unless waived by the parties shall file with it a transcript or other authorized recording of the proceedings and of the evidence and original exhibits. The clerk shall mail immediately notice of the filing to all parties.

B. Within ten days after being served with notice of the filing of the report, any party may file written objections with the district court and serve such objections on the other parties.

C. If the district court judge wishes to review the hearing officer's decision de novo or on the record, he shall take action on the objections presented by the parties within fifteen days after the objections are filed. Failure to act by the district judge within the time allowed is deemed acceptance by the district court of the child support hearing officer's decision and will grant the decision the full force and effect of a district court decision.

D. If the district court's review is on the record, he shall set aside the decision only if the decision is found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record as a whole; or

(3) otherwise not in accordance with law.

E. The effect of a child support hearing officer's report is the same whether or not the parties have consented to the reference; however, when the parties stipulate that a child support hearing officer's findings of fact shall be final, only questions of law arising upon the report may thereafter be considered.

History: Laws 1988, ch. 127, § 8; 1993, ch. 124, § 3.

40-4B-9. Review and appeal.

Within thirty days after the hearing officer's decision becomes final pursuant to Section 8 [40-4B-8 NMSA 1978] of the Child Support Hearing Officer Act, an applicant or recipient may file a notice of appeal in the same manner as that of an appeal from a district court decision pursuant to the Rules of Appellate Procedure.

History: Laws 1988, ch. 127, § 9.

40-4B-10. Child support standards and guidelines.

In establishing any support obligations pursuant to the Child Support Hearing Officer Act, the child support hearing officer shall be governed by the child support standards and guidelines set out by the New Mexico supreme court, by New Mexico statutes or by the secretary.

History: Laws 1988, ch. 127, § 10.

ARTICLE 4C
Mandatory Medical Support

40-4C-1. Short title.

Chapter 40, Article 4C NMSA 1978 may be cited as the "Mandatory Medical Support Act".

History: Laws 1990, ch. 78, § 1; 2003, ch. 287, § 1.

40-4C-2. Purpose.

To ensure that children have access to quality medical care, it is the purpose of the Mandatory Medical Support Act to require parents to provide or purchase health care coverage for their minor children when such coverage is available.

History: Laws 1990, ch. 78, § 2; 2003, ch. 287, § 2; 2007, ch. 165, § 2; 2021, ch. 20, § 5.

40-4C-3. Definitions.

As used in the Mandatory Medical Support Act:

A. "carrier" means an entity that offers, delivers or administers an employment-related or other group health care coverage plan, a health maintenance organization, a nonprofit health care plan or other type of health care coverage plan under which medical or dental services are provided, regardless of service delivery mechanism;

B. "cash medical support" means an amount ordered to be paid toward the cost of health care coverage provided by another parent through employment or otherwise, or for other medical costs not covered by health care coverage;

C. "court" means any district court ordering support by a medical support obligor;

D. "department" means the human services department [health care authority department];

E. "employer" means an individual, organization, agency, business or corporation hiring a medical support obligor for pay;

F. "gross income" means income from any source and includes income from salaries, wages, tips, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, significant in-kind benefits that reduce personal living expenses, prizes and alimony or maintenance received; provided that:

(1) "gross income" does not include benefits received from:

(a) means-tested public assistance programs, including temporary assistance for needy families, supplemental security income and general assistance;

(b) the earnings or public assistance benefits of a child who is the subject of a child support award; or

(c) child support received by a parent for the support of other children;

(2) for income from self-employment, rent, royalties, proprietorship of a business or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required to produce such income, but ordinary and necessary expenses do not include expenses determined by the court to be inappropriate for purposes of calculating child support;

(3) "gross income" does not include the amount of alimony payments actually paid in compliance with a court order;

(4) "gross income" does not include the amount of child support actually paid by a parent in compliance with a court order for the support of prior children; and

(5) "gross income" does not include a reasonable amount for a parent's obligation to support prior children who are in that parent's custody. A duty to support subsequent children is not ordinarily a basis for reducing support owed to children of the parties but may be a defense to a child support increase for the children of the parties. In raising such a defense, a party may use the child support schedule promulgated by the department pursuant to Subsection M of Section 40-4-11.1 NMSA 1978 to calculate the support for the subsequent children;

G. "health care coverage" means fee-for-service, health maintenance organization, preferred provider organization and other types of private health insurance and public health care coverage under which medical services may be provided to minor children;

H. "medical support obligee" means a person to whom a duty of medical support is owed or a person who has commenced a proceeding for enforcement of a duty to provide health support for each minor child or for registration of a support order that includes a provision for such support for each minor child;

I. "medical support obligor" means a person owing a duty to provide medical support or against whom a proceeding for the enforcement of such a duty of support is commenced or for registration of a support order that includes provisions for such support for each minor child;

J. "minor child" means a child younger than eighteen years of age who has not been emancipated; and

K. "national medical support notice" means a notice to an employer that an employee's child must be covered by the employment-related group health and dental care coverage plan pursuant to a court order.

History: Laws 1990, ch. 78, § 3; 1994, ch. 76, § 4; 2003, ch. 287, § 3; 2007, ch. 165, § 3; 2009, ch. 32, § 2; 2021, ch. 20, § 6; 2023, ch. 106, § 3; 2023, ch. 107, § 1.

40-4C-4. Medical support; order.

A. The court shall determine a parent or both parents to be a medical support obligor based on the following:

(1) the availability of health care coverage that meets or exceeds the minimum standards required under the Mandatory Medical Support Act;

(2) the availability of health care coverage through an employment-related or other group health and dental care coverage plan; and

(3) the availability of health care coverage through a public entity when either parent meets eligibility requirements.

B. When a medical support obligor is ordered to provide health care coverage, the medical support obligor shall properly name each minor child on behalf of whom medical support is owed as an eligible dependent enrolled in health care coverage.

C. The court may consider the impact of the cost of health care coverage on the payment of the base child support amounts in determining whether the coverage shall be ordered; provided that:

(1) the health care coverage for the minor child shall be available to the parent responsible for providing medical support at a reasonable cost;

(2) cash medical support or the cost of health care coverage for the minor child is considered reasonable in cost if the cost to the parent responsible for providing medical support does not exceed five percent of the parent's gross income; and

(3) the court shall allocate the cost of coverage between the minor child's parents by including the costs in the child support worksheet as set forth in Section 40-4-11.1 NMSA 1978.

D. The court may order the medical support obligor to obtain health care coverage for each minor child to whom medical support is owed if the court finds that health care coverage for each minor child is not available to the medical support obligor through an employment-related or other group health care coverage plan.

E. The court shall require the medical support obligor to pay cash medical support in specific dollar amounts when:

(1) the court finds that health care coverage is not available at the time an order is entered or modified and until such time that health care coverage becomes available; or

(2) the court finds that the health care coverage required to be obtained by a medical support obligor does not pay all the medical or dental expenses of each minor child.

F. The court shall require the medical support obligor to be liable to the custodial parent for all or a portion of the uninsured or uncovered medical and dental expenses of each minor child.

G. The court shall require the medical support obligor to provide health care coverage or dental care coverage for the benefit of the medical support obligee if it is available at no additional cost to the medical support obligor.

H. The court in any proceeding for the establishment, enforcement or modification of a child support obligation may modify an existing order of support or establish child support, as applicable, for each minor child to incorporate the provisions for medical and dental support ordered pursuant to the Mandatory Medical Support Act.

I. The court shall consider health care coverage provided by a public entity as meeting the standards required under the Mandatory Medical Support Act.

History: Laws 1990, ch. 78, § 4; 2003, ch. 287, § 4; 2007, ch. 165, § 4; 2009, ch. 32, § 3; 2021, ch. 20, § 7; 2023, ch. 107, § 2.

40-4C-5. Order; proof of compliance; notice.

A. The medical support obligor shall provide to the medical support obligee within thirty days of receipt of effective notice of a court order for health care coverage pursuant to the Mandatory Medical Support Act written proof of the medical support obligor's compliance with that order. Compliance means either that the health care coverage has been obtained or that a correct and complete application for health care coverage has been made.

B. The medical support obligee shall forward a copy of the court order for health care coverage issued pursuant to the Mandatory Medical Support Act to the medical support obligor's employer or union only when ordered to do so by the court or when:

(1) the medical support obligor fails to provide written proof of compliance with the court order to the medical support obligee within thirty days of the medical support obligor's receipt of effective written notice of the court order;

(2) the medical support obligee serves by mail at the medical support obligor's last known post office address written notice on the medical support obligor of the medical support obligee's intent to enforce the order; and

(3) the medical support obligor fails to provide within fifteen days after the date the medical support obligee mailed the notice in Paragraph (2) of this subsection written proof to the medical support obligee that the medical support obligor has obtained the health care coverage ordered by the court or has applied for such coverage.

C. Upon receipt of a court order for health care coverage pursuant to the Mandatory Medical Support Act, the employer or union shall forward a copy of the order to the carrier or dental care coverage provider, as applicable.

History: Laws 1990, ch. 78, § 5; 2007, ch. 165, § 5; 2021, ch. 20, § 8.

40-4C-6. Obligations; employers, unions and carriers; plan.

A. Upon receipt of a national medical support notice or the court order for health care coverage pursuant to Section 40-4C-5 NMSA 1978 or upon application of the medical support obligor pursuant to the court order, the employer or union shall enroll the minor child as an eligible dependent in the health care coverage plan and withhold any required premium from the medical support obligor's income or wages. If more than one health care coverage plan and dental care coverage plan is offered by the employer, union or carrier, the minor child shall be enrolled in the plan in which the medical support obligor is enrolled. If the medical support obligor is not enrolled in a plan, the child shall be enrolled in a plan that meets the minimum coverage criteria required pursuant to the Mandatory Medical Support Act. If the medical support obligor is not enrolled in a plan, the premiums charged for the child or children of the medical support obligor shall be those charged for the enrollment of the medical support obligor only.

B. In any instance in which the medical support obligor is required by a court order to provide health care coverage for each minor child and the medical support obligor is eligible for health care coverage through an employment-related or other group health care coverage plan, the employer, union or carrier shall do the following:

(1) permit the medical support obligor to enroll for health care coverage each minor child who is otherwise eligible for coverage without regard to any enrollment season restrictions;

(2) enroll each minor child for health care coverage if the medical support obligor fails to enroll each minor child upon application by the medical support obligee or the department;

(3) not disenroll or eliminate coverage of any minor child so enrolled unless:

(a) the employer is provided with satisfactory written evidence that the court order is no longer in effect;

(b) the minor child is or will be enrolled in comparable health care coverage that meets the health care coverage criteria required pursuant to the Mandatory Medical Support Act and that will take effect not later than the effective date of the disenrollment;

(c) the medical support obligor has terminated employment; or

(d) the employer has eliminated health care coverage for all of its employees; and

(4) withhold from the medical support obligor's compensation the medical support obligor's share, if any, of premiums for health care coverage and to pay the share of premiums to the carrier, unless otherwise provided in law or regulation.

C. In those instances in which the medical support obligor fails or refuses to execute any document necessary to enroll a minor child in a health care coverage plan ordered by the court, the required information and authorization may be provided by the department or the custodial parent or guardian of the minor child.

D. Information and authorization provided by the department or the custodial parent or guardian of a minor child shall be valid for the purpose of meeting enrollment requirements of the health care coverage plan and shall not affect the obligation of the employer or union and the carrier to enroll the minor child in the health care coverage plan for which other eligibility, enrollment, underwriting terms and other requirements are met. In instances in which a minor child is covered through the medical support obligor, the carrier shall provide all information to the medical support obligee that may be helpful or necessary for the minor child to obtain benefits.

E. A minor child that a medical support obligor is required to cover as an eligible dependent pursuant to the Mandatory Medical Support Act shall be considered for health care coverage purposes as a dependent of the medical support obligor until the child is emancipated or until further order of the court.

F. In instances in which a minor child is provided health care coverage through a medical support obligor, unless prohibited by federal law, the carrier is prohibited from denying health care coverage of the minor child on the grounds that:

(1) the minor child was born out of wedlock;

(2) the minor child is not claimed as a dependent on the medical support obligor's federal income tax return; or

(3) the minor child does not reside with the medical support obligor or reside in the carrier's service area.

G. In instances in which a minor child is provided health care coverage through a medical support obligor, the carrier is prohibited from imposing requirements on the department that are different from requirements applicable to an agent or assignee of any other individual covered by the health care coverage plan.

H. In instances in which a minor child is provided health care coverage through a medical support obligor who is a noncustodial parent, the carrier shall permit the custodial parent or health care provider, with the approval of the custodial parent, to submit claims for covered services without the approval of the medical support obligor. The carrier shall make payments on submitted claims directly to the custodial parent or the health care provider.

I. In instances in which a minor child is covered through a public entity, the medical support obligor is required to maintain the recertification of the health care coverage as long as the medical support obligor meets eligibility requirements.

J. If the medical support obligor is terminated, the employer shall notify the department of the termination.

History: Laws 1990, ch. 78, § 6; 1994, ch. 76, § 5; 2003, ch. 287, § 5; 2007, ch. 165, § 6; 2021, ch. 20, § 9; 2023, ch. 107, § 3.

40-4C-7. Health care coverage required.

Any health care coverage plan ordered for a minor child pursuant to the Mandatory Medical Support Act shall, at a minimum, meet minimum standards of acceptable coverage, deductibles, cost-sharing, lifetime benefits, out-of-pocket expenses, co-payments and plan requirements as set forth in regulations promulgated by the secretary of human services pursuant to the Mandatory Medical Support Act. To be an

acceptable choice under that act, a health maintenance organization plan, in addition to meeting minimum standards, shall have a coverage area specified under the plan that includes the residential area of the minor child who is covered under the plan as an eligible dependent.

History: Laws 1990, ch. 78, § 7; 2021, ch. 20, § 10.

40-4C-8. Limitation on application.

No insurer, health maintenance organization or non-profit health care plan shall be required to change coverages offered as a result of the minimum standards promulgated pursuant to the Mandatory Medical Support Act. Nothing in the Mandatory Medical Support Act shall be construed as creating any regulatory authority over the business of insurance.

History: Laws 1990, ch. 78, § 8.

40-4C-9. Authorization for claims.

The signature of the custodial parent of the minor child insured pursuant to a court order or a directive issued by the department is a valid authorization to the health insurer or dental insurer for purposes of processing an insurance reimbursement payment.

History: Laws 1990, ch. 78, § 9; 2003, ch. 287, § 6.

40-4C-10. Employer, union or carrier notice.

When an order for health care coverage pursuant to the Mandatory Medical Support Act is in effect, upon termination of the medical support obligor's employment or upon termination of the health care coverage, the employer, union or carrier shall make a good faith effort to notify the department and the other parent within ten days of the termination date with notice of conversion privileges.

History: Laws 1990, ch. 78, § 10; 2003, ch. 287, § 7; 2007, ch. 165, § 7; 2021, ch. 20, § 11.

40-4C-11. Release of information.

When an order for health care coverage pursuant to the Mandatory Medical Support Act is in effect, the medical support obligor's employer, union or carrier shall release to the other parent, upon request, information on such coverage, including the name of the carrier.

History: Laws 1990, ch. 78, § 11; 2003, ch. 287, § 8; 2007, ch. 165, § 8; 2021, ch. 20, § 12.

40-4C-12. Medical support obligor liability.

A. A medical support obligor who fails to maintain the health care coverage for the benefit of a minor child as ordered pursuant to the Mandatory Medical Support Act shall be liable to the other parent for any medical and dental expenses incurred from the date of the court order.

B. A medical support obligor who receives payment from a third party for the costs of medical or dental services provided to a minor child and who fails to use the payment to reimburse the department is liable to the department to the extent of the department's payment for the services. The department is authorized to intercept the obligor's tax refund, if the medical support obligor is a noncustodial parent, or use other means of enforcement available to the department to recoup amounts paid. Claims for current or past due child support take priority over any claims made pursuant to this subsection. Failure to maintain health care coverage as ordered constitutes a showing of increased need and provides a basis for modification of the medical support obligor's child support order.

C. A medical support obligor is required to provide the department with the following information concerning health care coverage:

(1) medical support obligor's name and tax identification number;

(2) type of coverage (single or family);

(3) name, address and identifying number of health care coverage;

(4) name and tax identification number of other individuals who are provided health care coverage by the medical support obligor;

(5) effective period of coverage; and

(6) name, address and the tax identification number of the employer.

History: Laws 1990, ch. 78, § 12; 1994, ch. 76, § 6; 2003, ch. 287, § 9; 2007, ch. 165, § 9; 2021, ch. 20, § 13; 2023, ch. 107, § 4.

40-4C-13. Department; duties.

The department shall pursue the establishment and enforcement of an order for health care coverage of a minor child upon application of a custodial or noncustodial parent to the department and payment by the custodial or noncustodial parent of fees required by the department.

History: Laws 1990, ch. 78, § 13; 1994, ch. 76, § 7; 2003, ch. 287, § 10; 2007, ch. 165, § 10; 2021, ch. 20, § 14; 2023, ch. 107, § 5.

40-4C-14. Enforcement.

All remedies available for the collection and enforcement of child support apply to medical support ordered pursuant to the Mandatory Medical Support Act. For the purpose of enforcement, the costs of individual or group health or hospitalization coverage or liabilities established pursuant to Section 40-4C-12 NMSA 1978 shall be included in a medical support judgment.

History: Laws 1990, ch. 78, § 14; 2007, ch. 165, § 11.

ARTICLE 5
Illegitimacy and Support (Repealed.)

40-5-1 to 40-5-26. Repealed.

ARTICLE 5A
Parental Responsibility

40-5A-1. Short title.

This act [40-5A-1 to 40-5A-13 NMSA 1978] may be cited as the "Parental Responsibility Act".

History: Laws 1995, ch. 25, § 1.

40-5A-2. Purpose.

The purpose of the Parental Responsibility Act is to require:

A. parents to eliminate child support arrearages in order to be issued, maintain or renew a license; and

B. compliance with, after receiving appropriate notice, subpoenas or warrants relating to paternity or child support, which will subsequently reduce both the number of children in New Mexico who live at or below the poverty level and the financial obligation that falls to the state when parents do not provide for their minor children.

History: Laws 1995, ch. 25, § 2; 1997, ch. 237, § 25; 1998, ch. 53, § 1.

40-5A-3. Definitions.

As used in the Parental Responsibility Act:

A. "applicant" means an obligor who is applying for issuance of a license;

B. "board" means:

(1) the construction industries commission, the construction industries division and the electrical bureau, mechanical bureau and general construction bureau of the construction industries division of the regulation and licensing department;

(2) the manufactured housing committee and manufactured housing division of the regulation and licensing department;

(3) a board, commission or agency that administers a profession or occupation licensed pursuant to Chapter 61 NMSA 1978;

(4) any other state agency to which the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] is applied by law;

(5) a licensing board or other authority that issues a license, certificate, registration or permit to engage in a profession or occupation regulated in New Mexico;

(6) the department of game and fish;

(7) the motor vehicle division of the taxation and revenue department; or

(8) the alcohol and gaming division of the regulation and licensing department;

C. "certified list" means a verified list that includes the names, social security numbers and last known addresses of obligors not in compliance;

D. "compliance" means that:

(1) an obligor is no more than thirty days in arrears in payment of amounts required to be paid pursuant to an outstanding judgment and order for support; and

(2) an obligor has, after receiving appropriate notice, complied with subpoenas or warrants relating to paternity or child support proceedings;

E. "department" means the human services department [health care authority department];

F. "judgment and order for support" means the judgment entered against an obligor by the district court or a tribal court in a case enforced by the department pursuant to Title IV-D of the Social Security Act;

G. "license" means a liquor license or other license, certificate, registration or permit issued by a board that a person is required to have to engage in a profession or occupation in New Mexico; "license" includes a commercial driver's license, driver's license and recreational licenses, including hunting, fishing or trapping licenses;

H. "licensee" means an obligor to whom a license has been issued; and

I. "obligor" means the person who has been ordered to pay child or spousal support pursuant to a judgment and order for support.

History: Laws 1995, ch. 25, § 3; 1997, ch. 237, § 26; 1998, ch. 53, § 2; 2005, ch. 51, § 1.

40-5A-4. Application for license.

A person who submits an application for a license issued by a board is not eligible for issuance of the license if he is not in compliance with a judgment and order for support or subpoenas or warrants relating to paternity or child support proceedings. A board that denies or proposes to deny the application on the grounds that he is not in compliance with a judgment and order for support or subpoenas or warrants relating to paternity or child support proceedings shall advise the applicant in writing of the grounds for denial of his application and his right, if any, to a hearing. The applicant shall have a right to a hearing if, pursuant to applicable law governing hearings, the denial of the application on other grounds would have entitled the applicant to a hearing. The application shall be reinstated if, within thirty days of the date of the notice, the applicant provides the board with a certified statement from the department that he is in compliance with a judgment and order for support or subpoenas or warrants relating to paternity or child support proceedings.

History: Laws 1995, ch. 25, § 4; 1997, ch. 237, § 27.

40-5A-5. Renewal of license.

A licensee who seeks renewal of his license from a board is not eligible to have the license renewed if he is not in compliance with a judgment and order for support or subpoenas or warrants relating to paternity or child support proceedings. A board that denies or proposes to deny the renewal of a license on the grounds that the licensee is not in compliance with a judgment and order for support or subpoenas or warrants relating to paternity or child support proceedings shall advise the licensee in writing of the grounds for the denial or proposed denial and his right to a hearing. The licensee shall have a right to a hearing on the denial of the renewal of his license pursuant to the applicable law governing hearings. The application for renewal shall be reinstated if, within thirty days of the date of the notice, the licensee provides the board with a certified statement from the department that he is in compliance with a judgment and order for support or subpoenas or warrants relating to paternity or child support proceedings.

History: Laws 1995, ch. 25, § 5; 1997, ch. 237, § 28.

40-5A-6. Suspension or revocation of license.

The failure of a licensee to be in compliance with a judgment and order for support or subpoena or warrants relating to paternity or child support proceedings is grounds for suspension or revocation of a license. The proceeding shall be conducted by a board or the administrative hearings office pursuant to the law governing suspension and revocation proceedings for the license.

History: Laws 1995, ch. 25, § 6; 1997, ch. 237, § 29; 2015, ch. 73, § 26.

40-5A-7. Certified lists.

The department shall provide each board with a certified list of obligors not in compliance with a judgment and order for support or subpoenas or warrants relating to paternity or child support proceedings within ten calendar days after the first day of each month. By the end of the month in which the certified list is received, each board shall report to the department the names of applicants and licensees who are on the list and the action the board has taken in connection with such applicants and licensees.

History: Laws 1995, ch. 25, § 7; 1997, ch. 237, § 30.

40-5A-8. Court orders.

As part of a judgment and order for support, a district court may require the obligor to surrender any license held by him or may refer the matter to the appropriate board for further action.

History: Laws 1995, ch. 25, § 8.

40-5A-9. Rules and regulations.

On or before November 1, 1995, boards shall promulgate and file, in accordance with the States Rules Act [Chapter 14, Article 4 NMSA 1978], rules and regulations to implement the provisions of the Parental Responsibility Act.

History: Laws 1995, ch. 25, § 9.

40-5A-10. Action by supreme court.

The supreme court shall adopt by order rules for the denial of applications or licensing and renewal of licenses and for the suspension or revocation of licenses of lawyers and other persons licensed by the supreme court for the failure of an applicant or licensee to be in compliance with a judgment and order for support or subpoenas or

warrants relating to paternity or child support proceedings and may delegate the enforcement of the rules to a board under its supervision.

History: Laws 1995, ch. 25, § 10; 1997, ch. 237, § 31.

40-5A-11. Joint powers agreements.

A board may enter into a joint powers agreement with the regulation and licensing department to administer the provisions of the Parental Responsibility Act for the board.

History: Laws 1995, ch. 25, § 11.

40-5A-12. Federal funds; board surcharges.

A. The department may enter into joint powers agreements with boards to assist in the implementation of the Parental Responsibility Act. The agreements shall provide for payment to the boards of federal funds to cover the portion of costs allowable under federal law and regulation that are incurred by the boards in implementing those sections. The agreement shall also provide for payment by the boards to the department for the nonfederal share of costs incurred by the department in assisting the boards. The boards shall reimburse the department for the nonfederal share of costs incurred pursuant to the Parental Responsibility Act from money collected from licensees or applicants for licenses.

B. Notwithstanding any other provision of law, each board may levy a surcharge on any fee assessed for licensure or regulation of the profession or occupation to cover the costs of implementing and administering the provisions of the Parental Responsibility Act. The surcharge may be adopted after notice to the licensees and applicants, but shall not require the adoption or amendment of a regulation.

History: Laws 1995, ch. 25, § 12.

40-5A-13. Annual report.

The department shall report to the governor and the legislature by December 1 of each year on the progress of child support enforcement measures, including:

A. the number of delinquent obligors certified by the department;

B. the number of obligors who also were licensees or applicants subject to the provisions of the Parental Responsibility Act;

C. the number of licenses that were suspended or revoked by each board, the number of new licenses and renewals that were delayed or denied by each board and the number of licenses and renewals that were granted following an applicant's

compliance with a judgment and order for support or subpoenas or warrants relating to paternity or child support proceedings; and

D. the costs incurred in the implementation and enforcement of the Parental Responsibility Act.

History: Laws 1995, ch. 25, § 13; 1997, ch. 237, § 32.

ARTICLE 6
Reciprocal Enforcement of Support (Repealed.)

40-6-1 to 40-6-41. Repealed.

ARTICLE 6A
Uniform Interstate Family Support

ARTICLE 1
GENERAL PROVISIONS

40-6A-100. Recompiled.

History: Laws 1907, ch. 49, § 4; Code 1915, § 5657; Laws 1919, ch. 46, § 1; C.S. 1929, § 151-104; Laws 1937, ch. 178, § 1; 1947, ch. 142, § 1; 1941 Comp., § 77-201; 1953 Comp., § 75-2-1; Laws 1971, ch. 234, § 10; 1977, ch. 254, § 92; 1982, ch. 10, § 3; recompiled as 40-6A-100 by Laws 2005, ch. 166, § 47; § 40-6A-100 recompiled as 40-6A-101 by Laws 2011, ch. 159, § 68.

40-6A-101. Short title.

Chapter 40, Article 6A NMSA 1978 may be cited as the "Uniform Interstate Family Support Act".

History: Laws 1994, ch. 107, § 902; 1997, ch. 9, § 23; 1978 Comp., 40-6A-902 recompiled as 40-6A-100 by Laws 2005, ch. 166, § 47; § 40-6A-100 recompiled as § 40-6A-101 by Laws 2011, ch. 159, § 68.

40-6A-102. Definitions.

As used in the Uniform Interstate Family Support Act:

A. "child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent;

B. "child-support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country;

C. "convention" means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007;

D. "duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse or former spouse, including an unsatisfied obligation to provide support;

E. "foreign country" means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

(1) that has been declared under the law of the United States to be a foreign reciprocating country;

(2) that has established a reciprocal arrangement for child support with this state as provided in Section 40-6A-308 NMSA 1978;

(3) that has enacted a law or established procedures for the issuance and enforcement of support orders that are substantially similar to the procedures pursuant to the Uniform Interstate Family Support Act; or

(4) in which the convention is in force with respect to the United States;

F. "foreign support order" means a support order of a foreign tribunal;

G. "foreign tribunal" means a court, administrative agency or quasi-judicial entity of a foreign country that is authorized to establish, enforce or modify support orders or to determine parentage of a child. "Foreign tribunal" includes a competent authority pursuant to the convention;

H. "gross income" means income from any source and includes income from salaries, wages, tips, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, significant in-kind benefits that reduce personal living expenses, prizes and alimony or maintenance received; provided that:

(1) "gross income" does not include benefits received from:

(a) means-tested public assistance programs, including temporary assistance for needy families, supplemental security income and general assistance;

(b) the earnings or public assistance benefits of a child who is the subject of a child support award; or

(c) child support received by a parent for the support of other children;

(2) for income from self-employment, rent, royalties, proprietorship of a business or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required to produce such income, but ordinary and necessary expenses do not include expenses determined by the court to be inappropriate for purposes of calculating child support;

(3) "gross income" does not include the amount of alimony payments actually paid in compliance with a court order;

(4) "gross income" does not include the amount of child support actually paid by a parent in compliance with a court order for the support of prior children; and

(5) "gross income" does not include a reasonable amount for a parent's obligation to support prior children who are in that parent's custody. A duty to support subsequent children is not ordinarily a basis for reducing support owed to children of the parties but may be a defense to a child support increase for the children of the parties. In raising such a defense, a party may use Table A as set forth in Subsection M of Section 40-4-11.1 NMSA 1978 to calculate the support for the subsequent children;

I. "home state" means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state or foreign country in which the child lived from birth with a parent or a person acting as parent. A period of temporary absence of any of them is counted as part of the six-month or other period;

J. "income" means actual gross income of a parent if employed to full capacity or potential income if unemployed or underemployed. The gross income of a parent means only the income and earnings of that parent and not the income of subsequent spouses, notwithstanding the community nature of both incomes after remarriage;

K. "income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor to withhold support from the income of the obligor;

L. "initiating tribunal" means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or a foreign country;

M. "issuing foreign country" means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child;

N. "issuing state" means the state in which a tribunal issues a support order or a judgment determining parentage of a child;

O. "issuing tribunal" means the tribunal of a state or foreign country that issues a support order or a judgment determining parentage of a child;

P. "law" includes decisional and statutory law and rules and regulations having the force of law;

Q. "obligee" means:

(1) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued;

(2) a foreign country, state or political subdivision of a state to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee in place of child support;

(3) an individual seeking a judgment determining parentage of the individual's child; or

(4) a person that is a creditor in a proceeding pursuant to Sections 40-6A-701 through 40-6A-713 NMSA 1978;

R. "obligor" means an individual or the estate of a decedent who:

(1) owes or is alleged to owe a duty of support;

(2) is alleged but has not been adjudicated to be a parent of a child;

(3) is liable under a support order; or

(4) is a debtor in a proceeding pursuant to Sections 40-6A-701 through 40-6A-713 NMSA 1978;

S. "outside this state" means a location in another state or in a country other than the United States, whether or not the country is a foreign country;

T. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation,

government or governmental subdivision, agency or instrumentality or any other legal or commercial entity;

U. "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

V. "register" means to file in a tribunal of this state a support order or judgment determining parentage of a child issued in another state or a foreign country;

W. "registering tribunal" means a tribunal in which a support order or judgment determining parentage of a child is registered;

X. "responding state" means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or a foreign country;

Y. "responding tribunal" means the authorized tribunal in a responding state or foreign country;

Z. "spousal support order" means a support order for a spouse or former spouse of the obligor;

AA. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession under the jurisdiction of the United States. "State" includes an Indian tribe, pueblo, nation or band;

BB. "support enforcement agency" means a public official, governmental entity or private agency, acting under contract with such a public official or governmental entity, that is authorized to:

(1) seek enforcement of support orders or laws relating to the duty of support;

(2) seek establishment or modification of child support;

(3) request determination of parentage of a child;

(4) attempt to locate obligors or their assets; or

(5) request determination of the controlling child-support order;

CC. "support order" means a judgment, decree, order, decision or directive, whether temporary, final or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse or a former spouse, that provides for monetary support, health care, arrearages, retroactive support or reimbursement for financial assistance provided to an individual obligee in place of child support. "Support order"

may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney fees and other relief; and

DD. "tribunal" means a court, administrative agency or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage of a child.

History: Laws 1994, ch. 107, § 101; 1997, ch. 9, § 1; amended and recompiled as 40-6A-102 by Laws 2005, ch. 166, § 1; 2011, ch. 159, § 1; 2021, ch. 20, § 15.

40-6A-103. State tribunal and support enforcement agency.

A. The district courts are the tribunals of this state.

B. The human services department [health care authority department] is the support enforcement agency of this state.

History: Laws 1994, ch. 107, § 102; 1997, ch. 9, § 2; recompiled as 40-6A-105 by Laws 2005, ch. 166, § 47; § 40-6A-105 recompiled as § 40-6A-103 by Laws 2011, ch. 159, § 2.

40-6A-104. Remedies cumulative.

A. Remedies provided by the Uniform Interstate Family Support Act are cumulative and do not affect the availability of remedies under other law or the recognition of a foreign support order on the basis of comity.

B. The Uniform Interstate Family Support Act does not:

(1) provide the exclusive method of establishing or enforcing a support order under the law of this state; or

(2) grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding pursuant to the Uniform Interstate Family Support Act.

History: Laws 1994, ch. 107, § 103; amended and recompiled as 40-6A-104 by Laws 2005, ch. 166, § 2; 2011, ch. 159, § 3.

40-6A-105. Application of Uniform Interstate Family Support Act to resident of foreign country and foreign support proceeding.

A. A tribunal of this state shall apply Sections 40-6A-101 through 40-6A-616 NMSA 1978 and, as applicable, Sections 40-6A-701 through 40-6A-713 NMSA 1978, to a support proceeding involving:

(1) a foreign support order;

(2) a foreign tribunal; or

(3) an obligee, obligor or child residing in a foreign country.

B. A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of Sections 40-6A-101 through 40-6A-616 NMSA 1978.

C. Sections 40-6A-701 through 40-6A-713 NMSA 1978 shall apply only to a support proceeding pursuant to the convention. In such a proceeding, if a provision of Sections 40-6A-701 through 40-6A-713 NMSA 1978 is inconsistent with Sections 40-6A-101 through 40-6A-616 NMSA 1978, the provisions of Sections 40-6A-701 through 40-6A-713 NMSA 1978 control.

History: 1978 Comp., § 40-6A-105, enacted by Laws 2011, ch. 159, § 4.

ARTICLE 2
JURISDICTION

PART A
EXTENDED PERSONAL JURISDICTION

40-6A-201. Bases for jurisdiction over nonresident.

A. In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) the individual is personally served with notice within this state;

(2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the individual resided with the child in this state;

(4) the individual resided in this state and provided prenatal expenses or support for the child;

(5) the child resides in this state as a result of the acts or directives of the individual;

(6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(7) the individual asserted parentage of a child in the putative father registry maintained in this state by the department of health; or

(8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

B. The bases of personal jurisdiction set forth in Subsection A of this section or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of Section 40-6A-611 NMSA 1978 are met or, in the case of a foreign support order, unless the requirements of Section 40-6A-615 NMSA 1978 are met.

History: Laws 1994, ch. 107, § 201; 2005, ch. 166, § 3; 2011, ch. 159, § 5.

40-6A-202. Duration of personal jurisdiction.

Personal jurisdiction acquired by a tribunal of this state in a proceeding under the Uniform Interstate Family Support Act or other law of this state relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by Sections 40-6A-205, 40-6A-206 and 40-6A-211 NMSA 1978.

History: Laws 1994, ch. 107, § 202; repealed and reenacted by Laws 2005, ch. 166, § 4.

PART B
PROCEEDINGS INVOLVING TWO OR MORE STATES

40-6A-203. Initiating and responding tribunal of state.

Pursuant to the Uniform Interstate Family Support Act, a tribunal of this state may serve as an initiating tribunal to forward proceedings to a tribunal of another state or a foreign country and as a responding tribunal for proceedings initiated in another state or a foreign country.

History: Laws 1994, ch. 107, § 203; 1997, ch. 9, § 3; 2011, ch. 159, § 6.

40-6A-204. Simultaneous proceedings.

A. A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state or a foreign country only if:

(1) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;

(2) the contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and

(3) if relevant, this state is the home state of the child.

B. A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:

(1) the petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(2) the contesting party timely challenges the exercise of jurisdiction in this state; and

(3) if relevant, the other state or foreign country is the home state of the child.

History: Laws 1994, ch. 107, § 204; 2005, ch. 166, § 5; 2011, ch. 159, § 7.

40-6A-205. Continuing, exclusive jurisdiction to modify child-support order.

A. A tribunal of this state that has issued a child-support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child-support order if the order is the controlling order and:

(1) at the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued; or

(2) even if this state is not the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

B. A tribunal of this state that has issued a child-support order consistent with the law of this state may not exercise continuing, exclusive jurisdiction to modify the order if:

(1) all of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one

of all the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(2) its order is not the controlling order.

C. If a tribunal of another state has issued a child-support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to that act that modifies a child-support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

D. A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child-support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

E. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

History: Laws 1994, ch. 107, § 205; 1997, ch. 9, § 4; 2005, ch. 166, § 6; 2011, ch. 159, § 8.

40-6A-206. Continuing jurisdiction to enforce child-support order.

A. A tribunal of this state that has issued a child-support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

(1) the order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or

(2) a money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

B. A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

History: Laws 1994, ch. 107, § 206; 2005, ch. 166, § 7; 2011, ch. 159, § 9.

PART C
RECONCILIATION WITH ORDERS OF OTHER STATES

40-6A-207. Determination of controlling child-support order.

A. If a proceeding is brought pursuant to the Uniform Interstate Family Support Act and only one tribunal has issued a child-support order, the order of that tribunal controls and shall be so recognized.

B. If a proceeding is brought pursuant to the Uniform Interstate Family Support Act and two or more child-support orders have been issued by tribunals of this state, another state or a foreign country with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized:

(1) if only one of the tribunals would have continuing, exclusive jurisdiction pursuant to the Uniform Interstate Family Support Act, the order of that tribunal controls;

(2) if more than one of the tribunals would have continuing, exclusive jurisdiction pursuant to the Uniform Interstate Family Support Act:

(a) an order issued by a tribunal in the current home state of the child controls; or

(b) if an order has not been issued in the current home state of the child, the order most recently issued controls; and

(3) if none of the tribunals would have continuing, exclusive jurisdiction pursuant to the Uniform Interstate Family Support Act, the tribunal of this state shall issue a child-support order, which controls.

C. If two or more child-support orders have been issued for the same obligor and same child upon request of a party who is an individual or that is a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls pursuant to Subsection B of this section. The request may be filed with a registration for enforcement or registration for modification pursuant to Sections 40-6A-601 through 40-6A-615 NMSA 1978, or may be filed as a separate proceeding.

D. A request to determine which is the controlling order shall be accompanied by a copy of every child-support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

E. The tribunal that issued the controlling order under Subsection A, B or C of this section has continuing jurisdiction to the extent provided in Section 40-6A-205 or 40-6A-206 NMSA 1978.

F. A tribunal of this state that determines by order which is the controlling order pursuant to Paragraph (1) or (2) of Subsection B or Subsection C of this section or that

issues a new controlling order pursuant to Paragraph (3) of Subsection B of this section shall state in that order:

(1) the basis on which the tribunal made its determination;

(2) the amount of prospective support, if any; and

(3) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by Section 40-6A-209 NMSA 1978.

G. Within thirty days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

H. An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under the Uniform Interstate Family Support Act.

History: Laws 1994, ch. 107, § 207; 1997, ch. 9, § 5; 2005, ch. 166, § 8; 2011, ch. 159, § 10.

40-6A-208. Child support orders for two or more obligees.

In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state or a foreign country, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state.

History: Laws 1994, ch. 107, § 208; 2005, ch. 166, § 9; 2011, ch. 159, § 11.

40-6A-209. Credit for payments.

A tribunal of this state shall credit amounts collected for a particular period pursuant to any child-support order against the amounts owed for the same period under any other child-support order for support of the same child issued by a tribunal of this or another state or a foreign country.

History: Laws 1994, ch. 107, § 209; 2005, ch. 166, § 10; 2011, ch. 159, § 12.

40-6A-210. Application of the Uniform Interstate Family Support Act to a nonresident subject to personal jurisdiction.

A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding pursuant to the Uniform Interstate Family Support Act, pursuant to other law of this state relating to a support order or recognizing a foreign support order may receive evidence from outside this state pursuant to Section 40-6A-316 NMSA 1978, communicate with a tribunal outside this state pursuant to Section 40-6A-317 NMSA 1978 and obtain discovery through a tribunal outside this state pursuant to Section 40-6A-318 NMSA 1978. In all other respects, Sections 40-6A-301 through 40-6A-616 NMSA 1978 do not apply and the tribunal shall apply the procedural and substantive law of this state.

History: Laws 2005, ch. 166, § 11; 2011, ch. 159, § 13.

40-6A-211. Continuing, exclusive jurisdiction to modify spousal-support order.

A. A tribunal of this state issuing a spousal-support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal-support order through the existence of the support obligation.

B. A tribunal of this state may not modify a spousal-support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order pursuant to the law of that state or foreign country.

C. A tribunal of this state that has continuing, exclusive jurisdiction over a spousal-support order may serve as:

(1) an initiating tribunal to request a tribunal of another state to enforce the spousal-support order issued in this state; or

(2) a responding tribunal to enforce or modify its own spousal-support order.

History: Laws 2005, ch. 166, § 12; 2011, ch. 159, § 14.

ARTICLE 3
CIVIL PROVISIONS OF GENERAL APPLICATION

40-6A-301. Proceedings under the Uniform Interstate Family Support Act.

A. Except as otherwise provided in the Uniform Interstate Family Support Act, Sections 40-6A-301 through 40-6A-319 NMSA 1978 apply to all proceedings pursuant to that act.

B. An individual petitioner or a support enforcement agency may initiate a proceeding authorized pursuant to the Uniform Interstate Family Support Act by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or a foreign country that has or can obtain personal jurisdiction over the respondent.

History: Laws 1994, ch. 107, § 301; 2005, ch. 166, § 13; 2011, ch. 159, § 15.

40-6A-302. Proceeding by minor parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

History: Laws 1994, ch. 107, § 302; 2005, ch. 166, § 14.

40-6A-303. Application of law of state.

Except as otherwise provided by the Uniform Interstate Family Support Act, a responding tribunal of this state shall:

A. apply the procedural and substantive law generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

B. determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

History: Laws 1994, ch. 107, § 303; 1997, ch. 9, § 6; 2005, ch. 166, § 15; 2011, ch. 159, § 16.

40-6A-304. Duties of initiating tribunal.

A. Upon the filing of a petition authorized pursuant to the Uniform Interstate Family Support Act, an initiating tribunal of this state shall forward the petition and its accompanying documents:

(1) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

B. If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding state is in a foreign country, upon request, the tribunal of this state shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal.

History: Laws 1994, ch. 107, § 304; 1997, ch. 9, § 7; 2005, ch. 166, § 16; 2011, ch. 159, § 17.

40-6A-305. Duties and powers of responding tribunal.

A. When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to Subsection B of Section 40-6A-301 NMSA 1978, it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

B. A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

(1) establish or enforce a support order, modify a child-support order, determine the controlling child-support order or determine parentage of a child;

(2) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) order income withholding;

(4) determine the amount of any arrearage and specify a method of payment;

(5) enforce orders by civil or criminal contempt, or both;

(6) set aside property for satisfaction of the support order;

(7) place liens and order execution on the obligor's property;

(8) order an obligor to keep the tribunal informed of the obligor's current residential address, electronic mail address, telephone number, employer, address of employment and telephone number at the place of employment;

(9) issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(10) order the obligor to seek appropriate employment by specified methods;

(11) award reasonable attorney's fees and other fees and costs; and

(12) grant any other available remedy.

C. A responding tribunal of this state shall include in a support order issued pursuant to the Uniform Interstate Family Support Act, or in the documents accompanying the order, the calculations on which the support order is based.

D. A responding tribunal of this state may not condition the payment of a support order issued pursuant to the Uniform Interstate Family Support Act upon compliance by a party with provisions for visitation.

E. If a responding tribunal of this state issues an order pursuant to the Uniform Interstate Family Support Act, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

F. If requested to enforce a support order, arrears or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under applicable official or market exchange rate as publicly reported.

History: Laws 1994, ch. 107, § 305; 1997, ch. 9, § 8; 2005, ch. 166, § 17; 2011, ch. 159, § 18.

40-6A-306. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal of this state or another state and notify the petitioner where and when the pleading was sent.

History: Laws 1994, ch. 107, § 306; 1997, ch. 9, § 9; 2005, ch. 166, § 18; 2011, ch. 159, § 19.

40-6A-307. Duties of support enforcement agency.

A. A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding pursuant to the Uniform Interstate Family Support Act.

B. A support enforcement agency of this state that is providing services to the petitioner shall:

(1) take all steps necessary to enable an appropriate tribunal of this state, another state or a foreign country to obtain jurisdiction over the respondent;

(2) request an appropriate tribunal to set a date, time and place for a hearing;

(3) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) within two days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written notice in a record from an initiating, responding or registering tribunal, send a copy of the notice to the petitioner;

(5) within two days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) notify the petitioner if jurisdiction over the respondent cannot be obtained.

C. A support enforcement agency of this state that requests registration of a child-support order in this state for enforcement or for modification shall make reasonable efforts:

(1) to ensure that the order to be registered is the controlling order; or

(2) if two or more child-support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

D. A support enforcement agency of this state that requests registration and enforcement of a support order, arrears or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

E. A support enforcement agency of the state shall issue or request a tribunal of this state to issue a child-support order and an income-withholding order that redirect payment of current support, arrears and interest if requested to do so by a support enforcement agency of another state pursuant to Section 40-6A-319 NMSA 1978.

F. The Uniform Interstate Family Support Act does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

History: Laws 1994, ch. 107, § 307; 1997, ch. 9, § 10; 2005, ch. 166, § 19; 2011, ch. 159, § 20.

40-6A-308. Duty of attorney general.

A. If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may

order the agency to perform its duties pursuant to the Uniform Interstate Family Support Act or may provide those services directly to the individual.

B. The attorney general may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

History: Laws 1994, ch. 107, § 308; 2005, ch. 166, § 20; 2011, ch. 159, § 21.

40-6A-309. Private counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by the Uniform Interstate Family Support Act.

History: Laws 1994, ch. 107, § 309.

40-6A-310. Duties of state information agency.

A. The human services department [health care authority department] is the state information agency pursuant to the Uniform Interstate Family Support Act.

B. The state information agency shall:

(1) compile and maintain a current list, including addresses, of the tribunals in this state that have jurisdiction pursuant to the Uniform Interstate Family Support Act and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(2) maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

(3) forward to the appropriate tribunal in the county in this state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding pursuant to the Uniform Interstate Family Support Act received from another state or a foreign country; and

(4) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses and social security.

History: Laws 1994, ch. 107, § 310; 2005, ch. 166, § 21; 2011, ch. 159, § 22.

40-6A-311. Pleadings and accompanying documents.

A. In a proceeding pursuant to the Uniform Interstate Family Support Act, a petitioner seeking to establish a support order, to determine parentage of a child or to register and modify a support order of a tribunal of another state or a foreign country shall file a petition. Unless otherwise ordered pursuant to Section 40-6A-312 NMSA 1978, the petition or accompanying documents shall provide, so far as known, the name, residential address and social security numbers of the obligor and the obligee or the parent and alleged parent and the name, sex, residential address, social security number and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition shall be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

B. The petition shall specify the relief sought. The petition and accompanying documents shall conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

History: Laws 1994, ch. 107, § 311; 2005, ch. 166, § 22; 2011, ch. 159, § 23.

40-6A-312. Nondisclosure of information in exceptional circumstances.

If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure or specific identifying information, that information shall be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be the interest of justice.

History: Laws 1994, ch. 107, § 312; 2005, ch. 166, § 23.

40-6A-313. Costs and fees.

A. The petitioner may not be required to pay a filing fee or other costs.

B. If an obligee prevails, a responding tribunal of this state may assess against an obligor filing fees, reasonable attorney fees, other costs and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs or expenses against the obligee or the support enforcement agency of either the initiating or the responding state or foreign country, except as provided by other law. Attorney fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

C. The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding pursuant to Sections 40-6A-601 through 40-6A-616 NMSA 1978, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

History: Laws 1994, ch. 107, § 313; 2005, ch. 166, § 24; 2011, ch. 159, § 24.

40-6A-314. Limited immunity of petitioner.

A. Participation by a petitioner in a proceeding pursuant to the Uniform Interstate Family Support Act before a responding tribunal, whether in person, by private attorney or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

B. A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding pursuant to the Uniform Interstate Family Support Act.

C. The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding pursuant to the Uniform Interstate Family Support Act committed by a party while present in this state to participate in the proceeding.

History: Laws 1994, ch. 107, § 314; 2005, ch. 166, § 25; 2011, ch. 159, § 25.

40-6A-315. Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding pursuant to the Uniform Interstate Family Support Act.

History: Laws 1994, ch. 107, § 315; 2011, ch. 159, § 26.

40-6A-316. Special rules of evidence and procedure.

A. The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement or modification of a support order or the rendition of a judgment determining parentage of a child.

B. An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them that would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.

C. A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The

copy is evidence of facts asserted in it and is admissible to show whether payments were made.

D. Copies of bills for testing for parentage of a child and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary and customary.

E. Documentary evidence transmitted from outside this state to a tribunal of this state by telephone, telecopier or other electronic means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

F. In a proceeding pursuant to the Uniform Interstate Family Support Act, a tribunal of this state shall permit a party or witness residing outside this state to be deposed or to testify by telephone, audiovisual means or other electronic means at a designated tribunal or other location. A tribunal of this state shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

G. If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

H. A privilege against disclosure of communications between spouses does not apply in a proceeding pursuant to the Uniform Interstate Family Support Act.

I. The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding pursuant to the Uniform Interstate Family Support Act.

J. A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

History: Laws 1994, ch. 107, § 316; 2005, ch. 166, § 26; 2011, ch. 159, § 27.

40-6A-317. Communications between tribunals.

A tribunal of this state may communicate with a tribunal outside this state in a record or by telephone, electronic mail or other means to obtain information concerning the laws, the legal effect of a judgment, decree or order of that tribunal and the status of a proceeding. A tribunal of this state may furnish similar information by similar means to a tribunal outside this state.

History: Laws 1994, ch. 107, § 317; 2005, ch. 166, § 27; 2011, ch. 159, § 28.

40-6A-318. Assistance with discovery.

A tribunal of this state may:

A. request a tribunal outside this state to assist in obtaining discovery; and

B. upon request, compel a person over which it has jurisdiction to respond to a discovery order issued by a tribunal outside this state.

History: Laws 1994, ch. 107, § 318; 2011, ch. 159, § 29.

40-6A-319. Receipt and disbursement of payments.

A. A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

B. If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from the support enforcement agency of this state or another state, the support enforcement agency of this state or a tribunal of this state shall:

(1) direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(2) issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

C. The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to Subsection B of this section shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

History: Laws 1994, ch. 107, § 319; 2005, ch. 166, § 28; 2011, ch. 159, § 30.

ARTICLE 4
ESTABLISHMENT OF SUPPORT ORDER

40-6A-401. Establishment of support order.

A. If a support order entitled to recognition pursuant to the Uniform Interstate Family Support Act has not been issued, a responding tribunal of this state with personal jurisdiction over the parties may issue a support order if:

(1) the individual seeking the order resides outside this state; or

(2) the support enforcement agency seeking the order is located outside this state.

B. The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

(1) a presumed father of the child;

(2) petitioning to have his paternity adjudicated;

(3) identified as the father of the child through genetic testing;

(4) an alleged father who has declined to submit to genetic testing;

(5) shown by clear and convincing evidence to be the father of the child;

(6) an acknowledged father as provided by applicable state law;

(7) the mother of the child; or

(8) an individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

C. Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to Section 40-6A-305 NMSA 1978.

History: Laws 1994, ch. 107, § 401; 2005, ch. 166, § 29; 2011, ch. 159, § 31.

40-6A-402. Proceeding to determine parentage.

A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought pursuant to the Uniform Interstate Family Support Act or a law or procedure substantially similar to that act.

History: 1978 Comp., § 40-6A-402, enacted by Laws 2011, ch. 159, § 32.

ARTICLE 5
DIRECT ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION

40-6A-501. Employer's receipt of income-withholding order of another state.

An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency to the obligor's employer without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

History: Laws 1994, ch. 107, § 501; 1997, ch. 9, § 11; 2005, ch. 166, § 30.

40-6A-502. Employer's compliance with income-withholding order of another state.

A. Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

B. The employer shall treat an income-withholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this state.

C. Except as otherwise provided in Subsection D of this section and Section 40-6A-503 NMSA 1978, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order that specify:

(1) the duration and amount of periodic payments of current child support, stated as a sum certain;

(2) the person designated to receive payments and the address to which the payments are to be forwarded;

(3) medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal and the obligee's attorney, stated as sums certain; and

(5) the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

D. An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) the employer's fee for processing an income-withholding order;

(2) the maximum amount permitted to be withheld from the obligor's income; and

(3) the times within which the employer shall implement the withholding order and forward the child-support payment.

History: Laws 1997, ch. 9, § 12; 2005, ch. 166, § 31; 2011, ch. 159, § 33.

40-6A-503. Employee's compliance with two or more income-withholding orders.

If an obligor's employer receives two or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for two or more child-support obligees.

History: Laws 1997, ch. 9, § 13; 2005, ch. 166, § 32.

40-6A-504. Immunity from civil liability.

An employer that complies with an income-withholding order issued in another state in accordance with Sections 40-6A-501 through 40-6A-507 NMSA 1978 is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

History: 1978 Comp., § 40-6A-504, enacted by Laws 1997, ch. 9, § 14; 2011, ch. 159, § 34.

40-6A-505. Penalties for noncompliance.

An employer that willfully fails to comply with an income-withholding order issued in another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

History: 1978 Comp., § 40-6A-505, enacted by Laws 1997, ch. 9, § 15; 2011, ch. 159, § 35.

40-6A-506. Contest by obligor.

A. An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in Sections 40-6A-601 through 40-6A-616 NMSA 1978, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.

B. The obligor shall give notice of the contest to:

(1) a support enforcement agency providing services to the obligee;

(2) each employer that has directly received an income-withholding order relating to the obligor; and

(3) the person designated to receive payments in the income-withholding order or, if no person is designated, to the obligee.

History: Laws 1997, ch. 9, § 16; 2005, ch. 166, § 33; 2011, ch. 159, § 36.

40-6A-507. Administrative enforcement of orders.

A. A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued in another state, or a foreign support order may send the documents required for registering the order to a support enforcement agency of this state.

B. Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to the Uniform Interstate Family Support Act.

History: Laws 1997, ch. 9, § 17; 2005, ch. 166, § 34; 2011, ch. 159, § 37.

ARTICLE 6
ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER AFTER REGISTRATION

PART A
REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER

40-6A-601. Registration of order for enforcement.

A support order or income-withholding order issued in another state or a foreign support order may be registered in this state for enforcement.

History: Laws 1994, ch. 107, § 601; 2005, ch. 166, § 35; 2011, ch. 159, § 38.

40-6A-602. Procedure to register order for enforcement.

A. Except as otherwise provided in Section 40-6A-706 NMSA 1978, a support order or income-withholding order of another state or a foreign support order may be registered in this state by sending the following records to the appropriate tribunal in this state:

(1) a letter of transmittal to the tribunal requesting registration and enforcement;

(2) two copies, including one certified copy, of the order to be registered, including any modification of the order;

(3) a sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) the name of the obligor and, if known:

(a) the obligor's address and social security number;

(b) the name and address of the obligor's employer and any other source of income of the obligor; and

(c) a description and the location of property of the obligor in this state not exempt from execution; and

(5) except as otherwise provided in Section 40-6A-312 NMSA 1978, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

B. On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of a tribunal of another state or as a foreign support order, together with one copy of the documents and information, regardless of their form.

C. A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading shall specify the grounds for the remedy sought.

D. If two or more orders are in effect, the person requesting registration shall:

(1) furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

(2) specify the order alleged to be the controlling order, if any; and

(3) specify the amount of consolidated arrears, if any.

E. A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

History: Laws 1994, ch. 107, § 602; 2005, ch. 166, § 36; 2011, ch. 159, § 39.

40-6A-603. Effect of registration for enforcement.

A. A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this state.

B. A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

C. Except as otherwise provided in Sections 40-6A-601 through 40-6A-616 NMSA 1978, a tribunal of this state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction.

History: Laws 1994, ch. 107, § 603; 2011, ch. 159, § 40.

40-6A-604. Choice of law.

A. Except as otherwise provided in Subsection D of this section, the law of the issuing state or foreign country governs:

(1) the nature, extent, amount and duration of current payments under a registered support order;

(2) the computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(3) the existence and satisfaction of other obligations under the support order.

B. In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state or foreign country, whichever is longer, applies.

C. A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in this state.

D. After a tribunal of this or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order,

including its law on interest on arrears, on current and future support, and on consolidated arrears.

History: Laws 1994, ch. 107, § 604; 2005, ch. 166, § 37; 2011, ch. 159, § 41.

PART B
CONTEST OF VALIDITY OR ENFORCEMENT

40-6A-605. Notice of registration of order.

A. When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall notify the nonregistering party. The notice shall be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

B. A notice shall inform the nonregistering party:

(1) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) that a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after notice unless the registered order is pursuant to Section 40-6A-707 NMSA 1978;

(3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearage and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) of the amount of any alleged arrearage.

C. If the registering party asserts that two or more orders are in effect, a notice shall also:

(1) identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;

(2) notify the nonregistering party of the right to a determination of which is the controlling order;

(3) state that the procedures provided in Subsection B of this section apply to the determination of which is the controlling order; and

(4) state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

D. Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer.

History: Laws 1994, ch. 107, § 605; 1997, ch. 9, § 18; 2005, ch. 166, § 38; 2011, ch. 159, § 42.

40-6A-606. Procedure to contest validity or enforcement of registered support order.

A. A nonregistering party seeking to contest the validity or enforcement of a registered support order in this state shall request a hearing within the time required by Section 40-6A-605 NMSA 1978. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered support order or to contest the remedies being sought or the amount of any alleged arrearage pursuant to Section 40-6A-607 NMSA 1978.

B. If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

C. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered support order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time and place of the hearing.

History: Laws 1994, ch. 107, § 606; 1997, ch. 9, § 19; 2011, ch. 159, § 43.

40-6A-607. Contest of registration or enforcement.

A. A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(1) the issuing tribunal lacked personal jurisdiction over the contesting party;

(2) the order was obtained by fraud;

(3) the order has been vacated, suspended or modified by a later order;

(4) the issuing tribunal has stayed the order pending appeal;

(5) there is a defense under the law of this state to the remedy sought;

(6) full or partial payment has been made;

(7) the statute of limitation under Section 40-6A-604 NMSA 1978 precludes enforcement of some or all of the alleged arrearage; or

(8) the alleged controlling order is not the controlling order.

B. If a party presents evidence establishing a full or partial defense under Subsection A of this section, a tribunal may stay enforcement of a registered support order, continue the proceeding to permit production of additional relevant evidence and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the law of this state.

C. If the contesting party does not establish a defense under Subsection A of this section to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order.

History: Laws 1994, ch. 107, § 607; 2005, ch. 166, § 39; 2011, ch. 159, § 44.

40-6A-608. Confirmed order.

Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

History: Laws 1994, ch. 107, § 608; 2011, ch. 159, § 45.

PART C
REGISTRATION AND MODIFICATION OF CHILD SUPPORT ORDER

40-6A-609. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in Sections 40-6A-601 through 40-6A-608 NMSA 1978 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading shall specify the grounds for modification.

History: Laws 1994, ch. 107, § 609; 2011, ch. 159, § 46.

40-6A-610. Effect of registration for modification.

A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered support order may be modified only if the requirements of Section 40-6A-611 or 40-6A-613 NMSA 1978 have been met.

History: Laws 1994, ch. 107, § 610; 2005, ch. 166, § 40; 2011, ch. 159, § 47.

40-6A-611. Modification of child-support order of another state.

A. If Section 40-6A-613 NMSA 1978 does not apply, upon petition, a tribunal of this state may modify a child-support order issued in another state that is registered in this state if, after notice and hearing, the tribunal finds that:

(1) the following requirements are met:

(a) neither the child, nor the obligee who is an individual nor the obligor resides in the issuing state;

(b) a petitioner who is a nonresident of this state seeks modification; and

(c) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) this state is the residence of the child or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

B. Modification of a registered child-support order is subject to the same requirements, procedures and defenses that apply to the modification of an order issued by a tribunal of this state, and the order may be enforced and satisfied in the same manner.

C. A tribunal of this state may not modify any aspect of a child-support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child-support orders for the same obligor and same child, the order that controls and shall be so recognized under Section 40-6A-207 NMSA 1978 establishes the aspects of the support order which are nonmodifiable.

D. In a proceeding to modify a child-support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of further obligation of support by a tribunal of this state.

E. On issuance of an order by a tribunal of this state modifying a child-support order issued in another state, the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

F. Notwithstanding Subsections A through E of this section and Subsection B of Section 40-6A-201 NMSA 1978, a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:

(1) one party resides in another state; and

(2) the other party resides outside the United States.

History: Laws 1994, ch. 107, § 611; 1997, ch. 9, § 20; 2005, ch. 166, § 41; 2011, ch. 159, § 48.

40-6A-612. Recognition of order modified in another state.

If a child-support order issued by a tribunal of this state is modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act, a tribunal of this state:

A. may enforce its order that was modified only as to arrears and interest accruing before the modification;

B. may provide appropriate relief for violations of its order that occurred before the effective date of the modification; and

C. shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

History: Laws 1994, ch. 107, § 612; 2005, ch. 166, § 42; 2011, ch. 159, § 49.

40-6A-613. Jurisdiction to modify child-support order of another state when individual parties reside in this state.

A. If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child-support order in a proceeding to register that order.

B. A tribunal of this state exercising jurisdiction under this section shall apply the provisions of Sections 40-6A-101 through 40-6A-211 and 40-6A-601 through 40-6A-616 NMSA 1978 and the procedural and substantive law of this state to the proceeding for enforcement or modification. Sections 40-6A-301 through 40-6A-507 and 40-6A-701 through 40-6A-802 NMSA 1978 do not apply.

History: 1978 Comp., § 40-6A-613, enacted by Laws 1997, ch. 9, § 21; 2011, ch. 159, § 50.

40-6A-614. Notice to issuing tribunal of modification.

Within thirty days after issuance of a modified child-support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

History: 1978 Comp., § 40-6A-614, enacted by Laws 1997, ch. 9, § 22.

40-6A-615. Jurisdiction to modify child-support order of foreign country.

A. Except as otherwise provided in Section 40-6A-711 NMSA 1978, if a foreign country lacks or refuses to exercise jurisdiction to modify its child-support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child-support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child-support order otherwise required of the individual pursuant to Section 40-6A-611 NMSA 1978 has been given or whether the individual seeking modification is a resident of this state or of the foreign country.

B. An order issued by a tribunal of this state modifying a foreign child-support order pursuant to this section is the controlling order.

History: Laws 2005, ch. 166, § 43; 2011, ch. 159, § 51.

40-6A-616. Procedure to register child-support order of foreign country for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child-support order not pursuant to the convention may register that order in this state pursuant to Sections 40-6A-601 through 40-6A-608 NMSA 1978 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or at another time. The petition shall specify the grounds for modification.

History: 1978 Comp., § 40-6A-616, enacted by Laws 2011, ch. 159, § 52.

ARTICLE 7
DETERMINATION OF PARENTAGE

40-6A-701. Definitions.

As used in Sections 40-6A-701 through 40-6A-713 NMSA 1978:

A. "application" means a request pursuant to the convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority;

B. "central authority" means the entity designated by the United States or a foreign country described in Paragraph (4) of Subsection E of Section 40-6A-102 NMSA 1978 to perform the functions specified in the convention;

C. "convention child-support order" means a child-support order of a tribunal of a foreign country described in Paragraph (4) of Subsection E of Section 40-6A-102 NMSA 1978;

D. "convention support order" means a support order of a tribunal of a foreign country described in Paragraph (4) of Subsection E of Section 40-6A-102 NMSA 1978;

E. "direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor or child residing outside the United States;

F. "foreign central authority" means the entity designated by a foreign country described in Paragraph (4) of Subsection E of Section 40-6A-102 NMSA 1978 to perform the functions specified in the convention;

G. "foreign support agreement":

(1) means an agreement for support in a record that:

(a) is enforceable as a support order in the country of origin;

(b) has been: 1) formally drawn up or registered as an authentic instrument by a foreign tribunal; or 2) authenticated by or concluded, registered or filed with a foreign tribunal; and

(c) may be reviewed and modified by a foreign tribunal; and

(2) includes a maintenance arrangement or authentic instrument pursuant to the convention; and

H. "United States central authority" means the secretary of the United States department of health and human services.

History: Laws 1994, ch. 107, § 701; 2005, ch. 166, § 44; repealed and reenacted by Laws 2011, ch. 159, § 53.

40-6A-702. Applicability.

Sections 40-6A-701 through 40-6A-713 NMSA 1978 apply only to a support proceeding pursuant to the convention. In such a proceeding, if a provision of Sections 40-6A-701 through 40-6A-713 NMSA 1978 is inconsistent with Sections 40-6A-101 through 40-6A-616 NMSA 1978, the provisions of Sections 40-6A-701 through 40-6A-713 NMSA 1978 control.

History: 1978 Comp., § 40-6A-702, enacted by Laws 2011, ch. 159, § 54.

40-6A-703. Relationship of human services department [health care authority department] to United States central authority.

The human services department [health care authority department] of this state is recognized as the agency designated by the United States central authority to perform specific functions pursuant to the convention.

History: 1978 Comp., § 40-6A-703, enacted by Laws 2011, ch. 159, § 55.

40-6A-704. Initiation by human services department [health care authority department] of support proceeding under convention.

A. In a support proceeding pursuant to Sections 40-6A-701 through 40-6A-713 NMSA 1978, the human services department [health care authority department] of this state shall:

(1) transmit and receive applications; and

(2) initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

B. The following support proceedings are available to an obligee pursuant to the convention:

(1) recognition or recognition and enforcement of a foreign support order;

(2) enforcement of a support order issued or recognized in this state;

(3) establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

(4) establishment of a support order if recognition of a foreign support order is refused pursuant to Paragraph (2), (4) or (9) of Subsection B of Section 40-6A-708 NMSA 1978;

(5) modification of a support order of a tribunal of this state; and

(6) modification of a support order of a tribunal of another state or a foreign country.

C. The following support proceedings are available pursuant to the convention to an obligor against which there is an existing support order:

(1) recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;

(2) modification of a support order of a tribunal of this state; and

(3) modification of a support order of a tribunal of another state or a foreign country.

D. A tribunal of this state may not require security, bond or deposit, however described, to guarantee the payment of costs and expenses in proceedings pursuant to the convention.

History: 1978 Comp., § 40-6A-704, enacted by Laws 2011, ch. 159, § 56.

40-6A-705. Direct request.

A. A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

B. A petitioner may file a direct request seeking recognition and enforcement of a support order or foreign support agreement. In the proceeding, Sections 40-6A-706 through 40-6A-713 NMSA 1978 apply.

C. In a direct request for recognition and enforcement of a convention support order or foreign support agreement:

(1) a security, bond or deposit is not required to guarantee the payment of costs and expenses; and

(2) an obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.

D. A petitioner filing a direct request is not entitled to assistance from the human services department [health care authority department] of this state.

E. Sections 40-6A-701 through 40-6A-713 NMSA 1978 do not prevent the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

History: 1978 Comp., § 40-6A-705, enacted by Laws 2011, ch. 159, § 57.

40-6A-706. Registration of convention support order.

A. Except as otherwise provided in Sections 40-6A-701 through 40-6A-713 NMSA 1978, a party who is an individual or a support enforcement agency seeking recognition of a convention support order shall register the order in this state as provided in Sections 40-6A-601 through 40-6A-616 NMSA 1978.

B. Notwithstanding Section 40-6A-311 NMSA 1978 and Subsection A of Section 40-6A-602 NMSA 1978, a request for registration of a convention support order must be accompanied by:

(1) a complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by The Hague Conference on Private International Law;

(2) a record stating that the support order is enforceable in the issuing country;

(3) if the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

(4) a record showing the amount of arrears, if any, and the date the amount was calculated;

(5) a record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

(6) if necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

C. A request for registration of a convention support order may seek recognition and partial enforcement of the order.

D. A tribunal of this state may vacate the registration of a convention support order without the filing of a contest pursuant to Section 40-6A-707 NMSA 1978 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

E. The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a convention support order.

History: 1978 Comp., § 40-6A-706, enacted by Laws 2011, ch. 159, § 58.

40-6A-707. Contest of registered convention support order.

A. Except as otherwise provided in Sections 40-6A-701 through 40-6A-713 NMSA 1978, Sections 40-6A-605 through 40-6A-608 NMSA 1978 apply to a contest of a registered convention support order.

B. A party contesting a registered convention support order shall file a contest not later than thirty days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than sixty days after notice of the registration.

C. If the nonregistering party fails to contest the registered convention support order by the time specified in Subsection B of this section, the order is enforceable.

D. A contest of a registered convention support order may be based only on grounds set forth in Section 40-6A-708 NMSA 1978. The contesting party bears the burden of proof.

E. In a contest of a registered convention support order, a tribunal of this state:

(1) is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

(2) may not review the merits of the order.

F. A tribunal of this state deciding a contest of a registered convention support order shall promptly notify the parties of its decision.

G. A challenge or appeal, if any, does not stay the enforcement of a convention support order unless there are exceptional circumstances.

History: 1978 Comp., § 40-6A-707, enacted by Laws 2011, ch. 159, § 59.

40-6A-708. Recognition and enforcement of registered convention support order.

A. Except as otherwise provided in Subsection B of this section, a tribunal of this state shall recognize and enforce a registered convention support order.

B. The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered convention support order:

(1) recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(2) the issuing tribunal lacked personal jurisdiction consistent with the requirements of Section 40-6A-201 NMSA 1978 if those requirements were applied to the foreign country where the tribunal is located;

(3) the order is not enforceable in the issuing foreign country;

(4) the order was obtained by fraud in connection with a matter of procedure;

(5) a record transmitted in accordance with Section 40-6A-706 NMSA 1978 lacks authenticity or integrity;

(6) a proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

(7) the order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement pursuant to Sections 40-6A-701 through 40-6A-713 NMSA 1978 in this state;

(8) payment, to the extent alleged arrears have been paid in whole or in part;

(9) in a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(a) if the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(b) if the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(10) the order was made in violation of Section 40-6A-711 NMSA 1978.

C. If a tribunal of this state does not recognize a convention support order pursuant to Paragraph (2), (4), (6) or (9) of Subsection B of this section:

(1) the tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new convention support order; and

(2) the human services department [health care authority department] of this state shall take all appropriate measures to request a child-support order for the obligee if the application for recognition and enforcement was received pursuant to Section 40-6A-704 NMSA 1978.

History: 1978 Comp., § 40-6A-708, enacted by Laws 2011, ch. 159, § 60.

40-6A-709. Partial enforcement.

If a tribunal of this state does not recognize and enforce a convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a convention support order.

History: 1978 Comp., § 40-6A-709, enacted by Laws 2011, ch. 159, § 61.

40-6A-710. Foreign support agreement.

A. Except as otherwise provided in Subsections C and D of this section, a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.

B. An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

(1) a complete text of the foreign support agreement; and

(2) a record stating that the foreign support agreement is enforceable as an order of support in the issuing foreign country.

C. A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

D. In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:

(1) recognition and enforcement of the agreement is manifestly incompatible with public policy;

(2) the agreement was obtained by fraud or falsification;

(3) the agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement pursuant to Sections 40-6A-701 through 40-6A-713 NMSA 1978 in this state; or

(4) the record submitted pursuant to Subsection B of this section lacks authenticity or integrity.

E. A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

History: 1978 Comp., § 40-6A-710, enacted by Laws 2011, ch. 159, § 62.

40-6A-711. Modification of convention child-support order.

A. A tribunal of this state may not modify a convention child-support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(1) the obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

(2) the foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

B. If a tribunal of this state does not modify a convention child-support order because the order is not recognized in this state, Subsection C of Section 40-6A-708 NMSA 1978 applies.

History: 1978 Comp., § 40-6A-711, enacted by Laws 2011, ch. 159, § 63.

40-6A-712. Personal information; limit on use.

Personal information gathered or transmitted pursuant to Sections 40-6A-701 through 40-6A-713 NMSA 1978 may be used only for the purposes for which it was gathered or transmitted.

History: 1978 Comp., § 40-6A-712, enacted by Laws 2011, ch. 159, § 64.

40-6A-713. Record in original language; English translation.

A record filed with a tribunal of this state pursuant to Sections 40-6A-701 through 40-6A-713 NMSA 1978 must be in the original language and, if not in English, must be

accompanied by an English translation. The cost of the translation shall be paid by the state or foreign country issuing the record.

History: 1978 Comp., § 40-6A-713, enacted by Laws 2011, ch. 159, § 65.

ARTICLE 8
INTERSTATE RENDITION

40-6A-801. Grounds for rendition.

A. For purposes of Section 40-6A-802 NMSA 1978, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by the Uniform Interstate Family Support Act.

B. The governor of this state may:

(1) demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(2) on the demand of the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

C. A provision for extradition of individuals not inconsistent with the Uniform Interstate Family Support Act applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

History: Laws 1994, ch. 107, § 801; 2005, ch. 166, § 45; 2011, ch. 159, § 66.

40-6A-802. Conditions of rendition.

A. Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to the Uniform Interstate Family Support Act or that the proceeding would be of no avail.

B. If, under the Uniform Interstate Family Support Act or a law substantially similar to that act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a

proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

C. If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

History: Laws 1994, ch. 107, § 802; 2005, ch. 166, § 46; 2011, ch. 159, § 67.

ARTICLE 9
MISCELLANEOUS PROVISIONS

40-6A-901. Uniformity of application and construction.

The Uniform Interstate Family Support Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of that act among states enacting it.

History: Laws 1994, ch. 107, § 901.

40-6A-902. Recompiled.

40-6A-903. Severability clause.

If any provision of the Uniform Interstate Family Support Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act which can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

History: Laws 1994, ch. 107, § 903.

ARTICLE 7
Adoption (Repealed, Recompiled.)

40-7-1 to 40-7-24. Repealed.

40-7-25 to 40-7-28. Recompiled.

40-7-29 to 40-7-65. Repealed.

ARTICLE 7A
Child Placement Agency Licensing

40-7A-1. Short title.

Chapter 40, Article 7A NMSA 1978 may be cited as the "Child Placement Agency Licensing Act".

History: Laws 1981, ch. 171, § 1; 2011, ch. 130, § 1.

40-7A-2. Purpose.

The purpose of the Child Placement Agency Licensing Act is to facilitate the licensing of child placement agencies for the placement of abused, neglected, dependent or homeless children in a stable and loving environment where a healthy and normal parent-child relationship may exist between the foster or adoptive parent and the child.

History: Laws 1981, ch. 171, § 2.

40-7A-3. Definitions.

As used in the Child Placement Agency Licensing Act:

A. "child" means an individual under the age of eighteen years;

B. "child placement agency" means any individual, partnership, unincorporated association or corporation undertaking to place a child in a home in this or any other state for the purpose of foster care or adoption of the child;

C. "department" means the children, youth and families department;

D. "division" means the protective services division of the department;

E. "foster home" means a home maintained by an individual having the care and control, for periods exceeding twenty-four hours, of a child who is not placed for adoption;

F. "person" means any individual, partnership, unincorporated association or corporation; and

G. "secretary" means the secretary of children, youth and families.

History: Laws 1981, ch. 171, § 3; 2011, ch. 130, § 2.

40-7A-4. Licensing; rules; application for license.

A. An application for a license to operate a child placement agency shall be made to the division on forms provided and in the manner prescribed by the division. A child placement agency may be licensed either to place children in foster homes or in homes for adoption, or both. The division shall investigate the applicant to ascertain whether the applicant qualifies under the rules promulgated by the division. If qualified, the division shall issue a license valid for one year from date of issuance. A license shall be renewed for successive periods of time not to exceed three years, as determined by the division, if the division is satisfied that the child placement agency is in compliance with the division's rules. No fee shall be charged for a license.

B. No person shall operate a child placement agency without first being licensed to operate the agency by the division. An individual desiring to operate a foster home shall obtain a license from the division or the child placement agency under which it will operate. The child placement agency shall notify the division when the individual is licensed to operate a foster home. The notification shall be on a form provided by the division and shall contain such information as the division requires. No foster home shall be licensed by more than one child placement agency. A license shall be renewed for successive one- or two-year periods if the child placement agency is satisfied that the foster home is in compliance with the division's rules.

C. Upon licensure to operate a foster home, the child placement agency may place a child for foster care in the licensed foster home.

D. The division shall prescribe and publish minimum standards and other rules for licensing of child placement agencies and licensing of foster homes. The prescribed minimum standards and other rules shall be promulgated by the division and shall be restricted to:

(1) the responsibility assumed by the foster home or child placement agency for the shelter, health, diet, safety and education of the child served;

(2) the character, suitability and qualifications of the applicant for a license and of other persons directly responsible for the health and safety of the child served;

(3) the general financial ability of the applicant for a license to provide care for the child served;

(4) the maintenance of records pertaining to the admission, progress, health and discharge of the child served;

(5) the maintenance of records concerning agency personnel, foster parents and foster parent applicants; and

(6) the filing of reports with the division.

E. The regulations shall not proscribe or interfere with the religious beliefs or religious training of child placement agencies and foster homes, except when the beliefs or training endanger the child's health or safety.

F. The division may inspect child placement agencies and foster homes as necessary to ensure that they are in compliance with the rules of the division.

G. Any person licensed to operate a child placement agency under the provisions of the Child Placement Agency Licensing Act has the right to appeal any rule that the person believes has been improperly applied by representatives of the division or that exceeds the authority granted to the division by the Child Placement Agency Licensing Act. The secretary shall designate a hearing officer or officers from the department to hear an appeal. The hearing officer or officers shall make a written recommendation to the secretary for resolution of the appeal. The secretary's decision shall be in writing and shall be the final administrative determination of the matter.

H. Any individual licensed to operate a foster home under the provisions of the Child Placement Agency Licensing Act has the right to appeal a decision by the division or by a child placement agency to revoke, suspend or not renew a license and has the right to request an administrative review of a denial of a license.

History: Laws 1981, ch. 171, § 4; 1991, ch. 100, § 1; 2011, ch. 130, § 3.

40-7A-5. Variances.

Upon written application from a child placement agency, the division in exercise of its sole discretion may issue a variance that permits a noncompliance with the division's rules. The variance shall be in writing and may be temporary or permanent. No variance shall be issued that is contrary to the Child Placement Agency Licensing Act. There shall be no right to a variance.

History: Laws 1981, ch. 171, § 5; 2011, ch. 130, § 4.

40-7A-6. Revocation or suspension of license; notice; reinstatement; appeal.

A. The division may deny, revoke, suspend, place on probation or refuse to renew the license of any child placement agency for failure to comply with the division's rules. The holder of the license that is to be denied, revoked, suspended or placed on probation or that is not renewed shall be given notice in writing of the proposed action and the reason therefor and shall, at a date and place to be specified in the notice, be given a hearing before a hearing officer appointed by the secretary with an opportunity to produce testimony in the holder's behalf and to be assisted by counsel. The hearing shall be held no earlier than twenty days after service of notice thereof unless the time limitations are waived or a child safety or health issue is present. A person whose license has been denied, revoked, suspended, placed on probation or not renewed

may, on application to the division, have the license issued, reinstated or reissued upon proof that the noncompliance with the rules has ceased.

B. A child placement agency adversely affected by a decision of the division denying, revoking, suspending, placing on probation or refusing to renew a license may obtain a review by appealing to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

C. The division or a child placement agency may deny, revoke, suspend or refuse to renew the license of any foster home for failure to comply with the division's rules. The holder of a license that is to be revoked or suspended or that is not renewed shall be given notice in writing of the proposed action and the reason for the proposed action and shall be given the opportunity to appeal the decision. A foster home that is denied a license shall be given the opportunity to request an administrative review of the reasons for the denial of the license.

D. When any foster home license is denied, suspended, revoked or not renewed, the care and control of any child placed pursuant to the Child Placement Agency Licensing Act shall be transferred to the child placement agency or the division.

History: Laws 1981, ch. 171, § 6; 1998, ch. 55, § 44; 1999, ch. 265, § 46; 2011, ch. 130, § 5.

40-7A-7. Judicial review; scope of review.

The filing of a petition with the district court shall not stay the enforcement of the decision of the division, but the court may order a stay upon a showing of good cause.

History: Laws 1981, ch. 171, § 7.

40-7A-8. Penalty.

Any person who operates a child placement agency or foster home without a license as provided for in the Child Placement Agency Licensing Act shall be guilty of a misdemeanor.

History: Laws 1981, ch. 171, § 8.

ARTICLE 7B
Interstate Compact on Adoption and Medical Assistance

40-7B-1. Compact.

The "Interstate Compact on Adoption and Medical Assistance" is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

ARTICLE I. FINDINGS

The party states find that:

1. in order to obtain adoptive families for children with special needs, prospective adoptive parents must be assured of substantial assistance, usually on a continuing basis, in meeting the high costs of supporting and providing for the special needs and services required by such children;

2. the states have a fundamental interest in promoting adoption for children with special needs because the care, emotional stability and general support and encouragement required by such children to surmount their physical, mental or emotional conditions can be best, and often only, obtained in family homes with a normal parent-child relationship;

3. the states obtain advantages from providing adoption assistance because the customary alternative is for the state to defray the entire cost of meeting all the needs of such children;

4. the special needs involved are for the emotional and physical maintenance of the child and medical support and services; and

5. the necessary assurances of adoption assistance for children with special needs, in those instances where children and adoptive parents are in states other than the one undertaking to provide the assistance, require the establishment and maintenance of suitable substantive guarantees and workable procedures for interstate payments to assist with the necessary child maintenance, procurement of services and medical assistance.

ARTICLE II. PURPOSES

The purposes of this compact are to:

1. strengthen protections for the interests of the children with special needs on behalf of whom adoption assistance is committed to be paid, when such children are in or move to states other than the one committed to make adoption assistance payments; and

2. provide substantive assurances and procedures which will promote the delivery to children of medical and other services on an interstate basis through programs of adoption assistance established by the laws of the party states.

ARTICLE III. DEFINITIONS

As used in the Interstate Compact on Adoption and Medical Assistance, unless the context clearly requires a different construction:

1. "child with special needs" means a minor who has not yet attained the age at which the state normally discontinues children's services or twenty-one, where the state determines that the child's mental or physical handicaps warrant the continuation of assistance, for whom the state has determined the following:

(a) that the child cannot or should not be returned to the home of his parents;

(b) that there exists with respect to the child a specific factor or condition such as ethnic background, age, membership in a minority or sibling group or the presence of factors such as medical condition or physical, mental or emotional handicaps because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance; or

(c) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents developed while the child is in the care of such parents as a foster child, a reasonable but unsuccessful effort has been made to place the child with appropriate adoptive parents without providing assistance payments;

2. "adoption assistance" means the making of payment or payments for maintenance of a child, which payment or payments are made or committed to be made pursuant to the adoption assistance program established by the laws of a party state;

3. "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands or a territory or possession of the United States;

4. "adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case;

5. "residence state" means the state of which the child is a resident by virtue of the residence of the adoptive parents; and

6. "parents" means either the singular or plural of the word "parent".

ARTICLE IV. ADOPTION ASSISTANCE

A. Each state shall determine the amounts of adoption assistance and other aid which it will give to children with special needs and to their adoptive parents in accordance with its own laws and programs. The adoption assistance and other aid

may be made subject to periodic reevaluation of eligibility by the adoption assistance state in accordance with its laws. The provisions of this article and of Article V are subject to the limitation set forth in this subsection.

B. The adoption assistance and medical assistance services and benefits to which the Interstate Compact on Adoption and Medical Assistance applies are those provided to children with special needs and to their adoptive parents from the time of the final decree of adoption or the interlocutory decree of adoption, as the case may be, pursuant to the laws of the adoption assistance state. In addition to the content required by subsequent provisions of this article for adoption assistance agreements, each such agreement shall state whether the initial adoption assistance period begins with the final or interlocutory decree of adoption. Aid provided by party states to children with special needs during the preadoptive placement period or earlier shall be under the foster care of other programs of the states and, except as provided in Subsection C of this article, shall not be governed by the provisions of that compact.

C. Every case of adoption assistance shall include an adoption assistance agreement between the adoptive parents and the agency of the state undertaking to provide the adoption assistance. Every such agreement shall contain provisions for the fixing of actual or potential interstate aspects of the adoption assistance, as follows:

(1) an express commitment that the adoption assistance shall be payable by the adoption assistance state without regard for the state of residence of the adoptive parents, both at the outset of the agreement period and at all times during its continuance;

(2) a provision setting forth with particularity the types of child care and services toward which the adoption assistance state will make payments;

(3) a commitment to make medical assistance available to the child in accordance with Article V of the Interstate Compact on Adoption and Medical Assistance; and

(4) an express declaration that the agreement is for the benefit of the child, the adoptive parents and the state and that it is enforceable by any or all of them.

D. Any services or benefits provided by the residence state and the adoption assistance state for a child may be facilitated by the party states on each other's behalf. To this end, the personnel of the child welfare agencies of the party states will assist each other and beneficiaries of adoption assistance agreements with other party states in implementing benefits expressly included in adoption assistance agreements. However, it is recognized and agreed that, in general, children to whom adoption assistance agreements apply are eligible for benefits under the child welfare, education, rehabilitation, mental health and other programs of their state of residence on the same basis as other resident children.

E. Adoption assistance payments, when made on behalf of a child in another state, shall be made on the same basis and in the same amounts as they would be made if the child were in the state making the payments.

ARTICLE V. MEDICAL ASSISTANCE

A. Children for whom a party state is committed, in accordance with the terms of an adoption assistance agreement, to make adoption assistance payments are eligible for medical assistance during the entire period for which such payments are to be provided. Upon application therefor, the adoptive parents of a child on whose behalf a party state's duly constituted authorities have entered into an adoption assistance agreement shall receive a medical assistance identification card made out in the child's name. The identification shall be issued by the medical assistance program of the residence state and shall entitle the child to the same benefits, pursuant to the same procedures, as any other child who is a resident of the state and covered by medical assistance, whether or not the adoptive parents are eligible for medical assistance.

B. The identification shall bear no indication that an adoption assistance agreement with another state is the basis for issuance. However, if the identification is issued on account of an outstanding adoption assistance agreement to which another state is a signatory, the records of the issuing state and the adoption assistance state shall show the fact and shall contain a copy of the adoption assistance agreement and any amendment or replacement therefor and all other pertinent information. The adoption assistance and medical assistance programs of the adoption assistance state shall be notified of the identification issuance.

C. A state which has issued a medical assistance identification card pursuant to the Interstate Compact on Adoption and Medical Assistance which identification is valid and currently in force, shall accept, process and pay medical assistance claims thereon as on any other medical assistance eligibilities of residents.

D. An adoption assistance state which provides medical services or benefits to children covered by its adoption assistance agreements, which services or benefits are not provided for those children under the medical assistance program of the residence state, may enter into cooperative arrangements with the residence state to facilitate the delivery and administration of such services and benefits. However, any such arrangements shall not be inconsistent with the Interstate Compact on Adoption and Medical Assistance nor shall they relieve the residence state of any obligation to provide medical assistance in accordance with its laws and that compact.

E. A child whose residence is changed from one party state to another party state shall be eligible for medical assistance under the medical assistance program of the new state of residence.

ARTICLE VI. JOINDER AND WITHDRAWAL

A. The Interstate Compact on Adoption and Medical Assistance shall be open to joinder by any state. It shall enter into force as to a state when the duly constituted and empowered authority of the state has executed it or when enacted into law by the legislature of that state.

B. In order that the provisions of the Interstate Compact on Adoption and Medical Assistance may be accessible to and known by the general public and so that its status as law in each of the party states may be fully implemented, the full text of that compact, together with a notice of its execution, shall be published by the authority which has executed it in each party state. Copies of that compact shall be made available upon request made of the executing or administering authority in any state.

C. Withdrawal from the Interstate Compact on Adoption and Medical Assistance shall be by written notice sent by the authority which executed it to the appropriate officials of all other party states, but no such notice shall take effect until one year after it is given in accordance with the requirements of this subsection.

D. All adoption assistance agreements outstanding and to which a party state is signatory at the time when its withdrawal from the Interstate Compact on Adoption and Medical Assistance takes effect shall continue to have the effects given to them pursuant to that compact until they expire or are terminated in accordance with their provisions. Until such expiration or termination, all beneficiaries of the agreements involved shall continue to have all rights and obligations conferred or imposed by that compact and the withdrawing state shall continue to administer that compact to the extent necessary to accord and implement fully the rights and protections preserved hereby.

History: Laws 1985, ch. 133, § 1.

40-7B-2. Human services department [health care authority department] to administer compact; rules and regulations.

The New Mexico human services department [health care authority department], hereinafter called "the department", or its successor agency is the compact administrator of the Interstate Compact on Adoption and Medical Assistance [40-7B-1 to 40-7B-6 NMSA 1978], hereinafter called "the compact". The department shall promulgate rules and regulations to carry out more effectively the terms of the compact. Where appropriate, the department shall act jointly with the officers of other party states in promulgating such rules and regulations. The department may cooperate with all other departments and agencies of this state and its political subdivisions in facilitating the proper administration of the compact and any amendments or supplementary agreements thereunder entered into by this state.

History: Laws 1985, ch. 133, § 2.

40-7B-3. Supplementary agreements.

The compact administrator of the Interstate Compact on Adoption and Medical Assistance may enter into supplementary agreements with appropriate officials of other states pursuant to the compact. If any supplementary agreement requires or contemplates the use of any institution or facility of this state or requires or contemplates the provision of any service by this state, it shall not become effective until approved by the head of the agency under whose jurisdiction the institution or facility is operated or whose agency will be charged with rendering the service.

History: Laws 1985, ch. 133, § 3.

40-7B-4. Financial arrangements.

Subject to legislative appropriations, the compact administrator of the Interstate Compact on Adoption and Medical Assistance shall arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or any supplementary agreement entered into thereunder.

History: Laws 1985, ch. 133, § 4.

40-7B-5. Special provisions relating to medical assistance.

A. A child with special needs, resident in this state, who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance identification from this state upon filing with the department a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the department, the adoptive parents may be required periodically to show that the agreement is still in force or has been renewed.

B. The department shall consider the holder of a medical assistance identification pursuant to this section as any other holder of a medical assistance identification under the laws of this state and shall process and make payment on claims on account of such holder in the same manner and pursuant to the same conditions and procedures as for the recipients of medical assistance.

C. Where the department has entered into an adoption assistance agreement to provide to a child services which are not provided by the residence state, the department shall provide those services agreed to which are not provided by the residence state. The department will not make any payment for services provided by the residence state, even if the payment authorized for the service in the residence state is less than the payment amount authorized in New Mexico for that service. The adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not provided by the residence state and shall be reimbursed therefor. However, there shall be no reimbursement for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The additional coverages and benefit amounts provided pursuant to this section shall be for services for which there is no federal contribution or

which, if federally aided, are not provided by the residence state. Among other things, such regulations shall include procedures to be followed in obtaining prior approvals for services in those instances where required for the assistance.

D. The provisions of this section shall apply to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this state. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this state shall be eligible to receive such assistance in accordance with the laws and procedures applicable thereto.

History: Laws 1985, ch. 133, § 5.

40-7B-6. Federal participation.

Consistent with federal law, the department, in connection with the administration of the compact entered into pursuant to this act, shall include in any state plan made pursuant to the federal Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), Titles IV(e) and XIX of the Social Security Act and any other applicable federal laws the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost. The department shall apply for and administer all relevant federal aid in accordance with law.

History: Laws 1985, ch. 133, § 6.

ARTICLE 8
Change of Name

40-8-1. Change of name; petition and order.

A. Any resident of this state fourteen years of age or older may, upon petition to the district court of the district in which the petitioner resides, if no sufficient cause is shown to the contrary, have the petitioner's name changed or established by order of the court. The legal parents or legal guardians of any resident of this state under the age of fourteen years may, upon petition to the district court of the district in which the petitioner resides, if no sufficient cause is shown to the contrary, have the name of the petitioner's child or ward changed or established by order of the court. When residents under the age of fourteen years petition the district court for a name change, notice shall be given to all legal parents or legal guardians. The order shall be entered at length upon the record of the court, and a copy of the order, duly certified, shall be filed in the office of the county clerk of the county in which the person resides. The county clerk shall record the same in a record book to be kept by the county clerk for that purpose.

B. If the court finds that notice to one or more legal parents or legal guardians of a child who is under fourteen years of age will jeopardize the child's or the applicant's personal safety, the court shall not require notice. The court shall order all records regarding the petition to be sealed. The records shall only be opened by court order based upon a showing of good cause or at the applicant's request.

History: Laws 1889, ch. 3, § 1; C.L. 1897, § 2910; Code 1915, § 3807; C.S. 1929, § 92-101; Laws 1937, ch. 162, § 1; 1941 Comp., § 25-501; 1953 Comp., § 22-5-1; Laws 1979, ch. 14, § 1; 1989, ch. 161, § 1; 2023, ch. 28, § 1.

40-8-2. Repealed.

History: Laws 1889, ch. 3, § 2; C.L. 1897, § 2911; Code 1915, § 3808; C.S. 1929, § 92-102; 1941 Comp., § 25-502; 1953 Comp., § 22-5-2; 1978 Comp., § 40-8-2; 2001, ch. 125, § 1; repealed by Laws 2023, ch. 28, § 2.

40-8-3. [Hearing at regular term in county of petitioner's residence.]

That the hearing and determination of all proceedings instituted under the provisions of this chapter [40-8-1, 40-8-3 NMSA 1978], and the final order of the court therein, shall be had and made at some regular term of the district court sitting within and for the county wherein said petitioner resides.

History: Laws 1889, ch. 3, § 3; C.L. 1897, § 2912; Code 1915, § 3809; C.S. 1929, § 92-103; 1941 Comp., § 25-503; 1953 Comp., § 22-5-3.

ARTICLE 9
Grandparent's Visitation Privileges

40-9-1. Short title.

Chapter 40, Article 9 NMSA 1978 may be cited as the "Grandparent's Visitation Privileges Act".

History: 1978 Comp., § 40-9-1, enacted by Laws 1993, ch. 93, § 1.

40-9-1.1. Definitions.

As used in the Grandparent's Visitation Privileges Act, "grandparent" means:

A. the biological grandparent or great-grandparent of a minor child; or

B. a person who becomes a grandparent or great-grandparent due to the adoption of a minor child by a member of that person's family.

History: 1978 Comp., § 40-9-1.1, enacted by Laws 1993, ch. 93, § 2.

40-9-2. Children; visitation by grandparent; petition; mediation.

A. In rendering a judgment of dissolution of marriage, legal separation or the existence of the parent and child relationship pursuant to the provisions of the Uniform Parentage Act [New Mexico Uniform Parentage Act, 40-11A-101 to 40-11A-903 NMSA 1978], or at any time after the entry of the judgment, the district court may grant reasonable visitation privileges to a grandparent of a minor child, not in conflict with the child's education or prior established visitation or time-sharing privileges.

B. If one or both parents of a minor child are deceased, any grandparent of the minor child may petition the district court for visitation privileges with respect to the minor. The district court may order temporary visitation privileges until a final order regarding visitation privileges is issued by the court.

C. If a minor child resided with a grandparent for a period of at least three months and the child was less than six years of age at the beginning of the three-month period and the child was subsequently removed from the grandparent's home by the child's parent or any other person, the grandparent may petition the district court for visitation privileges with respect to the child, if the child's home state is New Mexico, as provided in the Child Custody Jurisdiction Act [repealed].

D. If a minor child resided with a grandparent for a period of at least six months and the child was six years of age or older at the beginning of the six-month period and the child was subsequently removed from the grandparent's home by the child's parent or any other person, the grandparent may petition the district court for visitation privileges with respect to the child, if the child's home state is New Mexico, as provided in the Child Custody Jurisdiction Act [repealed] .

E. A biological grandparent may petition the district court for visitation privileges with respect to a grandchild when the grandchild has been adopted or adoption is sought, pursuant to the provisions of the Adoption Act [Chapter 32A, Article 5 NMSA 1978], by:

(1) a stepparent;

(2) a relative of the grandchild;

(3) a person designated to care for the grandchild in the provisions of a deceased parent's will; or

(4) a person who sponsored the grandchild at a baptism or confirmation conducted by a recognized religious organization.

F. When a minor child is adopted by a stepparent and the parental rights of the natural parent terminate or are relinquished, the biological grandparents are not

precluded from attempting to establish visitation privileges. When a petition filed pursuant to the provisions of the Grandparent's Visitation Privileges Act is filed during the pendency of an adoption proceeding, the petition shall be filed as part of the adoption proceedings. The provisions of the Grandparent's Visitation Privileges Act shall have no application in the event of a relinquishment or termination of parental rights in cases of other statutory adoption proceedings.

G. When considering a grandparent's petition for visitation privileges with a child, the district court shall assess:

(1) any factors relevant to the best interests of the child;

(2) the prior interaction between the grandparent and the child;

(3) the prior interaction between the grandparent and each parent of the child;

(4) the present relationship between the grandparent and each parent of the child;

(5) time-sharing or visitation arrangements that were in place prior to filing of the petition;

(6) the effect the visitation with the grandparent will have on the child;

(7) if the grandparent has any prior convictions for physical, emotional or sexual abuse or neglect; and

(8) if the grandparent has previously been a full-time caretaker for the child for a significant period.

H. The district court may order mediation and evaluation in any matter when a grandparent's visitation privileges with respect to a minor child are at issue. When a judicial district has established a domestic relations mediation program pursuant to the provisions of the Domestic Relations Mediation Act [Chapter 40, Article 12 NMSA 1978], the mediation shall conform with the provisions of that act. Upon motion and hearing, the district court shall act promptly on the recommendations set forth in a mediation report and consider assessment of mediation and evaluation to the parties. The district court may order temporary visitation privileges until a final order regarding visitation privileges is issued by the court.

I. When the district court decides that visitation is not in the best interest of the child, the court may issue an order requiring other reasonable contact between the grandparent and the child, including regular communication by telephone, mail or any other reasonable means.

J. The provisions of the Child Custody Jurisdiction Act and Section 30-4-4 NMSA 1978, regarding custodial interference, are applicable to the provisions of the Grandparent's Visitation Privileges Act.

History: 1978 Comp., § 40-9-2, enacted by Laws 1993, ch. 93, § 3; 1999, ch. 73, § 1.

40-9-3. Visitation; modification; restrictions.

A. When the district court grants reasonable visitation privileges to a grandparent pursuant to the provisions of the Grandparent's Visitation Privileges Act, the court shall issue any necessary order to enforce the visitation privileges and may modify the privileges or order upon a showing of good cause by any interested person.

B. Absent a showing of good cause, no grandparent or parent shall file a petition pursuant to the provisions of the Grandparent's Visitation Privileges Act more often than once a year.

C. When an action for enforcement of a court order allowing visitation privileges is brought pursuant to the Grandparent's Visitation Privileges Act by a grandparent, the court may award court costs and reasonable attorneys' fees to the prevailing party when a court order is violated.

History: 1978 Comp., § 40-9-3, enacted by Laws 1993, ch. 93, § 4; 1995, ch. 58, § 1.

40-9-4. Change of child's domicile; notice to grandparent.

A. When a grandparent is granted visitation privileges with respect to a minor child pursuant to the provisions of the Grandparent's Visitation Privileges Act and the child's custodian intends to depart the state or to relocate within the state with the intention of changing that child's domicile, the custodian shall:

(1) notify the grandparents of the minor child of the custodian's intent to change the child's domicile at least five days prior to the child's change of domicile;

(2) provide the grandparent with an address and telephone number for the minor child; and

(3) afford the grandparent of the minor child the opportunity to communicate with the child.

B. This state will recognize an order or act regarding grandparent visitation privileges issued by any state, district, Indian tribe or territory of the United States of America.

History: 1978 Comp., § 40-9-4, enacted by Laws 1993, ch. 93, § 5; 1995, ch. 58, § 2.

ARTICLE 10
Child Custody Jurisdiction (Repealed.)

40-10-1 to 40-10-24. Repealed.

ARTICLE 10A
Child Custody

ARTICLE 1
GENERAL PROVISIONS

40-10A-101. Short title.

This act [40-10A-101 to 40-10A-403 NMSA 1978] may be cited as the "Uniform Child-Custody Jurisdiction and Enforcement Act".

History: Laws 2001, ch. 114, § 101.

40-10A-102. Definitions.

As used in the Uniform Child-Custody Jurisdiction and Enforcement Act:

(1) "abandoned" means left without provision for reasonable and necessary care or supervision;

(2) "child" means an individual who has not attained eighteen years of age;

(3) "child-custody determination" means a judgment, decree or other order of a court providing for legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial or modification order. The term does not include an order relating to child support or other monetary obligation of an individual;

(4) "child-custody proceeding" means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for dissolution of marriage, custody of a child when dissolution of a marriage is not an issue, neglect, abuse, dependency, guardianship, paternity, termination of parental rights whether filed alone or with an adoption proceeding and protection from domestic violence in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act;

(5) "commencement" means the filing of the first pleading in a proceeding;

(6) "court" means an entity authorized under the law of a state to establish, enforce or modify a child-custody determination;

(7) "home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period;

(8) "initial determination" means the first child-custody determination concerning a particular child;

(9) "issuing court" means the court that makes a child-custody determination for which enforcement is sought under the Uniform Child-Custody Jurisdiction and Enforcement Act;

(10) "issuing state" means the state in which a child-custody determination is made;

(11) "modification" means a child-custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination;

(12) "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity;

(13) "person acting as a parent" means a person, other than a parent, who:

(A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this state;

(14) "physical custody" means the physical care and supervision of a child;

(15) "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States;

(16) "tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state; and

(17) "warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

History: Laws 2001, ch. 114, § 102.

40-10A-103. Proceedings governed by other law.

The Uniform Child-Custody Jurisdiction and Enforcement Act does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

History: Laws 2001, ch. 114, § 103.

40-10A-104. Application to Indian tribes.

(a) A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to the Uniform Child-Custody Jurisdiction and Enforcement Act to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying Articles 1 and 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of the Uniform Child-Custody Jurisdiction and Enforcement Act must be recognized and enforced under Article 3 of that act.

History: Laws 2001, ch. 114, § 104.

40-10A-105. International application of the Uniform Child-Custody Jurisdiction and Enforcement Act.

(a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying Articles 1 and 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

(b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of the Uniform Child-Custody Jurisdiction and Enforcement Act must be recognized and enforced under Article 3 of that act.

(c) A court of this state need not apply the Uniform Child-Custody Jurisdiction and Enforcement Act if the child custody law of a foreign country violates fundamental principles of human rights.

History: Laws 2001, ch. 114, § 105.

40-10A-106. Effect of child-custody determination.

A child-custody determination made by a court of this state that had jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act binds all persons who have been served in accordance with the laws of this state or notified in accordance with Section 108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

History: Laws 2001, ch. 114, § 106.

40-10A-107. Priority.

If a question of existence or exercise of jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

History: Laws 2001, ch. 114, § 107.

40-10A-108. Notice to persons outside state.

(a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

History: Laws 2001, ch. 114, § 108.

40-10A-109. Appearance and limited immunity.

(a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under the Uniform Child-Custody Jurisdiction and Enforcement Act committed by an individual while present in this state.

History: Laws 2001, ch. 114, § 109.

40-10A-110. Communication between courts.

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under the Uniform Child-Custody Jurisdiction and Enforcement Act.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

History: Laws 2001, ch. 114, § 110.

40-10A-111. Taking testimony in another state.

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that

the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

History: Laws 2001, ch. 114, § 111.

40-10A-112. Cooperation between courts; preservation of records.

(a) A court of this state may request the appropriate court of another state to:

(1) hold an evidentiary hearing;

(2) order a person to produce or give evidence pursuant to procedures of that state;

(3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented and any evaluation prepared in compliance with the request; and

(5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this state.

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations and other pertinent records with respect to a child-custody proceeding until the child attains eighteen years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

History: Laws 2001, ch. 114, § 112.

ARTICLE 2
JURISDICTION

40-10A-201. Initial child-custody jurisdiction.

(a) Except as otherwise provided in Section 204, a court of this state has jurisdiction to make an initial child-custody determination only if:

(1) this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) a court of another state does not have jurisdiction under paragraph (1) or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 207 or 208] and:

(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) substantial evidence is available in this state concerning the child's care, protection, training and personal relationships;

(3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 207 or 208; or

(4) no court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2) or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

History: Laws 2001, ch. 114, § 201.

40-10A-202. Exclusive, continuing jurisdiction.

(a) Except as otherwise provided in Section 204, a court of this state which has made a child-custody determination consistent with Section 201 or 203 has exclusive, continuing jurisdiction over the determination until:

(1) a court of this state determines that the child, or the child and one parent, or the child and a person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships; or

(2) a court of this state or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this state.

(b) A court of this state which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 201.

History: Laws 2001, ch. 114, § 202.

40-10A-203. Jurisdiction to modify determination.

Except as otherwise provided in Section 204, a court of this state may not modify a child-custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under Section 201(a)(1) or (2) and:

(1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 202 or that a court of this state would be a more convenient forum under Section 207; or

(2) a court of this state or a court of the other state determines that the child, the child's parents and any person acting as a parent do not presently reside in the other state.

History: Laws 2001, ch. 114, § 203.

40-10A-204. Temporary emergency jurisdiction.

(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under the Uniform Child-Custody Jurisdiction and Enforcement Act and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 201 through 203, a child-custody determination made under this section

remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 201 through 203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 201 through 203, a child-custody determination made under this section becomes a final determination, if it so provides, and this state becomes the home state of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under the Uniform Child-Custody Jurisdiction and Enforcement Act, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under Sections 201 through 203, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 201 through 203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under Sections 201 through 203, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Sections 201 through 203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child and determine a period for the duration of the temporary order.

History: Laws 2001, ch. 114, § 204.

40-10A-205. Notice; opportunity to be heard; joinder.

(a) Before a child-custody determination is made under the Uniform Child-Custody Jurisdiction and Enforcement Act, notice and an opportunity to be heard in accordance with the standards of Section 108 must be given to all persons entitled to notice under the law of this state as in child-custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated and any person having physical custody of the child.

(b) The Uniform Child-Custody Jurisdiction and Enforcement Act does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under the Uniform Child-Custody Jurisdiction and Enforcement Act are governed by the law of this state as in child-custody proceedings between residents of this state.

History: Laws 2001, ch. 114, § 205.

40-10A-206. Simultaneous proceedings.

(a) Except as otherwise provided in Section 204, a court of this state may not exercise its jurisdiction under Article 2 [40-10A-201 to 40-10A-210 NMSA 1978] of the Uniform Child-Custody Jurisdiction and Enforcement Act if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with the Uniform Child-Custody Jurisdiction and Enforcement Act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under Section 207.

(b) Except as otherwise provided in Section 204, a court of this state, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with the Uniform Child-Custody Jurisdiction and Enforcement Act, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with the Uniform Child-Custody Jurisdiction and Enforcement Act does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may:

(1) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying or dismissing the proceeding for enforcement;

(2) enjoin the parties from continuing with the proceeding for enforcement; or

(3) proceed with the modification under conditions it considers appropriate.

History: Laws 2001, ch. 114, § 206.

40-10A-207. Inconvenient forum.

(a) A court of this state which has jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The

issue of inconvenient forum may be raised upon motion of a party, the court's own motion or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) the length of time the child's home state is or recently was another state;

(3) the distance between the court in this state and the court in the state that would assume jurisdiction;

(4) the relative financial circumstances of the parties with respect to travel arrangements;

(5) any agreement of the parties as to which state should assume jurisdiction;

(6) the nature and location of the evidence required to resolve the pending custody litigation, including testimony of the child;

(7) the ability of the court of each state to decide the custody issue expeditiously and the procedures necessary to present the evidence; and

(8) whether another state has a closer connection with the child or with the child and one or more of the parties, including whether the court of the other state is more familiar with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

History: Laws 2001, ch. 114, § 207.

40-10A-208. Jurisdiction declined by reason of conduct.

(a) Except as otherwise provided in Section 204 or by other law of this state, if a court of this state has jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) a court of the state otherwise having jurisdiction under Sections 201 through 203 determines that this state is a more appropriate forum under Section 207; or

(3) no court of any other state would have jurisdiction under the criteria specified in Sections 201 through 203.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under Sections 201 through 203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care expenses during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs or expenses against this state unless authorized by law other than the Uniform Child-Custody Jurisdiction and Enforcement Act.

History: Laws 2001, ch. 114, § 208.

40-10A-209. Information to be submitted to court.

(a) Subject to local law providing for the confidentiality of procedures, addresses and other identifying information in a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number and the date of the child-custody determination, if any;

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number and the nature of the proceeding; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice.

History: Laws 2001, ch. 114, § 209.

40-10A-210. Appearance of parties and child.

(a) In a child-custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to Section 108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this state is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

History: Laws 2001, ch. 114, § 210.

ARTICLE 3
ENFORCEMENT

40-10A-301. Definitions.

As used in Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act:

(1) "petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination; and

(2) "respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

History: Laws 2001, ch. 114, § 301.

40-10A-302. Enforcement under Hague Convention.

Under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act, a court of this state may enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

History: Laws 2001, ch. 114, § 302.

40-10A-303. Duty to enforce.

(a) A court of this state shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with the Uniform Child-Custody Jurisdiction and Enforcement Act or if the determination was made under factual circumstances meeting the jurisdictional standards of that act and the determination has not been modified in accordance with that act.

(b) A court of this state may utilize any remedy available under other law of this state to enforce a child-custody determination made by a court of another state. The remedies provided in Article 3 of the Uniform Child-Custody Jurisdiction and

Enforcement Act are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

(c) A court of this state may enforce a custody determination made pursuant to Sections 201 and 203 until it is modified by a court having jurisdiction pursuant to Sections 201 and 203.

History: Laws 2001, ch. 114, § 303.

40-10A-304. Temporary visitation.

(a) A court of this state which does not have jurisdiction to modify a child-custody determination may issue a temporary order enforcing:

(1) a visitation schedule made by a court of another state; or

(2) the visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this state makes an order under subsection (a)(2), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act. The order remains in effect until an order is obtained from the other court or the period expires.

History: Laws 2001, ch. 114, § 304.

40-10A-305. Registration of child-custody determination.

(a) A child-custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate court in this state:

(1) a letter or other document requesting registration;

(2) two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) except as otherwise provided in Section 209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall:

(1) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) serve notice upon the persons named pursuant to subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subsection (b)(2) must state that:

(1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(2) a hearing to contest the validity of the registered determination must be requested within twenty days after service of notice; and

(3) failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within twenty days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act;

(2) the child-custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 108 in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

History: Laws 2001, ch. 114, § 305.

40-10A-306. Enforcement of registered determination.

(a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child-custody determination made by a court of another state.

(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act, a registered child-custody determination of a court of another state.

History: Laws 2001, ch. 114, § 306.

40-10A-307. Simultaneous proceedings.

If a proceeding for enforcement under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

History: Laws 2001, ch. 114, § 307.

40-10A-308. Expedited enforcement of child-custody determination.

(a) A petition under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) whether the determination for which enforcement is sought has been vacated, stayed or modified by a court whose decision must be enforced under the Uniform Child-Custody Jurisdiction and Enforcement Act and, if so, identify the court, the case number and the nature of the proceeding;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number and the nature of the proceeding;

(4) the present physical address of the child and the respondent, if known;

(5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) if the child-custody determination has been registered and confirmed under Section 305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs and expenses under Section 312 and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed or modified by a court having jurisdiction to do so under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act; and

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 305, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

History: Laws 2001, ch. 114, § 308.

40-10A-309. Service of petition and order.

Except as otherwise provided in Section 311, the petition and order must be served, by any method authorized by the law of this state, upon the respondent and any person who has physical custody of the child.

History: Laws 2001, ch. 114, § 309.

40-10A-310. Hearing and order.

(a) Unless the court issues a temporary emergency order pursuant to Section 204, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a state having jurisdiction to do so under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108 in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under Section 305 but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under Article 2 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

(b) The court shall award the fees, costs and expenses authorized under Section 312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act.

History: Laws 2001, ch. 114, § 310.

40-10A-311. Warrant to take physical custody of child.

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by Section 308(b).

(c) A warrant to take physical custody of a child must:

(1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) direct law enforcement officers to take physical custody of the child immediately; and

(3) provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

History: Laws 2001, ch. 114, § 311.

40-10A-312. Costs, fees and expenses.

(a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care expenses during the course of the proceedings, unless

the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs or expenses against a state unless authorized by law other than the Uniform Child-Custody Jurisdiction and Enforcement Act.

History: Laws 2001, ch. 114, § 312.

40-10A-313. Recognition and enforcement.

A court of this state shall accord full faith and credit to an order issued by another state and consistent with the Uniform Child-Custody Jurisdiction and Enforcement Act which enforces a child-custody determination by a court of another state, unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under Article 2 of that act.

History: Laws 2001, ch. 114, § 313.

40-10A-314. Appeals.

An appeal may be taken from a final order in a proceeding under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Section 204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

History: Laws 2001, ch. 114, § 314.

40-10A-315. Role of prosecutor or public official.

(a) In a case arising under the Uniform Child-Custody Jurisdiction and Enforcement Act or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resort to a proceeding under Article 3 of the Uniform Child-Custody Jurisdiction and Enforcement Act or any other available civil proceeding, to locate a child, obtain the return of a child or enforce a child-custody determination if there is:

(1) an existing child-custody determination;

(2) a request to do so from a court in a pending child-custody proceeding;

(3) a reasonable belief that a criminal statute has been violated; or

(4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A prosecutor or appropriate public official acting under this section acts on behalf of the court and may not represent any party.

History: Laws 2001, ch. 114, § 315.

40-10A-316. Role of law enforcement.

At the request of a prosecutor or other appropriate public official acting under Section 315, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under Section 315.

History: Laws 2001, ch. 114, § 316.

40-10A-317. Costs and expenses.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under Section 315 or 316.

History: Laws 2001, ch. 114, § 317.

ARTICLE 4
MISCELLANEOUS PROVISIONS

40-10A-401. Application and construction.

In applying and construing the Uniform Child-Custody Jurisdiction and Enforcement Act [40-10A-101 to 40-10A-403 NMSA 1978], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: Laws 2001, ch. 114, § 401.

40-10A-402. Severability clause.

If any provision of the Uniform Child-Custody Jurisdiction and Enforcement Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act which can be given effect without the invalid provision or application and to this end the provisions of the act are severable.

History: Laws 2001, ch. 114, § 402.

40-10A-403. Transitional provision.

A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody determination which was commenced before the effective date of the Uniform Child-Custody Jurisdiction and Enforcement Act is governed by the law in effect at the time the motion or other request was made.

History: Laws 2001, ch. 114, § 403.

ARTICLE 10B
Kinship Guardianship

40-10B-1. Short title.

Chapter 40, Article 10B NMSA 1978 may be cited as the "Kinship Guardianship Act".

History: Laws 2001, ch. 167, § 1; 2020, ch. 51, § 1.

40-10B-2. Repealed.

History: Laws 2001, ch. 167, § 2; repealed by Laws 2020, ch. 51, § 10.

40-10B-3. Definitions.

As used in the Kinship Guardianship Act:

A. "caregiver" means an adult, who is not a parent of a child, with whom a child resides and who provides that child with the care, maintenance and supervision consistent with the duties and responsibilities of a parent of the child;

B. "child" means an individual who is a minor;

C. "department" means the children, youth and families department;

D. "guardian" means a person appointed as a guardian by a court or Indian tribal authority;

E. "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;

F. "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;

G. "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;

H. "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;

I. "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 of the interior 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 [32A-28-1 to 32A-28-42 NMSA 1978], "Indian tribe" also includes those tribal officials and staff who are responsible for child welfare and social services matters;

J. "kinship" means the relationship that exists between a child and a relative of the child, a godparent, a member of the child's tribe or clan or an adult with whom the child has a significant bond;

K. "parent" means a biological or adoptive parent of a child whose parental rights have not been terminated and includes an individual identified as a parent under the New Mexico Uniform Parentage Act [40-11A-101 to 40-11A-903 NMSA 1978]; and

L. "relative" means an individual related to a child as a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any person denoted by the prefix "grand" or "great", or the spouse or former spouse of the persons specified.

History: Laws 2001, ch. 167, § 3; 2020, ch. 51, § 2; 2023, ch. 90, § 22.

40-10B-4. Jurisdiction and venue.

A. The district court has jurisdiction of proceedings pursuant to the Kinship Guardianship Act.

B. Proceedings pursuant to the Kinship Guardianship Act shall be in the district court of the county of the child's legal residence or the county where the child resides, if different from the county of legal residence.

History: Laws 2001, ch. 167, § 4.

40-10B-5. Petition; who may file; contents.

A. A petition seeking the appointment of a guardian pursuant to the Kinship Guardianship Act may be filed only by:

(1) a kinship caregiver;

(2) a caregiver, who has reached the age of twenty-one, with whom no kinship with the child exists who has been nominated to be guardian of the child by the child, and the child has reached the age of fourteen;

(3) a caregiver designated formally or informally by a parent in writing if the designation indicates on its face that the parent signing understands:

(a) the purpose and effect of the guardianship;

(b) that the parent has the right to be served with the petition and notices of hearings in the action; and

(c) that the parent may appear in court to contest the guardianship; or

(4) a caregiver with whom the department has placed the child pursuant to the Children's Code.

B. A petition seeking the appointment of a guardian shall be verified by the petitioner and allege the following with respect to the child:

(1) facts that, if proved, will meet the requirements of Subsection B of Section 40-10B-8 NMSA 1978;

(2) the date and place of birth of the child, if known, and if not known, the reason for the lack of knowledge;

(3) the legal residence of the child and the place where the child resides, if different from the legal residence;

(4) the name and address of the petitioner;

(5) the kinship, if any, between the petitioner and the child;

(6) the names and addresses of the parents of the child;

(7) the names and addresses of persons having legal custody of the child;

(8) the existence of any matters pending involving the custody of the child;

(9) a statement that the petitioner agrees to accept the duties and responsibilities of guardianship;

(10) the existence of any matters pending pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978 and, if so, a statement that the department consents to the relief requested in the petition;

(11) whether the child is an Indian child or there is reason to know that the child is an Indian child, and subject to provisions of the Indian Family Protection Act and, if so:

(a) the Indian child's tribe;

(b) the tribal affiliations of the Indian child's parents; and

(c) active efforts made to comply with the notice requirements pursuant to the Indian Family Protection Act, including results of the contact and the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the Indian child's tribe shall be attached as exhibits to the petition; and

(12) other facts in support of the guardianship sought.

History: Laws 2001, ch. 167, § 5; 2015, ch. 28, § 1; 2022, ch. 41, § 69; 2023, ch. 90, § 23.

40-10B-6. Service of petition; notice; parties.

A. The court shall set a date for hearing on the petition, which date shall be no less than thirty and no more than ninety days from the date of filing the petition.

B. The petition and a notice of the hearing shall be served upon:

(1) the department if there is any pending matter relating to the child pursuant to the provisions of the Children's Code [Chapter 32A NMSA 1978];

(2) the child if the child has reached the age of fourteen;

(3) the parents of the child;

(4) a person having custody of the child or visitation rights pursuant to a court order; and

(5) if the child is an Indian child or there is reason to know the child is an Indian child subject to the provisions of the Indian Family Protection Act [32A-28-1 to 32A-28-42 NMSA 1978], the appropriate Indian tribe and any "Indian custodian", together with a notice of pendency of the guardianship proceedings, pursuant to the provisions of the Indian Family Protection Act.

C. Service of process required by Subsection A of this section shall be made in accordance with the requirements for giving notice of a hearing pursuant to Subsection A of Section 45-1-401 NMSA 1978.

D. The persons required to be served pursuant to Subsection B of this section have a right to file a response as parties to this action. Other persons may intervene pursuant to Rule 1-024 NMRA.

History: Laws 2001, ch. 167, § 6; 2015, ch. 28, § 2; 2022, ch. 41, § 70; 2023, ch. 90, § 24.

40-10B-7. Temporary guardianship pending hearing.

A. After the filing of the petition, upon motion of the petitioner or a person required to be served pursuant to Subsection B of Section 40-10B-6 NMSA 1978, or upon its own motion, the court may appoint a temporary guardian to serve for not more than one hundred eighty days or until the case is decided on the merits, whichever occurs first.

B. A motion for temporary guardianship shall be heard within twenty days of the date the motion is filed. The motion and notice of hearing shall be served on all persons required to be served pursuant to Subsection B of Section 40-10B-6 NMSA 1978.

C. An order pursuant to Subsection A of this section may be entered ex parte upon good cause shown. If the order is entered ex parte, a copy of the order shall be served on the persons required to be served pursuant to Subsection B of Section 40-10B-6 NMSA 1978. If a person files an objection to the order, the court immediately shall schedule a hearing to be held within ten days of the date the objection is filed. Notice of the hearing shall be given to the petitioner and all persons required to be served pursuant to Subsection B of Section 40-10B-6 NMSA 1978.

History: Laws 2001, ch. 167, § 7; 2023, ch. 90, § 25.

40-10B-8. Hearing; elements of proof; burden of proof; judgment; child support.

A. Upon hearing, if the court finds that a qualified person seeks appointment, the venue is proper, the required notices have been given, the requirements of Subsection B of this section have been proved and the best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will serve the best interests of the minor.

B. A guardian may be appointed pursuant to the Kinship Guardianship Act only if:

(1) a parent of the child is living and has consented in writing to the appointment of a guardian and the consent has not been withdrawn;

(2) a parent of the child is living but all parental rights in regard to the child have been terminated or suspended by prior court order; or

(3) the child has resided with the petitioner without the parent for a period of ninety days or more immediately preceding the date the petition is filed and a parent having legal custody of the child is currently unwilling or unable to provide adequate care, maintenance and supervision for the child or there are extraordinary circumstances; and

(4) no guardian of the child is currently appointed pursuant to a provision of the Uniform Probate Code.

C. The burden of proof shall be by clear and convincing evidence.

D. As part of a judgment entered pursuant to the Kinship Guardianship Act, the court may order a parent to pay the reasonable costs of support and maintenance of the child that the parent is financially able to pay. The court may use the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate a reasonable payment.

E. The court may order visitation between a parent and child to maintain or rebuild a parent-child relationship if the visitation is in the best interests of the child.

History: Laws 2001, ch. 167, § 8; 2015, ch. 28, § 3; 2020, ch. 51, § 3; 2023, ch. 90, § 26.

40-10B-9. Guardian ad litem; appointment.

A. In a proceeding to appoint a guardian pursuant to the Kinship Guardianship Act, the court may appoint a guardian ad litem for the child upon the motion of a party or solely in the court's discretion. The court shall appoint a guardian ad litem if a parent of the child is participating in the proceeding and objects to the appointment requested.

B. In a proceeding in which a parent of the child has petitioned for the revocation of a guardianship established pursuant to the Kinship Guardianship Act and the guardian objects to the revocation, the court shall appoint a guardian ad litem.

C. The court may order all or some of the parties to a proceeding to pay a reasonable fee of a guardian ad litem. If all of the parties are indigent, the court may award a reasonable fee to the guardian ad litem to be paid out of funds of the court.

History: Laws 2001, ch. 167, § 9.

40-10B-10. Guardian ad litem; powers and duties.

A guardian ad litem appointed by the court in a proceeding pursuant to the Kinship Guardianship Act shall:

A. in connection with a petition for guardianship, make a diligent investigation of the circumstances surrounding the petition, including visiting the child in the home, interviewing the person proposed as guardian and interviewing the parents of the child if available;

B. in connection with a petition or motion for revocation of a guardianship, recommend an appropriate transition plan in the event the guardianship is revoked; and

C. at a hearing held in connection with proceedings described in Subsection A or B of this section, report to the court concerning the best interests of the child and the child's position on the requested relief.

History: Laws 2001, ch. 167, § 10.

40-10B-11. Nomination objection by child.

In a proceeding for appointment of a guardian pursuant to the Kinship Guardianship Act:

A. the court shall appoint a person nominated by a child who has reached the age of fourteen unless the court finds the nomination contrary to the best interests of the child; and

B. the court shall not appoint a person as guardian if a child who has reached the age of fourteen files a written objection in the proceeding before the person accepts

appointment as guardian unless the court makes a specific finding that it is in the best interest of the child.

History: Laws 2001, ch. 167, § 11; 2023, ch. 90, § 27.

40-10B-12. Revocation of guardianship.

A. Any person, including a child who has reached the age of fourteen, may move for revocation of a guardianship created pursuant to the Kinship Guardianship Act. The person requesting revocation shall attach to the motion a transition plan proposed to facilitate the reintegration of the child into the home of a parent or a new guardian. A transition plan shall take into consideration the child's age, development and any bond with the guardian.

B. If the court finds that a preponderance of the evidence proves a change in circumstances and the revocation is in the best interests of the child, it shall grant the motion and:

(1) adopt a transition plan proposed by a party or the guardian ad litem;

(2) propose and adopt its own transition plan; or

(3) order the parties to develop a transition plan by consensus if they will agree to do so.

History: Laws 2001, ch. 167, § 12; 2023, ch. 90, § 28.

40-10B-13. Rights and duties of guardian.

A. A guardian appointed for a child pursuant to the Kinship Guardianship Act has the legal rights and duties of a parent except the right to consent to adoption of the child and except for parental rights and duties that the court orders retained by a parent.

B. Unless otherwise ordered by the court, a guardian appointed pursuant to the Kinship Guardianship Act has authority to make all decisions regarding visitation between a parent and the child.

C. A certified copy of the court order appointing a guardian pursuant to the Kinship Guardianship Act shall be satisfactory proof of the authority of the guardian, and letters of guardianship need not be issued.

History: Laws 2001, ch. 167, § 13.

40-10B-14. Continuing jurisdiction of the court.

The court appointing a guardian pursuant to the Kinship Guardianship Act retains continuing jurisdiction of the matter.

History: Laws 2001, ch. 167, § 14.

40-10B-15. Caregiver's authorization affidavit.

A. A caregiver who executes a caregiver's authorization affidavit substantially in the form contained in Subsection J of this section by completing Items 1 through 4 of the form and who subscribes and swears to it before a notary public, is authorized to:

(1) enroll the named child in early intervention services, child development programs, headstart, preschool or a kindergarten through grade twelve school;

(2) consent to medical care, including school-related medical care, immunizations, sports physical examinations, dental care and mental health care; and

(3) be the authorized contact person for school-related purposes.

B. A caregiver who is a relative of the child, who executes a caregiver's authorization affidavit substantially in the form set forth in Subsection J of this section by completing Items 1 through 7 and who subscribes and swears to the affidavit before a notary public, has the same authority to authorize medical care, dental care and mental health care for the child as a guardian appointed pursuant to the Kinship Guardianship Act.

C. A caregiver's authorization affidavit executed pursuant to this section is not valid for more than one year after the date of its execution.

D. The decision of a caregiver to consent to or refuse medical, dental or mental health care pursuant to a caregiver's authorization affidavit is superseded by a contravening decision of a parent or other person having legal custody of the child if the contravening decision does not jeopardize the life, health or safety of the child.

E. No person who acts in good faith reliance on a caregiver's authorization affidavit to provide medical, dental or mental health care to a child without actual knowledge of facts contrary to those stated in the affidavit is subject to criminal culpability, civil liability or professional disciplinary action if the affidavit complies with the requirements of this section. The foregoing exclusions apply even though a parent having parental rights or person having legal custody of the child has contrary wishes as long as the provider of the care has no actual knowledge of the contrary wishes.

F. A person who relies upon a caregiver's authorization affidavit is under no duty to make further inquiry or investigation.

G. If a child stops living with the caregiver, the caregiver shall give notice of that fact to a school, early intervention services provider, child development program provider, headstart provider, preschool or kindergarten through grade twelve school, medical or dental health care provider, mental health care provider, health insurer or other person who has been given a copy of the caregiver's authorization affidavit.

H. A caregiver's authorization affidavit is invalid unless it contains the warning statement set out in the form contained in Subsection J of this section in not less that ten-point boldface type, or a reasonable equivalent thereof, enclosed in a box with three-point rule lines.

I. As used in this section, "school-related medical care" means medical care that is required by the state or a local government authority as a condition for school enrollment.

J. The caregiver's authorization affidavit shall be in substantially the following form:

"Caregiver's Authorization Affidavit"

Use of this affidavit is authorized by the Kinship Guardianship Act.

Instructions:

A. Completion of Items 1-4 and the signing of the affidavit is sufficient to authorize the caregiver to:

(1) enroll a minor in early intervention services, child development programs, headstart, preschool or a kindergarten through grade twelve school ("school");

(2) consent to medical care, including school-related medical care, immunizations, sports physical examinations, dental care and mental health care; and

(3) be the authorized contact person for school-related purposes.

B. Completion of Items 5-7 is additionally required to authorize any other medical care.

Print clearly:

The minor named below lives in my home and I am 18 years of age or older.

1. Name of minor: _____.

2. Minor's birth date: _____.

3. My name (adult giving authorization): _____.

4. My home address: _____.

5. Check one or both (for example, if one parent was advised and the other cannot be located):

( ) I have advised the parent(s) or other person(s) having legal custody of the minor of my intent to authorize medical care, and have received no objection.

( ) I am unable to contact the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.

6. My date of birth: _____.

7. My NM driver's license or other identification card number: _____.

WARNING: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment or both.

I declare under penalty of perjury under the laws of the state of New Mexico that the foregoing is true and correct.

Signed: _____

The foregoing affidavit was subscribed, sworn to and acknowledged before me this _____ day of _____, 20_____, by _____.

My commission expires: _____ _____

Notary Public

Notices:

1. This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody and control of the minor and does not mean that the caregiver has legal custody of the minor.

2. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

3. This affidavit is not valid for more than one year after the date on which it is executed.

Additional Information:

TO CAREGIVERS:

1. If the minor stops living with you, you are required to notify any school, early intervention services provider, child development program provider, headstart provider, preschool or kindergarten through grade twelve school, medical or dental health care provider, mental health care provider, health insurer or other person to whom you have given this affidavit.

2. If you do not have the information requested in Item 7, provide another form of identification such as your social security number or medicaid number.

TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS:

1. No person who acts in good faith reliance upon a caregiver's authorization affidavit to provide medical, dental or mental health care, without actual knowledge of facts contrary to those stated on the affidavit, is subject to criminal liability or to civil liability to any person, or is subject to professional disciplinary action, for such reliance if the applicable portions of the form are completed.

2. This affidavit does not confer dependency for health care coverage purposes.

History: Laws 2001, ch. 167, § 15; 2017, ch. 62, § 1.

40-10B-16. Repealed.

History: 1978 Comp., § 40-10B-16, as enacted by Laws 2020, ch. 51, § 4; repealed by Laws 2023, ch. 90, § 29.

40-10B-17. Repealed.

History: 1978 Comp., § 40-10B-17, as enacted by Laws 2020, ch. 51, § 5; repealed by Laws 2023, ch. 90, § 29.

40-10B-18. Repealed.

History: 1978 Comp., § 40-10B-18, as enacted by Laws 2020, ch. 51, § 6; repealed by Laws 2023, ch. 90, § 29.

40-10B-19. Repealed.

History: 1978 Comp., § 40-10B-19, as enacted by Laws 2020, ch. 51, § 7; repealed by Laws 2023, ch. 90, § 29.

40-10B-20. Repealed.

History: 1978 Comp., § 40-10B-20, as enacted by Laws 2020, ch. 51, § 8; repealed by Laws 2023, ch. 90, § 29.

40-10B-21. Repealed.

History: 1978 Comp., § 40-10B-21, as enacted by Laws 2020, ch. 51, § 9; repealed by Laws 2023, ch. 90, § 29.

ARTICLE 10C
Uniform Child Abduction Prevention

40-10C-1. Short title.

This act [40-10C-1 to 40-10C-12 NMSA 1978] may be cited as the "Uniform Child Abduction Prevention Act".

History: Laws 2013, ch. 156, § 1.

40-10C-2. Definitions.

As used in the Uniform Child Abduction Prevention Act:

A. "abduction" means the wrongful removal or wrongful retention of a child;

B. "child" means an unemancipated individual who is less than eighteen years of age;

C. "child-custody determination" means a judgment, decree or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. "Child-custody determination" includes a permanent, temporary, initial or modification order;

D. "child-custody proceeding" means a proceeding in which legal custody, physical custody or visitation with respect to a child is at issue. "Child-custody proceeding" includes a proceeding for divorce, dissolution of marriage, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights or protection from domestic violence;

E. "court" means an entity authorized pursuant to the law of a state to establish, enforce or modify a child-custody determination;

F. "petition" includes a motion or its equivalent;

G. "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

H. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the

jurisdiction of the United States. "State" includes a federally recognized Indian nation, tribe or pueblo;

I. "travel document" means records relating to a travel itinerary, including travel tickets, passes, reservations for transportation or accommodations. "Travel document" does not include a passport or visa;

J. "wrongful removal" means the taking of a child, which taking breaches rights of custody or visitation given or recognized pursuant to the law of this state; and

K. "wrongful retention" means the keeping or concealing of a child, which keeping or concealing breaches rights of custody or visitation given or recognized pursuant to the law of this state.

History: Laws 2013, ch. 156, § 2.

40-10C-3. Cooperation and communication among courts.

Sections 40-10A-110 through 40-10A-112 NMSA 1978 apply to cooperation and communication among courts in proceedings pursuant to the Uniform Child Abduction Prevention Act.

History: Laws 2013, ch. 156, § 3.

40-10C-4. Actions for abduction prevention measures.

A. A court on its own motion may order abduction prevention measures in a child-custody proceeding if the court finds that the evidence establishes a credible risk of abduction of the child.

B. A party to a child-custody determination or another individual or entity having a right pursuant to the law of this state or any other state to seek a child-custody determination for the child may file a petition seeking abduction prevention measures to protect the child pursuant to the Uniform Child Abduction Prevention Act.

C. A prosecutor or public authority designated pursuant to Section 40-10A-315 NMSA 1978 may seek a warrant to take physical custody of a child pursuant to Section 9 of the Uniform Child Abduction Prevention Act or other appropriate prevention measures.

History: Laws 2013, ch. 156, § 4.

40-10C-5. Jurisdiction.

A. A petition pursuant to the Uniform Child Abduction Prevention Act may be filed only in a court that has jurisdiction to make a child-custody determination with respect to

the child at issue pursuant to the Uniform Child-Custody Jurisdiction and Enforcement Act [40-10A-101 to 40-10A-403 NMSA 1978].

B. A court of this state has temporary emergency jurisdiction pursuant to Section 40-10A-204 NMSA 1978 if the court finds a credible risk of abduction.

History: Laws 2013, ch. 156, § 5.

40-10C-6. Contents of petition.

A petition pursuant to the Uniform Child Abduction Prevention Act shall be verified and include a copy of any existing child-custody determination, if available. The petition shall specify the risk factors for abduction, including the relevant factors described in Section 7 of the Uniform Child Abduction Prevention Act. Subject to the provisions of Subsection (e) of Section 40-10A-209 NMSA 1978, and if the information is reasonably ascertainable, the petition shall contain:

A. the name, date of birth and gender of the child;

B. the customary address and current physical location of the child;

C. the identity, customary address and current physical location of the respondent;

D. a statement of whether a prior action to prevent abduction or domestic violence has been filed by a party or other individual or entity having custody of the child and the date, location and disposition of the action;

E. a statement of whether a party to the proceeding has been arrested for a crime related to domestic violence, stalking or child abuse or neglect and the date, location and disposition of the case;

F. a statement of whether a party or other individual having custody of the child has sought the assistance of a domestic violence shelter and, if known, the approximate date and name of the person seeking the assistance of the shelter; and

G. any other information required to be submitted to the court for a child-custody determination pursuant to Section 40-10A-209 NMSA 1978.

History: Laws 2013, ch. 156, § 6.

40-10C-7. Factors to determine risk of abduction.

A. In determining whether there is a credible risk of abduction of a child, the court shall consider any evidence that the petitioner or respondent:

(1) has previously abducted or attempted to abduct the child;

(2) has threatened to abduct the child;

(3) has recently engaged in activities that may indicate a planned abduction, including:

(a) abandoning employment;

(b) selling a primary residence;

(c) terminating a lease;

(d) closing bank or other financial management accounts, liquidating assets, hiding or destroying financial documents or conducting any unusual financial activities;

(e) applying for a passport or visa or obtaining travel documents for the respondent, a family member or the child; or

(f) seeking to obtain the child's birth certificate or school or medical records;

(4) has engaged in domestic violence, stalking or child abuse or neglect;

(5) has refused to follow a child-custody determination;

(6) lacks strong familial, financial, emotional or cultural ties to the state or the United States;

(7) has strong familial, financial, emotional or cultural ties to another state or country;

(8) is likely to take the child to a country that:

(a) is not a party to the Hague Convention on the Civil Aspects of International Child Abduction and does not provide for the extradition of an abducting parent or for the return of an abducted child;

(b) is a party to the Hague Convention on the Civil Aspects of International Child Abduction but: 1) the Hague Convention on the Civil Aspects of International Child Abduction is not in force between the United States and that country; 2) the country is noncompliant according to the most recent compliance report issued by the United States department of state; or 3) the country lacks legal mechanisms for immediately and effectively enforcing a return order pursuant to the Hague Convention on the Civil Aspects of International Child Abduction;

(c) poses a risk that the child's physical or emotional health or safety would be endangered in the country because of specific circumstances relating to the child or because of human rights violations committed against children;

(d) has laws or practices that would: 1) enable the respondent, without due cause, to prevent the petitioner from contacting the child; 2) restrict the petitioner from freely traveling to or exiting from the country because of the petitioner's gender, nationality, marital status or religion; or 3) restrict the child's ability legally to leave the country after the child reaches the age of majority because of a child's gender, nationality or religion;

(e) is included by the United States department of state on a current list of state sponsors of terrorism;

(f) does not have an official United States diplomatic presence in the country; or

(g) is engaged in active military action or war, including a civil war, to which the child may be exposed;

(9) is undergoing a change in immigration or citizenship status that would adversely affect the respondent's ability to remain in the United States legally;

(10) has had an application for United States citizenship denied;

(11) has forged or presented misleading or false evidence on government forms or supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a federal social security card, a driver's license or other government-issued identification card or has made a misrepresentation to the United States government;

(12) has used multiple names to attempt to mislead or defraud; or

(13) has engaged in any other conduct the court considers relevant to the risk of abduction.

B. In the hearing on a petition pursuant to the Uniform Child Abduction Prevention Act, the court shall consider any evidence that the respondent believed in good faith that the respondent's conduct was necessary to avoid imminent harm to the child or respondent and any other evidence that may be relevant to whether the respondent may be permitted to remove or retain the child.

C. In applying the provisions of the Uniform Child Abduction Prevention Act, a court shall consider that parents abduct their children before as well as during and after custody litigation. The court shall also consider that some of the risk factors set forth in Subsection A of this section involve the same activities that might be undertaken by a victim of domestic violence who is trying to relocate or flee to escape violence. If the evidence shows that the parent preparing to leave is fleeing domestic violence, the court shall consider that any order restricting departure or transferring custody may pose safety issues for the victim and the child.

History: Laws 2013, ch. 156, § 7.

40-10C-8. Provisions and measures to prevent abduction.

A. If a petition is filed pursuant to the Uniform Child Abduction Prevention Act, the court may enter an order that shall include:

(1) the basis for the court's exercise of jurisdiction;

(2) the manner in which notice and opportunity to be heard were given to the persons entitled to notice of the proceeding;

(3) a detailed description of each party's custody and visitation rights and residential arrangements for the child;

(4) a provision stating that a violation of the order may subject the party in violation to civil and criminal penalties; and

(5) identification of the child's country of habitual residence at the time of the issuance of the order.

B. If at a hearing on a petition pursuant to the Uniform Child Abduction Prevention Act or on the court's own motion, the court, after reviewing the evidence, finds a credible risk of abduction of the child, the court shall enter an abduction prevention order. The order shall include the provisions required by Subsection A of this section and measures and conditions, including those set forth in Subsections C, D and E of this section, that are reasonably calculated to prevent abduction of the child, giving due consideration to the custody and visitation rights of the parties. The court shall consider the age of the child, the potential harm to the child from an abduction, the legal and practical difficulties of returning the child to the jurisdiction if abducted and the reasons for the potential abduction, including evidence of domestic violence, stalking or child abuse or neglect.

C. An abduction prevention order may include one or more of the following:

(1) an imposition of travel restrictions that requires that a party traveling with the child outside a designated geographical area provide the other party with the following:

(a) the travel itinerary of the child;

(b) a list of physical addresses and telephone numbers at which the child can be reached at specified times; and

(c) copies of all travel documents;

(2) a prohibition of the respondent directly or indirectly:

(a) removing the child from this state, the United States or another geographic area without permission of the court or the petitioner's written consent;

(b) removing or retaining the child in violation of a child-custody determination;

(c) removing the child from school or a child care or similar facility; or

(d) approaching the child at any location other than a site designated for supervised visitation;

(3) a requirement that a party register the order in another state as a prerequisite to allowing the child to travel to that state;

(4) with regard to the child's passport:

(a) a direction that the petitioner place the child's name in the United States department of state's child passport issuance alert program;

(b) a requirement that the respondent surrender to the court or the petitioner's attorney any United States or foreign passport issued in the child's name, including a passport issued in the name of both the parent and the child; and

(c) a prohibition upon the respondent from applying on behalf of the child for a new or replacement passport or visa;

(5) as a prerequisite to exercising custody or visitation, a requirement that the respondent provide:

(a) to the United States department of state office of children's issues and the relevant foreign consulate or embassy, an authenticated copy of the order detailing passport and travel restrictions for the child;

(b) to the court: 1) proof that the respondent has provided the information in Subparagraph (a) of this paragraph; and 2) an acknowledgment in a record from the relevant foreign consulate or embassy that no passport application has been made, nor passport issued, on behalf of the child;

(c) to the petitioner, proof of registration with the United States embassy or other United States diplomatic presence in the destination country and with the central authority for the Hague Convention on the Civil Aspects of International Child Abduction, if that convention is in effect between the United States and the destination country, unless one of the parties objects; and

(d) a written waiver pursuant to the Privacy Act of 1974, 5 U.S.C. Section 552a, as amended, with respect to any document, application or other information pertaining to the child authorizing its disclosure to the court and the petitioner; and

(6) upon the petitioner's request, a requirement that the respondent obtain an order from the relevant foreign country containing terms identical to the child-custody determination issued in the United States.

D. In an abduction prevention order, the court may impose conditions on the exercise of custody or visitation that:

(1) limit visitation or require that visitation with the child by the respondent be supervised until the court finds that supervision is no longer necessary and order the respondent to pay the costs of supervision;

(2) require the respondent to post a bond or provide other security in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to pay for the reasonable expenses of recovery of the child, including reasonable attorney fees and costs if there is an abduction; and

(3) require the respondent to obtain education on the potentially harmful effects to the child from abduction.

E. To prevent imminent abduction of a child, a court may:

(1) issue a warrant to take physical custody of the child pursuant to Section 9 of the Uniform Child Abduction Prevention Act;

(2) direct the use of law enforcement to take any action reasonably necessary to locate the child, obtain return of the child or enforce a custody determination pursuant to the Uniform Child Abduction Prevention Act; or

(3) grant any other relief allowed pursuant to the law of this state other than the Uniform Child Abduction Prevention Act.

F. The remedies provided in the Uniform Child Abduction Prevention Act are cumulative and do not affect the availability of other remedies to prevent abduction.

G. A court shall not require the disclosure of a confidential communication that is protected by the Victim Counselor Confidentiality Act [31-25-1 to 31-25-6 NMSA 1978], the physician-patient privilege or the psychotherapist-patient privilege.

History: Laws 2013, ch. 156, § 8.

40-10C-9. Warrant to take physical custody of child.

A. If a petition pursuant to the Uniform Child Abduction Prevention Act contains allegations that the child is imminently likely to be wrongfully removed and the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed, the court may issue an ex parte warrant to take physical custody of the child.

B. The respondent on a petition pursuant to Subsection A of this section shall be afforded an opportunity to be heard at the earliest possible time after the ex parte warrant is executed, but not later than the next judicial day unless a hearing on that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

C. An ex parte warrant pursuant to Subsection A of this section to take physical custody of a child shall:

(1) recite the facts upon which a determination of a credible risk of imminent wrongful removal of the child is based;

(2) direct law enforcement officers to take physical custody of the child immediately;

(3) state the date and time for the hearing on the petition; and

(4) provide for the safe interim placement of the child pending further order of the court.

D. If feasible, before issuing a warrant and before determining the placement of the child after the warrant is executed, the court may order a search of the relevant databases of the national crime information center system and similar state databases to determine if either the petitioner or respondent has a history of domestic violence, stalking or child abuse or neglect.

E. The petition and warrant shall be served on the respondent when or immediately after the child is taken into physical custody.

F. A warrant to take physical custody of a child, issued by this state or another state, is enforceable throughout this state. If the court finds that a less intrusive remedy will not be effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances, the court may authorize law enforcement officers to make a forcible entry at any hour.

G. If the court finds, after a hearing, that a petitioner sought an ex parte warrant pursuant to Subsection A of this section for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorney fees, costs and expenses.

H. The Uniform Child Abduction Prevention Act does not affect the availability of relief allowed pursuant to the law of this state other than that act.

History: Laws 2013, ch. 156, § 9.

40-10C-10. Duration of abduction prevention order.

An abduction prevention order remains in effect until the earliest of:

A. the time stated in the order;

B. the emancipation of the child;

C. the child's attaining eighteen years of age; or

D. the time the order is modified, revoked, vacated or superseded by a court with jurisdiction pursuant to Sections 40-10A-201 through 40-10A-203 NMSA 1978.

History: Laws 2013, ch. 156, § 10.

40-10C-11. Uniformity of application and construction.

In applying and construing the Uniform Child Abduction Prevention Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: Laws 2013, ch. 156, § 11.

40-10C-12. Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Child Abduction Prevention Act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

History: Laws 2013, ch. 156, § 12.

ARTICLE 10D
Deployed Parents Custody and Visitation

40-10D-1. Short title.

This act [40-10D-1 to 40-10D-9 NMSA 1978] may be cited as the "Deployed Parents Custody and Visitation Act".

History: Laws 2014, ch. 4, § 1.

40-10D-2. Definitions.

As used in the Deployed Parents Custody and Visitation Act:

A. "adult" means an individual who has attained eighteen years of age or is an emancipated minor;

B. "caretaking authority" means the right to live with and care for a child on a day-to-day basis. "Caretaking authority" includes physical custody, parenting time, right to access and visitation;

C. "child" means:

(1) an unemancipated individual who has not attained eighteen years of age; or

(2) an adult son or daughter by birth or adoption, or under law of this state other than the Deployed Parents Custody and Visitation Act, who is the subject of a court order concerning custodial responsibility;

D. "court" means a tribunal, including an administrative agency, authorized under law of this state other than the Deployed Parents Custody and Visitation Act, to make, enforce or modify a decision regarding custodial responsibility;

E. "custodial responsibility" includes all powers and duties relating to caretaking authority and decision-making authority for a child. "Custodial responsibility" includes physical custody, legal custody, parenting time, right to access, visitation and authority to grant limited contact with a child;

F. "decision-making authority" means the power to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities and travel. "Decision-making authority" does not include the power to make decisions that necessarily accompany a grant of caretaking authority;

G. "deploying parent" means a service member who is deployed or has been notified of impending deployment and is:

(1) a parent of a child under law of this state other than the Deployed Parents Custody and Visitation Act; or

(2) an individual who has custodial responsibility for a child under law of this state other than the Deployed Parents Custody and Visitation Act;

H. "deployment" means the movement or mobilization of a service member for more than ninety days but less than eighteen months pursuant to uniformed service orders that:

(1) are designated as unaccompanied;

(2) do not authorize dependent travel; or

(3) otherwise do not permit the movement of family members to the location to which the service member is deployed;

I. "family member" means a sibling, aunt, uncle, cousin, stepparent or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state other than the Deployed Parents Custody and Visitation Act;

J. "limited contact" means the authority of a nonparent to visit a child for a limited time. "Limited contact" includes authority to take the child to a place other than the residence of the child;

K. "nonparent" means an individual other than a deploying parent or other parent;

L. "other parent" means an individual who, in common with a deploying parent, is:

(1) a parent of a child under law of this state other than the Deployed Parents Custody and Visitation Act; or

(2) an individual who has custodial responsibility for a child under law of this state other than the Deployed Parents Custody and Visitation Act;

M. "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

N. "return from deployment" means the conclusion of a service member's deployment as specified in uniformed service orders;

O. "service member" means a member of a uniformed service;

P. "sign" means with present intent to authenticate or adopt a record to:

(1) execute or adopt a tangible symbol; or

(2) attach to or logically associate with the record an electronic symbol, sound or process;

Q. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States; and

R. "uniformed service" means:

(1) active and reserve components of the army, navy, air force, space force, marine corps or coast guard of the United States;

(2) the United States merchant marine;

(3) the commissioned corps of the United States public health service;

(4) the commissioned corps of the national oceanic and atmospheric administration of the United States; or

(5) the national guard of a state.

History: Laws 2014, ch. 4, § 2; 2024, ch. 21, § 6.

40-10D-3. Residence unchanged by deployment.

A. If a court has issued a temporary order regarding custodial responsibility pursuant to the Deployed Parents Custody and Visitation Act, the residence of the deploying parent is not considered to be changed by reason of the deployment for the purposes of the Uniform Child-Custody Jurisdiction and Enforcement Act [40-10A-101 to 40-10A-403 NMSA 1978] during the deployment.

B. If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to the Deployed Parents Custody and Visitation Act, the residence of the deploying parent is not considered to be changed by reason of the deployment for the purposes of the Uniform Child-Custody Jurisdiction and Enforcement Act.

C. If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not considered to be changed by reason of the deployment for the purposes of the Uniform Child-Custody Jurisdiction and Enforcement Act.

History: Laws 2014, ch. 4, § 3.

40-10D-4. Notification required of deploying parent.

A. Except as otherwise provided in Subsection D of this section and subject to Subsection C of this section, a deploying parent shall notify in a record the other parent

of a pending deployment not later than seven days after receiving notice of deployment unless reasonably prevented from doing so by the circumstances of service.

B. Except as otherwise provided in Subsection D of this section and subject to Subsection C of this section, each parent shall provide in a record the other parent with a plan for fulfilling that parent's share of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after notification of deployment.

C. If a court order currently in effect prohibits disclosure of the address or contact information of the other parent, notification of deployment pursuant to Subsection A of this section or notification of a plan for custodial responsibility during deployment pursuant to Subsection B of this section may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

D. Notification in a record under Subsection A or B of this section is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.

History: Laws 2014, ch. 4, § 4.

40-10D-5. Duty to notify of change of address.

A. Except as otherwise provided in Subsection B of this section, an individual to whom custodial responsibility has been granted during deployment pursuant to the Deployed Parents Custody and Visitation Act shall notify the deploying parent and any other individual with custodial responsibility of a child of any change of the individual's mailing address or residence until the custodial responsibility is terminated.

B. If a court order currently in effect prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a notification pursuant to Subsection A of this section may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.

History: Laws 2014, ch. 4, § 5.

40-10D-6. General consideration in custody proceeding of parent’s military service.

In a proceeding for custodial responsibility of a child of a service member, a court shall not consider a parent's past deployment or possible future deployment in itself in determining the best interest of the child.

History: Laws 2014, ch. 4, § 6.

40-10D-7. Agreement addressing custodial responsibility during deployment; form of agreement.

A. The parents of a child may enter into a temporary agreement granting custodial responsibility during deployment under the Deployed Parents Custody and Visitation Act.

B. A temporary agreement pursuant to Subsection A of this section shall be:

(1) in writing; and

(2) signed by both parents and any nonparent to whom custodial responsibility is granted.

History: Laws 2014, ch. 4, § 7.

40-10D-8. Nature of authority created by agreement.

A. An agreement under the Deployed Parents Custody and Visitation Act is temporary and terminates pursuant to that act after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order. The agreement does not create an independent, continuing right to caretaking authority, decision-making authority or limited contact in an individual to whom custodial responsibility is given.

B. A nonparent who has caretaking authority, decision-making authority or limited contact by an agreement pursuant to the Deployed Parents Custody and Visitation Act has standing to enforce the agreement until it has been terminated by court order.

History: Laws 2014, ch. 4, § 8.

40-10D-9. Expedited hearing.

If a motion to grant custodial responsibility is filed pursuant to the Deployed Parents Custody and Visitation Act before a deploying parent deploys, the court shall conduct an expedited hearing.

History: Laws 2014, ch. 4, § 9.

ARTICLE 11
Uniform Parentage Act (Repealed.)

40-11-1. Repealed.

History: Laws 1986, ch. 47, § 1; repealed by Laws 2009, ch. 215, § 9.

40-11-2. Repealed.

History: Laws 1986, ch. 47, § 2; repealed by Laws 2009, ch. 215, § 9.

40-11-3. Repealed.

History: Laws 1986, ch. 47, § 3; repealed by Laws 2009, ch. 215, § 9.

40-11-4. Repealed.

History: Laws 1986, ch. 47, § 4; repealed by Laws 2009, ch. 215, § 9.

40-11-5. Repealed.

History: Laws 1986, ch. 47, § 5; 1989, ch. 56, § 1; 1993, ch. 287, § 3; 1997, ch. 237, § 17; repealed by Laws 2009, ch. 215, § 9.

40-11-6. Repealed.

History: Laws 1986, ch. 47, § 6; repealed by Laws 2009, ch. 215, § 9.

40-11-7. Repealed.

History: Laws 1986, ch. 47, § 7; repealed by Laws 2009, ch. 215, § 9.

40-11-8. Repealed.

History: Laws 1986, ch. 47, § 8; repealed by Laws 2009, ch. 215, § 9.

40-11-9. Repealed.

History: Laws 1986, ch. 47, § 9; 1993, ch. 287, § 4; repealed by Laws 2009, ch. 215, § 9.

40-11-10. Repealed.

History: Laws 1986, ch. 47, § 10; repealed by Laws 2009, ch. 215, § 9.

40-11-11. Repealed.

History: Laws 1986, ch. 47, § 11; 1993, ch. 287, § 5; repealed by Laws 2009, ch. 215, § 9.

40-11-12. Repealed.

History: Laws 1986, ch. 47, § 12; 1989, ch. 56, § 2; 1993, ch. 287, § 6; 1997, ch. 237, § 18; repealed by Laws 2009, ch. 215, § 9.

40-11-13. Repealed.

History: Laws 1986, ch. 47, § 13; 1989, ch. 56, § 3; repealed by Laws 2009, ch. 215, § 9.

40-11-14. Repealed.

History: Laws 1986, ch. 47, § 14; 1997, ch. 237, § 1; repealed by Laws 2009, ch. 215, § 9.

40-11-15. Repealed.

History: Laws 1986, ch. 47, § 15; 1989, ch. 56, § 4; 1993, ch. 287, § 7; 1997, ch. 237, § 20; 2001, ch. 215, § 1; 2004, ch. 41, § 4; repealed by Laws 2009, ch. 215, § 9.

40-11-16. Repealed.

History: Laws 1986, ch. 47, § 16; 1989, ch. 56, § 5; 2004, ch. 41, § 5; repealed by Laws 2009, ch. 215, § 9.

40-11-17. Repealed.

History: Laws 1986, ch. 47, § 17; repealed by Laws 2009, ch. 215, § 9.

40-11-18. Repealed.

History: Laws 1986, ch. 47, § 18; repealed by Laws 2009, ch. 215, § 9.

40-11-19. Repealed.

History: Laws 1986, ch. 47, § 19; repealed by Laws 2009, ch. 215, § 9.

40-11-20. Repealed.

History: Laws 1986, ch. 47, § 20; repealed by Laws 2009, ch. 215, § 9.

40-11-21. Repealed.

History: Laws 1986, ch. 47, § 21; repealed by Laws 2009, ch. 215, § 9.

40-11-22. Repealed.

History: Laws 1986, ch. 47, § 22; repealed by Laws 2009, ch. 215, § 9.

40-11-23. Repealed.

History: Laws 1986, ch. 47, § 23; 1989, ch. 56, § 6; 2004, ch. 41, § 6; repealed by Laws 2009, ch. 215, § 9.

ARTICLE 11A
New Mexico Uniform Parentage Act

ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS

40-11A-101. Short title.

Sections 1-101 through 9-903 of this act may be cited as the "New Mexico Uniform Parentage Act".

History: Laws 2009, ch. 215, § 1-101.

40-11A-102. Definitions.

As used in the New Mexico Uniform Parentage Act:

A. "acknowledged father" means a man who has established a father-child relationship pursuant to Article 3 of the New Mexico Uniform Parentage Act;

B. "adjudicated father" means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child;

C. "alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. "Alleged father" does not include:

(1) a presumed father;

(2) a man whose parental rights have been terminated or declared not to exist; or

(3) a male donor;

D. "assisted reproduction" means a method of causing pregnancy other than sexual intercourse. "Assisted reproduction" includes:

(1) intrauterine insemination;

(2) donation of eggs;

(3) donation of embryos;

(4) in-vitro fertilization and transfer of embryos; and

(5) intracytoplasmic sperm injection;

E. "bureau" means the vital records and health statistics bureau of the department of health;

F. "child" means a person of any age whose parentage may be determined pursuant to the New Mexico Uniform Parentage Act;

G. "commence" means to file the initial pleading seeking an adjudication of parentage in district court;

H. "determination of parentage" means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity pursuant to Article 3 of the New Mexico Uniform Parentage Act or adjudication by the court;

I. "donor" means a person who produces eggs or sperm used for assisted reproduction, whether or not for consideration. "Donor" does not include:

(1) a husband who provides sperm, or a wife who provides eggs, to be used for assisted reproduction by the wife;

(2) a woman who gives birth to a child by means of assisted reproduction; or

(3) a parent pursuant to Article 7 of the New Mexico Uniform Parentage Act;

J. "ethnic or racial group" means, for purposes of genetic testing, a recognized group that a person identifies as all or part of the person's ancestry or that is so identified by other information;

K. "genetic testing" means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. "Genetic testing" includes an analysis of one or a combination of the following:

(1) deoxyribonucleic acid; and

(2) blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins or red-cell enzymes;

L. "man" means a male person of any age;

M. "parent" means a person who has established a parent-child relationship pursuant to Section 2-201 of the New Mexico Uniform Parentage Act;

N. "parent-child relationship" means the legal relationship between a child and a parent of the child, including the mother-child relationship and the father-child relationship;

O. "paternity index" means the likelihood of paternity calculated by computing the ratio between:

(1) the likelihood that the tested man is the father, based on the genetic markers of the tested man, mother and child, conditioned on the hypothesis that the tested man is the father of the child; and

(2) the likelihood that the tested man is not the father, based on the genetic markers of the tested man, mother and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is of the same ethnic or racial group as the tested man;

P. "presumed father" means a man who, by operation of law pursuant to Section 2-204 of the New Mexico Uniform Parentage Act, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding;

Q. "probability of paternity" means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability;

R. "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

S. "signatory" means a person who signs or otherwise authenticates a record and is bound by its terms;

T. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States; and

U. "support-enforcement agency" means the human services department [health care authority department] designated pursuant to Section 27-2-27 NMSA 1978 as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV D of the federal Social Security Act and any other public official or agency authorized to seek:

(1) enforcement of support orders or laws relating to the duty of support;

(2) establishment or modification of child support;

(3) determination of parentage; or

(4) location of child-support obligors and their income and assets.

History: Laws 2009, ch. 215, § 1-102.

40-11A-103. Scope of act; choice of law.

A. The New Mexico Uniform Parentage Act applies to determination of parentage in New Mexico.

B. The district court shall apply the law of New Mexico to adjudicate the parent-child relationship. The applicable law does not depend on:

(1) the place of birth of the child; or

(2) the past or present residence of the child.

C. The New Mexico Uniform Parentage Act does not create, enlarge, modify or diminish parental rights or duties pursuant to the Children's Code [Chapter 32A NMSA 1978] or other law of New Mexico. The definition or use of terms in the New Mexico Uniform Parentage Act shall not be used to interpret, by analogy or otherwise, the same or other terms in the Adoption Act [Chapter 32A, Article 5 NMSA 1978] or other law of New Mexico.

History: Laws 2009, ch. 215, § 1-103.

40-11A-104. Jurisdiction.

The district court has jurisdiction to adjudicate parentage pursuant to the New Mexico Uniform Parentage Act. The provisions of the New Mexico Uniform Parentage Act shall not be used to expand personal jurisdiction of the district court over

nonresident persons in cases subject to the Uniform Interstate Family Support Act [Chapter 40, Article 6A NMSA 1978].

History: Laws 2009, ch. 215, § 1-104.

40-11A-105. Protection of participants.

Proceedings pursuant to the New Mexico Uniform Parentage Act are subject to other laws of New Mexico governing the health, safety, privacy and liberty of a child or other person who could be jeopardized by disclosure of identifying information, including address, telephone number, place of employment, social security number and the child's daycare facility and school.

History: Laws 2009, ch. 215, § 1-105.

40-11A-106. Determination of maternity.

Provisions of the New Mexico Uniform Parentage Act relating to determination of paternity apply to determinations of maternity insofar as possible.

History: Laws 2009, ch. 215, § 1-106.

ARTICLE 2
PARENT-CHILD RELATIONSHIP

40-11A-201. Establishment of parent-child relationship.

A. The mother-child relationship is established between a woman and a child by:

(1) the woman's having given birth to the child;

(2) an adjudication of the woman's maternity; or

(3) adoption of the child by the woman.

B. The father-child relationship is established between a man and a child by:

(1) an unrebutted presumption of the man's paternity of the child pursuant to Section 2-204 of the New Mexico Uniform Parentage Act;

(2) an effective acknowledgment of paternity by the man pursuant to Article 3 of the New Mexico Uniform Parentage Act, unless the acknowledgment has been rescinded or successfully challenged;

(3) an adjudication of the man's paternity;

(4) adoption of the child by the man; or

(5) the man's having consented to assisted reproduction by a woman pursuant to Article 7 of the New Mexico Uniform Parentage Act that resulted in the birth of the child.

History: Laws 2009, ch. 215, § 2-201.

40-11A-202. No discrimination based on marital status.

A child born to parents who are not married to each other has the same rights pursuant to the law as a child born to parents who are married to each other.

History: Laws 2009, ch. 215, § 2-202.

40-11A-203. Consequences of establishment of parentage.

Unless parental rights are terminated or extinguished by relinquishment and decree of adoption pursuant to the Children's Code [Chapter 32A NMSA 1978], a parent-child relationship established pursuant to the New Mexico Uniform Parentage Act applies for all purposes, except determinations of parental rights pursuant to the Children's Code or as otherwise provided by other law of New Mexico.

History: Laws 2009, ch. 215, § 2-203.

40-11A-204. Presumption of paternity.

A. A man is presumed to be the father of a child if:

(1) he and the mother of the child are married to each other and the child is born during the marriage;

(2) he and the mother of the child were married to each other and the child is born within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity or divorce or after a decree of separation;

(3) before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred days after its termination by death, annulment, declaration of invalidity or divorce or after a decree of separation;

(4) after the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:

(a) the assertion is in an acknowledgement of paternity on a form provided by the bureau that is filed with the bureau;

(b) he agreed to be and is named as the child's father on the child's birth certificate; or

(c) he promised in a record to support the child as his own; or

(5) for the first two years of the child's life, he resided in the same household with the child and openly held out the child as his own.

B. A presumption of paternity established pursuant to this section may be rebutted only by an adjudication pursuant to Article 6 of the New Mexico Uniform Parentage Act. Rebuttal of a presumption of paternity pursuant to the New Mexico Uniform Parentage Act does not apply to a presumption of paternity established pursuant to the Adoption Act [Chapter 32A, Article 5 NMSA 1978].

History: Laws 2009, ch. 215, § 2-204.

ARTICLE 3
VOLUNTARY ACKNOWLEDGMENT OF PATERNITY

40-11A-301. Acknowledgment of paternity.

The mother of a child and a man claiming to be the genetic father of the child may sign an acknowledgment of paternity with intent to establish the man's paternity.

History: Laws 2009, ch. 215, § 3-301.

40-11A-302. Execution of acknowledgment of paternity.

A. An acknowledgment of paternity shall:

(1) be on a form provided by the bureau;

(2) be signed or otherwise authenticated under penalty of perjury by the mother and by the man seeking to establish his paternity;

(3) state that the child whose paternity is being acknowledged:

(a) does not have a presumed father or has a presumed father whose full name is stated; and

(b) does not have another acknowledged or adjudicated father;

(4) state whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and

(5) state that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after two years.

B. An acknowledgment of paternity is void if it:

(1) states that another man is a presumed father, unless a denial of paternity signed or otherwise authenticated by the presumed father is filed with the bureau;

(2) states that another man is an acknowledged or adjudicated father; or

(3) falsely denies the existence of a presumed, acknowledged or adjudicated father of the child.

C. A presumed father may sign or otherwise authenticate an acknowledgment of paternity.

History: Laws 2009, ch. 215, § 3-302.

40-11A-303. Denial of paternity.

A presumed father may sign a denial of his paternity. The denial is valid only if:

A. an acknowledgment of paternity signed or otherwise authenticated by another man is filed pursuant to Section 3-305 of the New Mexico Uniform Parentage Act;

B. the denial is on a form provided by the bureau and is signed or otherwise authenticated under penalty of perjury; and

C. the presumed father has not previously:

(1) acknowledged his paternity, unless the previous acknowledgment has been rescinded pursuant to Section 3-307 of the New Mexico Uniform Parentage Act or successfully challenged pursuant to Section 3-308 of the New Mexico Uniform Parentage Act; or

(2) been adjudicated to be the father of the child.

History: Laws 2009, ch. 215, § 3-303.

40-11A-304. Rules for acknowledgment and denial of paternity.

A. An acknowledgment of paternity and a denial of paternity may be contained in a single document or may be signed in counterparts, and may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are filed.

B. An acknowledgment of paternity or a denial of paternity may be signed before or after the birth of the child.

C. Subject to Subsection A of this section, an acknowledgment of paternity or denial of paternity takes effect on the birth of the child or the filing of the document with the bureau, whichever occurs later.

D. An acknowledgment of paternity or denial of paternity signed by a minor is valid if it is otherwise in compliance with the New Mexico Uniform Parentage Act.

History: Laws 2009, ch. 215, § 3-304.

40-11A-305. Effect of acknowledgment or denial of paternity.

A. Except as otherwise provided in Sections 3-307 and 3-308 [40-11A-307, 40-11A-308 NMSA 1978] of the New Mexico Uniform Parentage Act, a valid acknowledgment of paternity filed with the bureau is equivalent to an adjudication of paternity of a child.

B. Except as otherwise provided in Sections 3-307 and 3-308 of the New Mexico Uniform Parentage Act, a valid denial of paternity by a presumed father filed with the bureau in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the nonpaternity of the presumed father.

History: Laws 2009, ch. 215, § 3-305.

40-11A-306. No filing fee.

The bureau shall not charge for filing an acknowledgment of paternity or denial of paternity.

History: Laws 2009, ch. 215, § 3-306.

40-11A-307. Proceeding for rescission.

A signatory may rescind an acknowledgment of paternity or denial of paternity only by means of a judicial proceeding to rescind the acknowledgment or denial of paternity. A proceeding to rescind an acknowledgment of paternity or a denial of paternity shall be brought no later than the earlier of:

A. sixty days after the effective date of the acknowledgment or denial, as provided in Section 3-304 of the New Mexico Uniform Parentage Act;

B. in the case of a signatory who was a minor at the time of acknowledgment, the later of:

(1) sixty days after the eighteenth birthday of the signatory; or

(2) sixty days after the effective date of the acknowledgment or denial, as provided in Section 3-304 of the New Mexico Uniform Parentage Act; or

C. the date of the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

History: Laws 2009, ch. 215, § 3-307.

40-11A-308. Challenge after expiration of period for rescission.

A. After the period for rescission pursuant to Section 3-307 of the New Mexico Uniform Parentage Act has expired, a signatory to an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only:

(1) on the basis of fraud, duress or material mistake of fact; and

(2) within two years after the acknowledgment or denial is filed with the bureau or two years after the eighteenth birthday of the signatory, whichever is later.

B. A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof.

History: Laws 2009, ch. 215, § 3-308.

40-11A-309. Procedure for rescission or challenge.

A. Every signatory to an acknowledgment of paternity and any related denial of paternity shall be made a party to a proceeding to rescind or challenge the acknowledgment or denial.

B. For the purpose of rescission of or challenge to an acknowledgment of paternity or denial of paternity, a signatory submits to the personal jurisdiction of the district courts of this state by signing the acknowledgment or denial, effective upon the filing of the document with the bureau.

C. Except for good cause shown, during the pendency of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the district court shall not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

D. A proceeding to rescind or to challenge an acknowledgment of paternity or denial of paternity shall be conducted in the same manner as a proceeding to adjudicate parentage pursuant to Article 6 of the New Mexico Uniform Parentage Act.

E. At the conclusion of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the court shall order the bureau to amend the birth record of the child, if appropriate.

History: Laws 2009, ch. 215, § 3-309.

40-11A-310. Ratification barred.

A court or administrative agency conducting a judicial or administrative proceeding shall not ratify an unchallenged acknowledgment of paternity.

History: Laws 2009, ch. 215, § 3-310.

40-11A-311. Full faith and credit; acknowledgement or denial of paternity.

A court of this state shall give full faith and credit to an acknowledgment of paternity or denial of paternity effective in another state if the acknowledgment or denial has been signed and is otherwise in compliance with the law of the other state.

History: Laws 2009, ch. 215, § 3-311.

40-11A-312. Forms for acknowledgment and denial of paternity.

A. The bureau shall prescribe forms for the acknowledgment of paternity and the denial of paternity.

B. A valid acknowledgment of paternity or denial of paternity is not affected by a later modification of the prescribed form.

History: Laws 2009, ch. 215, § 3-312.

40-11A-313. Release of information.

The bureau may release information relating to the acknowledgment of paternity or denial of paternity to a signatory of the acknowledgment or denial and to courts and to other agencies as permitted pursuant to the provisions of Chapter 24, Article 14 NMSA 1978.

History: Laws 2009, ch. 215, § 3-313.

40-11A-314. Adoption of rules.

The bureau may adopt and promulgate rules and forms to implement the provisions of this article.

History: Laws 2009, ch. 215, § 3-314.

ARTICLE 4
REGISTRY OF PATERNITY

40-11A-401. Establishment of registry.

The putative father registry established pursuant to the provisions of Section 32A-5-20 NMSA 1978 is also the registry of paternity established pursuant to the New Mexico Uniform Parentage Act.

History: Laws 2009, ch. 215, § 4-401.

ARTICLE 5
GENETIC TESTING

40-11A-501. Scope of article.

This article governs genetic testing of a person to determine parentage, whether the person:

A. voluntarily submits to testing; or

B. is tested pursuant to an order of the district court or a support-enforcement agency.

History: Laws 2009, ch. 215, § 5-501.

40-11A-502. Order for testing.

A. Except as otherwise provided in this article and Article 6 of the New Mexico Uniform Parentage Act, the district court shall order the child and other designated persons to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding:

(1) alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the persons; or

(2) denying paternity and stating facts establishing a possibility that sexual contact between the persons, if any, did not result in the conception of the child.

B. A support-enforcement agency may order genetic testing only if there is no presumed, acknowledged or adjudicated father.

C. If a request for genetic testing of a child is made before birth, the district court or support-enforcement agency shall not order in-utero testing.

D. If two or more men are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

History: Laws 2009, ch. 215, § 5-502.

40-11A-503. Requirements for genetic testing.

A. Genetic testing shall be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

(1) the American association of blood banks or a successor to its functions;

(2) the American society for histocompatibility and immunogenetics or a successor to its functions; or

(3) an accrediting body designated by the federal secretary of health and human services.

B. A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each person undergoing genetic testing.

C. Based on the ethnic or racial group of a person, the testing laboratory shall determine the databases from which to select frequencies for use in calculation of the probability of paternity. If there is disagreement as to the testing laboratory's choice, the following rules apply:

(1) the person objecting may require the testing laboratory, within thirty days after receipt of the report of the test, to recalculate the probability of paternity using an ethnic or racial group different from that used by the laboratory;

(2) the person objecting to the testing laboratory's initial choice shall:

(a) if the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or

(b) engage another testing laboratory to perform the calculations; and

(3) the testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.

D. If, after recalculation using a different ethnic or racial group, genetic testing does not rebuttably identify a man as the father of a child pursuant to Section 5-505 [40-11A-505 NMSA 1978] of the New Mexico Uniform Parentage Act, a person who has been tested may be required to submit to additional genetic testing.

E. The retention of material used for genetic testing shall be governed by the provisions of Section 24-21-5 NMSA 1978.

History: Laws 2009, ch. 215, § 5-503.

40-11A-504. Report of genetic testing.

A. A report of genetic testing shall be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made pursuant to the requirements of this article is self-authenticating.

B. Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:

(1) the names and photographs of the persons whose specimens have been taken;

(2) the names of the persons who collected the specimens;

(3) the places and dates the specimens were collected;

(4) the names of the persons who received the specimens in the testing laboratory;

(5) the dates the specimens were received; and

(6) the accreditation of the testing facility showing that it meets the requirements of Section 5-503 of the New Mexico Uniform Parentage Act.

History: Laws 2009, ch. 215, § 5-504.

40-11A-505. Genetic testing results; rebuttal.

A. Pursuant to the New Mexico Uniform Parentage Act, a man is rebuttably identified as the father of a child if the genetic testing complies with this article and the results disclose that:

(1) the man has at least a ninety-nine percent probability of paternity, using a prior probability of zero point five zero, as calculated by using the combined paternity index obtained in the testing; and

(2) a combined paternity index of at least one hundred to one.

B. A man identified pursuant to Subsection A of this section as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this article that:

(1) excludes the man as a genetic father of the child; or

(2) identifies another man as the possible father of the child.

C. Except as otherwise provided in Section 5-510 of the New Mexico Uniform Parentage Act, if more than one man is identified by genetic testing as the possible father of the child, the court shall order them to submit to further genetic testing to identify the genetic father.

History: Laws 2009, ch. 215, § 5-505.

40-11A-506. Costs of genetic testing.

A. Subject to assessment of costs pursuant to Article 6 of the New Mexico Uniform Parentage Act, the cost of initial genetic testing shall be advanced:

(1) by a support-enforcement agency in a proceeding in which the support-enforcement agency is providing services;

(2) by the person who made the request;

(3) as agreed by the parties; or

(4) as ordered by the district court.

B. In cases in which the cost is advanced by the support-enforcement agency, the agency may seek reimbursement from a man who is rebuttably identified as the father.

History: Laws 2009, ch. 215, § 5-506.

40-11A-507. Additional genetic testing.

Prior to a final adjudication, the district court or the support-enforcement agency shall order additional genetic testing upon the request of a party who contests the result of the original testing. If the previous genetic testing identified a man as the father of the child pursuant to Section 5-505 of the New Mexico Uniform Parentage Act, the court or agency shall not order additional testing unless the party provides advance payment for the testing.

History: Laws 2009, ch. 215, § 5-507.

40-11A-508. Genetic testing when specimens not available.

A. Subject to Subsection B of this section, if a genetic-testing specimen is not available from a man who may be the father of a child, upon notice and after an opportunity for a hearing, and for good cause and under circumstances the court considers to be just, the court may order the following persons to submit specimens for genetic testing:

(1) the parents of the man;

(2) brothers and sisters of the man;

(3) other children of the man and their mothers; and

(4) other relatives of the man necessary to complete genetic testing.

B. Issuance of an order pursuant to this section requires a finding that a need for genetic testing outweighs the legitimate interests of the person sought to be tested.

History: Laws 2009, ch. 215, § 5-508.

40-11A-509. Deceased person.

For good cause shown, the district court may order genetic testing of a deceased person.

History: Laws 2009, ch. 215, § 5-509.

40-11A-510. Identical brothers.

A. The district court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.

B. If each brother satisfies the requirements as the identified father of the child pursuant to Section 5-505 of the New Mexico Uniform Parentage Act without consideration of another identical brother being identified as the father of the child, the

district court may rely on nongenetic evidence to adjudicate which brother is the father of the child.

History: Laws 2009, ch. 215, § 5-510.

40-11A-511. Confidentiality of genetic testing.

A. Release of the report of genetic testing for parentage may be released only to the parties tested or their representatives, the support-enforcement agency and the court.

B. A person who intentionally releases an identifiable specimen of another person for any purpose other than that relevant to the proceeding regarding parentage without a court order or the written permission of the person who furnished the specimen is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 2009, ch. 215, § 5-511.

ARTICLE 6
PROCEEDING TO ADJUDICATE PARENTAGE

PART 1
Nature of Proceeding

40-11A-601. Proceeding authorized.

A civil proceeding may be maintained in the district court to adjudicate the parentage of a child. The proceeding is governed by the Rules of Civil Procedure for the District Courts [Rule1-001 NMRA]. The mother of the child and an alleged father or presumed father are competent to testify. Any witness may be compelled to testify.

History: Laws 2009, ch. 215, § 6-601.

40-11A-602. Standing to maintain proceeding.

Subject to Article 3 and Sections 6-607 and 6-609 of the New Mexico Uniform Parentage Act, a proceeding to adjudicate parentage may be maintained by:

A. the child;

B. the mother of the child;

C. a man whose paternity of the child is to be adjudicated;

D. the support-enforcement agency;

E. an authorized adoption agency or licensed child-placing agency; or

F. a representative authorized by law to act for a person who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated or a minor.

History: Laws 2009, ch. 215, § 6-602.

40-11A-603. Parties to proceeding.

The following persons shall be joined as parties in a proceeding to adjudicate parentage:

A. the mother of the child; and

B. a man whose paternity of the child is to be adjudicated.

History: Laws 2009, ch. 215, § 6-603.

40-11A-604. Personal jurisdiction.

A. A person shall not be adjudicated to be a parent unless the district court has personal jurisdiction over the person.

B. A district court of this state having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident person, or the guardian or conservator of the person, if the conditions prescribed in Section 40-6A-201 NMSA 1978 are fulfilled.

C. Lack of jurisdiction over one person does not preclude the district court from making an adjudication of parentage binding on another person over whom the district court has personal jurisdiction.

History: Laws 2009, ch. 215, § 6-604.

40-11A-605. Venue.

Venue for a proceeding to adjudicate parentage is in the county of this state in which:

A. the child resides or is found;

B. the respondent resides or is found if the child does not reside in this state; or

C. a proceeding for probate or administration of the presumed, acknowledged or alleged father's estate is pending.

History: Laws 2009, ch. 215, § 6-605.

40-11A-606. No limitation; child having no presumed, acknowledged or adjudicated father.

A. A proceeding to adjudicate the parentage of a child having no presumed, acknowledged or adjudicated father may be commenced by the child at any time, even after:

(1) the child becomes an adult; or

(2) an earlier proceeding to adjudicate paternity has been dismissed based on the application of a statute of limitation then in effect.

B. A proceeding to adjudicate child support pursuant to Subsection A of this section is limited by Sections 6-607 and 6-636 of the New Mexico Uniform Parentage Act.

History: Laws 2009, ch. 215, § 6-606.

40-11A-607. Limitation; general.

A. Any proceeding to adjudicate child support shall be brought not later than three years after the child has reached the age of majority.

B. Except as otherwise specifically provided in another provision of the New Mexico Uniform Parentage Act, any proceeding to adjudicate the parentage of a child shall be commenced not later than three years after the child has reached the age of majority.

History: Laws 2009, ch. 215, § 6-607.

40-11A-608. Authority to deny motion for genetic testing.

A. In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having an acknowledged father, the district court may deny a motion seeking an order for genetic testing of the mother, the child and the presumed or acknowledged father if the district court determines that:

(1) the conduct of the mother or the presumed or acknowledged father estops that party from denying parentage; and

(2) it would be inequitable to disprove the father-child relationship between the child and the presumed or acknowledged father.

B. In determining whether to deny a motion seeking an order for genetic testing pursuant to this section, the district court shall consider the best interest of the child, including the following factors:

(1) the length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged father was placed on notice that he might not be the genetic father;

(2) the length of time during which the presumed or acknowledged father has assumed the role of father of the child;

(3) the facts surrounding the presumed or acknowledged father's discovery of his possible nonpaternity;

(4) the nature of the relationship between the child and the presumed or acknowledged father;

(5) the age of the child;

(6) the harm that may result to the child if presumed or acknowledged paternity is successfully disproved;

(7) the nature of the relationship between the child and any alleged father;

(8) the extent to which the passage of time reduces the chances of establishing the paternity of another man and a child-support obligation in favor of the child; and

(9) other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed or acknowledged father or the chance of other harm to the child.

C. In a proceeding involving the application of this section, a minor or incapacitated child shall be represented by a guardian ad litem.

D. Denial of a motion seeking an order for genetic testing shall be based on clear and convincing evidence.

E. If the district court denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed or acknowledged father to be the father of the child.

History: Laws 2009, ch. 215, § 6-608.

40-11A-609. Limitation; child having acknowledged or adjudicated father.

A. If a child has an acknowledged father, a signatory to the acknowledgment of paternity or denial of paternity may commence a proceeding seeking to rescind the acknowledgment or denial or challenge the paternity of the child only within the time allowed pursuant to Section 3-307 or 3-308 of the New Mexico Uniform Parentage Act.

B. If a child has an acknowledged father or an adjudicated father, a person, other than the child, who is neither a signatory to the acknowledgment of paternity nor a party to the adjudication and who seeks an adjudication of paternity of the child shall commence a proceeding not later than two years after the effective date of the acknowledgment or adjudication.

C. A proceeding pursuant to this section is subject to the application of the principles of estoppel established in Section 6-608 of the New Mexico Uniform Parentage Act.

History: Laws 2009, ch. 215, § 6-609.

40-11A-610. Joinder of proceedings.

A. Except as otherwise provided in Subsection B of this section, a proceeding to adjudicate parentage may be joined with a proceeding in the district court for adoption, termination of parental rights, child custody or visitation, child support, divorce, annulment, legal separation or separate maintenance, probate or administration of an estate or other appropriate proceeding.

B. A respondent shall not join a proceeding described in Subsection A of this section with a proceeding to adjudicate parentage brought pursuant to the Uniform Interstate Family Support Act.

History: Laws 2009, ch. 215, § 6-610.

40-11A-611. Proceeding before birth.

A proceeding to determine parentage may be commenced before the birth of the child, but shall not be concluded until after the birth of the child. The following actions may be taken before the birth of the child:

A. service of process;

B. discovery; and

C. except as prohibited by Section 5-502 of the New Mexico Uniform Parentage Act, collection of specimens for genetic testing.

History: Laws 2009, ch. 215, § 6-611.

40-11A-612. Child as party; representation.

A. A minor child is a permissible party, but is not a necessary party to a proceeding pursuant to this article.

B. The district court shall appoint a guardian ad litem to represent a minor or incapacitated child if the child is a party or the district court finds that the interests of the child are not adequately represented.

History: Laws 2009, ch. 215, § 6-612.

PART 2
Special Rules for Proceeding to Adjudicate Parentage

40-11A-621. Admissibility of results of genetic testing; expenses.

A. Except as otherwise provided in Subsection C of this section, a record of a genetic-testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects, in a writing delivered to the adverse party, to the record's admission within fourteen days after its receipt by the objecting party. The objecting party shall cite specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:

(1) voluntarily or pursuant to an order of the district court or a support-enforcement agency; or

(2) before or after the commencement of the proceeding.

B. A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition or another method approved by the district court. Unless otherwise ordered by the district court, the party offering the testimony bears the expense for the expert testifying.

C. If a child has a presumed, acknowledged or adjudicated father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:

(1) with the consent of both the mother and the presumed, acknowledged or adjudicated father; or

(2) pursuant to an order of the district court pursuant to Section 5-502 of the New Mexico Uniform Parentage Act.

D. Copies of bills for genetic testing, for child birth and for prenatal and postnatal health care for the mother and child that are furnished to the adverse party not less than ten days before the date of a hearing are admissible to establish:

(1) the amount of the charges billed; and

(2) that the charges were reasonable, necessary and customary.

History: Laws 2009, ch. 215, § 6-621.

40-11A-622. Consequences of declining genetic testing.

A. An order for genetic testing is enforceable by contempt.

B. If a person whose paternity is being determined declines to submit to genetic testing ordered by the district court, the district court for that reason may adjudicate parentage contrary to the position of the person who declines.

C. Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the district court may order the testing of the child and every man whose paternity is being adjudicated.

History: Laws 2009, ch. 215, § 6-622.

40-11A-623. Admission of paternity authorized.

A. A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.

B. If the district court finds that the admission of paternity satisfies the requirements of this section and finds that there is no reason to question the admission, the district court shall issue an order adjudicating the child to be the child of the man admitting paternity.

History: Laws 2009, ch. 215, § 6-623.

40-11A-624. Temporary order.

A. In a proceeding pursuant to this article, the district court shall issue a temporary order for support of a child if the order is appropriate and the person ordered to pay support is:

(1) a presumed father of the child;

(2) petitioning to have his paternity adjudicated;

(3) identified as the father through genetic testing pursuant to Section 5-505 of the New Mexico Uniform Parentage Act;

(4) an alleged father who has declined to submit to genetic testing;

(5) shown by clear and convincing evidence to be the father of the child; or

(6) the mother of the child.

B. A temporary order may include provisions for custody and visitation as provided by other law of this state. A temporary order of support is subject to Section 6-636 of the New Mexico Uniform Parentage Act.

History: Laws 2009, ch. 215, § 6-624.

40-11A-625. Pretrial proceedings.

As soon as practicable after an action to declare the existence or nonexistence of a father-child relationship has been brought, and unless judgment by default has been entered, an informal hearing shall be held. The court may order that the hearing be held before a master. The public shall be barred from the hearing. A record of the proceeding or any portion of the proceeding shall be kept if any party requests or the court so orders. The rules of evidence shall not apply.

History: Laws 2009, ch. 215, § 6-625.

40-11A-626. Pretrial recommendations.

A. On the basis of the information produced at the pretrial hearing, the judge, hearing officer or master conducting the hearing shall evaluate the probability of determining the existence or nonexistence of a father-child relationship in a trial. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties. Based upon the evaluation, the judge, hearing officer or master may enter an order for temporary support consistent with the child-support guidelines as provided in Section 40-4-11.1 NMSA 1978.

B. If the parties accept a recommendation made in accordance with Subsection A of this section, judgment shall be entered accordingly.

C. If a party refuses to accept a recommendation made in accordance with Subsection A of this section and genetic testing has not been taken, the court shall require the parties to submit to genetic testing, if practicable. Thereafter, the judge, hearing officer or master shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial and a party's acceptance or rejection of the recommendation shall be treated as any other offer of settlement with respect to its admissibility as evidence in subsequent proceedings.

D. The child's guardian may accept or refuse to accept a recommendation under this section.

E. The informal hearing may be terminated and the action set for trial if the judge, hearing officer or master conducting the hearing finds it unlikely that all parties would accept a recommendation that the judge, hearing officer or master might make under Subsection A or C of this section.

History: Laws 2009, ch. 215, § 6-626.

PART 3
Hearings and Adjudication

40-11A-631. Rules for adjudication of paternity.

The district court shall apply the following rules to adjudicate the paternity of a child:

A. the paternity of a child having a presumed, acknowledged or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child;

B. unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child pursuant to Section 5-505 of the New Mexico Uniform Parentage Act shall be adjudicated the father of the child;

C. if the district court finds that genetic testing pursuant to Section 5-505 of the New Mexico Uniform Parentage Act neither identifies nor excludes a man as the father of a child, the district court shall not dismiss the proceeding. In that event, the results of genetic testing and other evidence are admissible to adjudicate the issue of paternity; and

D. unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing shall be adjudicated not to be the father of the child.

History: Laws 2009, ch. 215, § 6-631.

40-11A-632. Jury prohibited.

The district court, without a jury, shall adjudicate paternity of a child.

History: Laws 2009, ch. 215, § 6-632.

40-11A-633. Hearings; inspection of records.

A. On request of a party and for good cause shown, the district court may close a proceeding to the public and except for a final order, may declare the proceeding to be confidential and seal the file.

B. A final order in a proceeding pursuant to this article is available for public inspection. Other papers and records are available only with the consent of the parties or on order of the district court for good cause.

C. The provisions of this section are subject to any rules established by the supreme court of New Mexico.

History: Laws 2009, ch. 215, § 6-633.

40-11A-634. Order on default.

The district court shall issue an order adjudicating the paternity of a man who:

A. after service of process, is in default; and

B. is found by the district court to be the father of a child.

History: Laws 2009, ch. 215, § 6-634.

40-11A-635. Dismissal for want of prosecution.

The district court may issue an order dismissing a proceeding commenced pursuant to the New Mexico Uniform Parentage Act for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

History: Laws 2009, ch. 215, § 6-635.

40-11A-636. Order adjudicating parentage.

A. The district court shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.

B. An order adjudicating parentage shall identify the child by name and date of birth.

C. Except as otherwise provided in Subsection D of this section, the district court may assess filing fees, reasonable fees of counsel, experts and the child's guardian ad litem, fees for genetic testing, other costs and necessary travel and other reasonable expenses incurred in a proceeding pursuant to this article. The district court may award attorney fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name. The district court may order these fees, costs and expenses to be paid by any party in proportions and at times as determined by the court, but not exceeding three years from the date of the filing of the action unless there is a substantial showing that paternity could not have been established and an action for child support could not have been brought within three years of the child's birth. The court may order the proportion of any indigent party to be paid from court funds.

D. The district court shall not assess fees, costs or expenses against the support-enforcement agency of this state or another state, except as provided by other law.

E. On request of a party and for good cause shown, the district court may order that the name of the child be changed.

F. If the order of the district court is at variance with the child's birth certificate, the district court shall order the bureau to issue an amended birth certificate.

G. The judgment or order may contain any other provision directed against or on behalf of the appropriate party to the proceeding concerning the duty of past and future support, the custody and guardianship of the child, visitation with the child, the furnishing of bond or other security for the payment of the judgment or any other matter within the jurisdiction of the court. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy, birth and confinement. The court shall order child support retroactive to the date of the child's birth, but not to exceed three years unless there is a substantial showing that paternity could not have been established and an action for child support could not have been brought within three years of the child's birth pursuant to the provisions of Sections 40-4-11 through 40-4-11.3 NMSA 1978; provided that, in deciding whether or how long to order retroactive support, the court shall consider:

(1) whether the alleged or presumed father has absconded or could not be located; and

(2) whether equitable defenses are applicable.

H. Support judgments or orders ordinarily shall be for periodic payments, which may vary in amount. In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support; provided, however, nothing in this section shall deprive a state agency of its right to reimbursement from an appropriate party should the child be a past or future recipient of public assistance.

I. In determining the amount to be paid by a parent for support of the child, a court, child support hearing officer or master shall make such determination in accordance with the provisions of the child support guidelines pursuant to Section 40-4-11.1 NMSA 1978.

History: Laws 2009, ch. 215, § 6-636; 2021, ch. 20, § 16.

40-11A-637. Binding effect of determination of parentage.

A. Except as otherwise provided in Subsection B of this section, a determination of parentage is binding on:

(1) all signatories to an acknowledgment or denial of paternity as provided in Article 3 of the New Mexico Uniform Parentage Act; and

(2) all parties to an adjudication by a district court acting under circumstances that satisfy the jurisdictional requirements of Section 40-6A-201 NMSA 1978.

B. A child is not bound by a determination of parentage pursuant to the New Mexico Uniform Parentage Act unless:

(1) the determination was based on an unrescinded acknowledgment of paternity and the acknowledgment is consistent with the results of genetic testing;

(2) the adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown;

(3) the child was a party or was represented in the proceeding determining parentage by a guardian ad litem; or

(4) there was a final order in the proceeding that satisfies the requirements of Paragraph (1), (2) or (3) of Subsection C of this section.

C. In a proceeding to dissolve a marriage, the district court is deemed to have made an adjudication of the parentage of a child if the district court acts under circumstances that satisfy the jurisdictional requirements of Section 40-6A-201 NMSA 1978, and the final order:

(1) expressly identifies a child as a "child of the marriage", "issue of the marriage", "child of the parties" or similar words indicating that the husband is the father of the child;

(2) provides for support of the child by the husband unless paternity is specifically disclaimed in the order; or

(3) contains a stipulation or admission that the parties are the parents of the child.

D. Except as otherwise provided in Subsection B of this section, a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by a person who was not a party to the earlier proceeding.

E. A party to an adjudication of paternity may challenge the adjudication only pursuant to the laws of New Mexico relating to appeal, vacation of judgments or other judicial review.

History: Laws 2009, ch. 215, § 6-637.

40-11A-638. Full faith and credit; determination of parentage.

A court of this state shall give full faith and credit to a determination of parentage made by a court of another state.

History: Laws 2009, ch. 215, § 6-638

40-11A-639. Enforcement of judgment or order.

A. If existence of the parental relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under the New Mexico Uniform Parentage Act or under prior law, the obligation of the noncustodial parent may be enforced in the same or other proceedings by any interested party.

B. The court shall order child support payments to be made in accordance with Section 40-4A-4.1 NMSA 1978.

C. Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

History: Laws 2009, ch. 215, § 6-639.

40-11A-640. Modification of judgment or order.

The court has continuing jurisdiction to modify or revoke a judgment or order for future support, except as otherwise specifically provided by the Uniform Interstate Family Support Act [Chapter 40, Article 6A NMSA 1978].

History: Laws 2009, ch. 215, § 6-640.

40-11A-641. Right to counsel; free transcript on appeal.

A. At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for any party who is unable to obtain counsel for financial reasons if, in the court's discretion, appointment of counsel is required in the interest of justice.

B. If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

History: Laws 2009, ch. 215, § 6-641.

40-11A-642. Hearings and records; confidentiality.

Notwithstanding any other laws concerning public hearings and records, any hearing or trial held under the provisions of the New Mexico Uniform Parentage Act may be held in closed court without admittance of any person other than those necessary to the action or proceeding. The court may order that certain papers and records pertaining to the action or proceeding, whether part of the permanent record of the court or any other file maintained by the state or elsewhere, are subject to inspection only upon consent of the court; provided, however, that nothing in this section shall infringe upon the right of the parties to an action or proceeding to inspect the court record. The provisions of this section are subject to any rules established by the New Mexico supreme court.

History: Laws 2009, ch. 215, § 6-642.

40-11A-643. Birth records.

A. Upon order of a court of this state or upon request of a court of another state, the bureau shall prepare a certificate of birth consistent with the findings of the court and shall substitute the certificate for the original certificate of birth.

B. The fact that the father-child relationship was declared after the child's birth shall not be ascertainable from the certificate prepared pursuant to Subsection A of this section, but the actual place and date of birth shall be shown.

C. The evidence upon which the certificate prepared pursuant to Subsection A of this section was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon order of the court and consent of all interested parties, or in exceptional cases only upon an order of the court for good cause shown.

History: Laws 2009, ch. 215, § 6-643.

ARTICLE 7
CHILD OF ASSISTED REPRODUCTION

40-11A-701. Scope of article.

This article does not apply to the birth of a child conceived by means of sexual intercourse.

History: Laws 2009, ch. 215, § 7-701.

40-11A-702. Parental status of donor.

Donors of eggs, sperm or embryos are not the parents of a child conceived by means of assisted reproduction.

History: Laws 2009, ch. 215, § 7-702.

40-11A-703. Parentage of child of assisted reproduction.

A person who provides eggs, sperm or embryos for or consents to assisted reproduction as provided in Section 7-704 of the New Mexico Uniform Parentage Act with the intent to be the parent of a child is a parent of the resulting child.

History: Laws 2009, ch. 215, § 7-703.

40-11A-704. Consent to assisted reproduction.

A. The intended parent or parents shall consent to the assisted reproduction in a record signed by them before the placement of the eggs, sperm or embryos. Donors shall also consent to an assisted reproduction before retrieval of the donors' eggs or sperm.

B. Failure of a parent to sign a consent required by Subsection A of this section does not preclude a finding of parentage if the parent, during the first two years of the child's life, resided in the same household with the child and openly held out the child as the parent’s own.

C. All papers relating to the assisted reproduction, whether part of a court, medical or any other file, are subject to inspection only upon an order of the district court or with the consent, in a signed record, of:

(1) the donor or donors; and

(2) the parent or parents who consented to the assisted reproduction pursuant to Subsection A of this section or a child who was born as a result of the assisted reproduction pursuant to Subsection A of this section if the child is eighteen years of age or older.

History: Laws 2009, ch. 215, § 7-704.

40-11A-705. Limitation on husband's dispute of paternity.

A. Except as otherwise provided in Subsection B of this section, the husband of a wife who gives birth to a child by means of assisted reproduction shall not challenge his paternity of the child unless:

(1) within two years after learning of the birth of the child, he commences a proceeding to adjudicate his paternity; and

(2) the district court finds that he did not consent to the assisted reproduction, before or after birth of the child.

B. A proceeding to adjudicate paternity may be maintained at any time if the district court determines that:

(1) the husband did not provide sperm for or, before or after the birth of the child, consent to assisted reproduction by his wife;

(2) the husband and the mother of the child have not cohabited since the probable time of assisted reproduction; and

(3) the husband never openly held out the child as his own.

C. The limitation provided in this section applies to a marriage dissolved or declared invalid after assisted reproduction.

History: Laws 2009, ch. 215, § 7-705.

40-11A-706. Effect of dissolution of marriage or withdrawal of consent.

A. If a marriage is dissolved before placement of eggs, sperm or embryos, the former spouse is not a parent of the resulting child unless the former spouse consented in a signed record that if assisted reproduction were to occur after a divorce the former spouse would be a parent of the child.

B. Unless otherwise agreed in a signed record, the consent of a woman or a man to assisted reproduction may be withdrawn by that person in a signed record delivered to the other person at any time before placement of eggs, sperm or embryos if the placement has not occurred within one year after the consent. A person who withdraws consent pursuant to this section is not a parent of the resulting child.

History: Laws 2009, ch. 215, § 7-706.

40-11A-707. Parental status of deceased person.

If a person who consented in a record to be a parent by assisted reproduction dies before placement of eggs, sperm or embryos, the deceased person is not a parent of the resulting child unless the deceased spouse consented in a signed record that if assisted reproduction were to occur after death, the deceased person would be a parent of the child.

History: Laws 2009, ch. 215, § 7-707.

ARTICLE 8
GESTATIONAL AGREEMENTS

40-11A-801. Gestational agreements not authorized or prohibited.

A. The New Mexico Uniform Parentage Act does not authorize or prohibit an agreement between a woman and the intended parents:

(1) in which the woman relinquishes all rights as the parent of a child to be conceived by means of assisted reproduction; and

(2) that provides that the intended parents become the parents of the child.

B. If a birth results pursuant to a gestational agreement pursuant to Subsection A of this section and the agreement is unenforceable under other law of New Mexico, the parent-child relationship shall be determined pursuant to Article 2 of the New Mexico Uniform Parentage Act.

History: Laws 2009, ch. 215, § 8-801.

ARTICLE 9
MISCELLANEOUS PROVISIONS

40-11A-901. Uniformity of application and construction.

In applying and construing the Uniform Parentage Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: Laws 2009, ch. 215, § 9-901.

40-11A-902. Severability.

If any provision of the New Mexico Uniform Parentage Act or its application to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the New Mexico Uniform Parentage Act that can be given effect without the invalid provision or application, and to this end, the provisions of the New Mexico Uniform Parentage Act are severable.

History: Laws 2009, ch. 215, § 9-902.

40-11A-903. Transitional provision.

A proceeding to adjudicate parentage that was commenced before the effective date of the New Mexico Uniform Parentage Act is governed by the law in effect at the time the proceeding was commenced.

History: Laws 2009, ch. 215, § 9-903.

ARTICLE 12
Domestic Relations Mediation

40-12-1. Short title.

Chapter 40, Article 12 NMSA 1978 may be cited as the "Domestic Relations Mediation Act".

History: Laws 1987, ch. 153, § 1; 2009, ch. 201, § 1.

40-12-2. Purpose.

The purpose of the Domestic Relations Mediation Act is to assist the court, parents and other interested parties in determining the best interests of the children involved in domestic relations cases.

History: Laws 1987, ch. 153, § 2.

40-12-3. Definitions.

As used in the Domestic Relations Mediation Act:

A. "advisory consultation" means a brief assessment about the parenting situation and a written report summarizing the information for the attorneys and the court, including an assessment by the counselor of the positions, situations and relationships of family members and suggestions regarding specific plans, general issues or requested action;

B. "counselor" means a person who by training or experience is qualified to work with individuals in a mediation situation and to perform assessments;

C. "domestic relations mediation program" means the provision of services to the court and parents, including advisory consultations, priority consultations, evaluations and mediation;

D. "evaluation" means a complete assessment that may include multiple interviews with parents and children, psychological testing, home visits and conferences with other appropriate professionals;

E. "fund" means the domestic relations mediation fund of the judicial district;

F. "mediation" means a process in which parents meet with a counselor in order to assist the parents in focusing on the needs of the child and to assist the parents in reaching a mutually acceptable arrangement regarding the child; and

G. "priority consultation" means that the court has requested specific information and brief assessment regarding the parenting situation and suggestions regarding temporary arrangements.

History: Laws 1987, ch. 153, § 3.

40-12-4. District court domestic relations mediation fund created.

A judicial district shall create a "domestic relations mediation fund" of the judicial district. Money in the fund shall be used to offset the cost of operating the domestic relations mediation program and the supervised visitation program. Deposits to the fund shall include payments made through the imposition of a sliding fee scale pursuant to Sections 40-12-5 and 40-12-5.1 NMSA 1978, distributions pursuant to Section 34-6-40 NMSA 1978 and the collection of the surcharge provided for in Section 40-12-6 NMSA 1978.

History: Laws 1987, ch. 153, § 4; 2001, ch. 201, § 1.

40-12-5. Domestic relations mediation program.

A. A judicial district may establish a domestic relations mediation program by court rule approved by the supreme court. The district court may employ or contract with a counselor to provide consultations, evaluations and mediation in domestic relations cases involving children.

B. Parents may request of the court the services of the domestic relations mediation program for consultations, evaluation or mediation. Parents shall enter the program when ordered to do so by the court.

C. Parents shall pay the cost of the domestic relations mediation program pursuant to a sliding fee scale approved by the supreme court. The sliding fee scale shall be based on ability to pay for the specific service rendered by the counselor. The fees shall be paid to the district court to be credited to the fund.

History: Laws 1987, ch. 153, § 5.

40-12-5.1. Supervised visitation program.

A. A judicial district may establish a "safe exchange and supervised visitation program" by local court rule approved by the supreme court. The safe exchange and supervised visitation program shall be used when, in the opinion of the court, the best interests of the child are served if confrontation or contact between the parents is to be

avoided during exchanges of custody or if contact between a parent and a child should be supervised. In a safe exchange and supervised visitation program, the district court may employ or contract with a person:

(1) with whom a child may be left by one parent for a short period while waiting to be picked up by the other parent; or

(2) to supervise visits among one or both parents and the child.

B. A parent may request the services of the safe exchange and supervised visitation program or the court may order that the program be used.

C. Parents shall pay the cost of the safe exchange and supervised visitation program pursuant to a sliding fee scale approved by the supreme court. The sliding fee scale shall be based on ability to pay for the service. The fees shall be paid to the district court to be credited to the fund.

History: Laws 2001, ch. 201, § 2; 2009, ch. 201, § 2.

40-12-6. Domestic relations mediation fees; district court clerk to collect.

In addition to fees collected pursuant to Section 34-6-40 NMSA 1978 for the docketing of civil cases, in any judicial district which has established a domestic relations mediation program, the district court clerk shall collect a surcharge of thirty dollars ($30.00) on all new and reopened domestic relations cases.

History: Laws 1987, ch. 153, § 6.

ARTICLE 13
Family Violence Protection

40-13-1. Short title.

Chapter 40, Article 13 NMSA 1978 may be cited as the "Family Violence Protection Act".

History: Laws 1987, ch. 286, § 1; 1999, ch. 142, § 1.

40-13-1.1. Legislative findings; state policy; dual arrests.

The legislature finds that domestic abuse incidents are complex and require special training on the part of law enforcement officers to respond appropriately to domestic abuse incidents. The state of New Mexico discourages dual arrests of persons involved

in incidents of domestic abuse. A law enforcement officer, in making arrests for domestic abuse, shall seek to identify and shall consider whether one of the parties acted in self defense.

History: Laws 2002, ch. 34, § 2 and Laws 2002, ch. 35, § 2.

40-13-2. Definitions.

As used in the Family Violence Protection Act:

A. "continuing personal relationship" means a dating or intimate relationship;

B. "co-parents" means persons who have a child in common, regardless of whether they have been married or have lived together at any time;

C. "court" means the district court of the judicial district where an alleged victim of domestic abuse resides or is found;

D. "domestic abuse":

(1) means an incident of stalking or sexual assault whether committed by a household member or not;

(2) means an incident by a household member against another household member consisting of or resulting in:

(a) physical harm;

(b) severe emotional distress;

(c) bodily injury or assault;

(d) a threat causing imminent fear of bodily injury by any household member;

(e) criminal trespass;

(f) criminal damage to property;

(g) repeatedly driving by a residence or work place;

(h) telephone harassment;

(i) harassment;

(j) strangulation;

(k) suffocation; or

(l) harm or threatened harm to children as set forth in this paragraph; and

(3) does not mean the use of force in self-defense or the defense of another;

E. "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion or the frame or receiver of any such weapon;

F. "household member" means a spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, grandparent, grandparent-in-law, child, stepchild, grandchild, co-parent of a child or a person with whom the petitioner has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section;

G. "law enforcement officer" means a public official or public officer vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes;

H. "mutual order of protection" means an order of protection that includes provisions that protect both parties;

I. "order of protection" means an injunction or a restraining or other court order granted for the protection of a victim of domestic abuse;

J. "protected party" means a person protected by an order of protection;

K. "restrained party" means a person who is restrained by an order of protection;

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

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

History: Laws 1987, ch. 286, § 2; 1993, ch. 109, § 1; 1995, ch. 23, § 3; 2008, ch. 40, § 2; 2010, ch. 85, § 2; 2018, ch. 30, § 4; 2019, ch. 253, § 2.

40-13-3. Petition for order of protection; contents; standard forms.

A. A victim of domestic abuse may petition the court under the Family Violence Protection Act for an order of protection.

B. The petition shall be made under oath or shall be accompanied by a sworn affidavit setting out specific facts showing the alleged domestic abuse.

C. The petition shall state whether any other domestic action is pending between the petitioner and the respondent.

D. If any other domestic action is pending between the petitioner and the respondent, the parties shall not be compelled to mediate any aspect of the case arising from the Family Violence Protection Act unless the court finds that appropriate safeguards exist to protect each of the parties and that both parties can fairly mediate with such safeguards.

E. An action brought under the Family Violence Protection Act is independent of any proceeding for annulment, separation or divorce between the parties.

F. Remedies granted pursuant to the Family Violence Protection Act are in addition to and shall not limit other civil or criminal remedies available to the parties.

G. Standard simplified petition forms with instructions for completion shall be available to all parties. Law enforcement agencies shall keep such forms and make them available upon request to alleged victims of domestic abuse.

History: Laws 1987, ch. 286, § 3; 1993, ch. 109, § 2; 2008, ch. 40, § 3.

40-13-3.1. Forbearance of costs associated with domestic abuse offenses.

A. An alleged victim of domestic abuse shall not be required to bear the cost of:

(1) the prosecution of a misdemeanor or felony offense arising out of an incident of domestic abuse, including costs associated with filing a criminal charge against the alleged perpetrator of the abuse;

(2) the filing, issuance or service of a warrant;

(3) the filing, issuance or service of a witness subpoena;

(4) the filing, issuance or service of a petition for an order of protection;

(5) the filing, issuance or service of an order of protection; or

(6) obtaining law enforcement reports or photographs or copies of photographs relating to the alleged abuse or pattern of abuse.

B. No witness fee shall be charged where prohibited by federal law.

History: Laws 1995, ch. 176, § 1; 2008, ch. 40, § 4; 2011, ch. 8, § 1.

40-13-3.2. Ex parte emergency orders of protection.

A. The district court may issue an ex parte written emergency order of protection when a law enforcement officer states to the court in person, by telephone or via facsimile and files a sworn written statement, setting forth the need for an emergency order of protection, and the court finds reasonable grounds to believe that the alleged victim or the alleged victim's child is in immediate danger of domestic abuse following an incident of domestic abuse. The written statement shall include the location and telephone number of the alleged perpetrator, if known.

B. A law enforcement officer who receives an emergency order of protection, whether in writing, by telephone or by facsimile transmission, from the court shall:

(1) if necessary, pursuant to the judge's oral approval, write and sign the order on an approved form;

(2) if possible, immediately serve a signed copy of the order on the restrained party and complete the appropriate affidavit of service;

(3) immediately provide the protected party with a signed copy of the order; and

(4) provide the original order to the court by the close of business on the next judicial day.

C. The court may grant the following relief in an emergency order of protection upon a probable cause finding that domestic abuse has occurred:

(1) enjoin the restrained party from threatening to commit or committing acts of domestic abuse against the protected party or any designated household members;

(2) enjoin the restrained party from any contact with the protected party, including harassing, telephoning, contacting or otherwise communicating with the protected party; and

(3) grant temporary custody of any minor child in common with the parties to the protected party, if necessary.

D. A district judge shall be available as determined by each judicial district to hear petitions for emergency orders of protection.

E. An emergency order of protection expires seventy-two hours after issuance or at the end of the next judicial day, whichever time is latest. The expiration date shall be clearly stated on the emergency order of protection.

F. A person may appeal the issuance of an emergency order of protection to the court that issued the order. An appeal may be heard as soon as the judicial day following the issuance of the order.

G. Upon a proper petition, a district court may issue a temporary order of protection that is based upon the same incident of domestic abuse that was alleged in an emergency order of protection.

H. Emergency orders of protection are enforceable in the same manner as other orders of protection issued pursuant to the provisions of the Family Violence Protection Act.

History: Laws 1999, ch. 142, § 2; 2008, ch. 40, § 5.

40-13-4. Temporary order of protection; hearing; dismissal.

A. Upon the filing of a petition for order of protection, the court shall:

(1) immediately grant an ex parte temporary order of protection without bond if there is probable cause from the specific facts shown by the affidavit or by the petition to give the judge reason to believe that an act of domestic abuse has occurred;

(2) cause the temporary order of protection together with notice of hearing to be served immediately on the alleged perpetrator of the domestic abuse; and

(3) within ten days after the granting of the temporary order of protection, hold a hearing on the question of continuing the order; or

(4) if an ex parte order is not granted, serve notice to appear upon the parties and hold a hearing on the petition for order of protection within seventy-two hours after the filing of the petition; provided if notice of hearing cannot be served within seventy-two hours, the temporary order of protection shall be automatically extended for ten days.

B. If the court grants a temporary order of protection, it may award temporary custody and visitation of any children involved when appropriate.

C. Except for petitions alleging stalking or sexual assault, if the court finds that the alleged perpetrator is not a household member, the court shall dismiss the petition.

History: Laws 1987, ch. 286, § 4; 2008, ch. 40, § 6.

40-13-5. Order of protection; contents; remedies; title to property not affected; mutual order of protection.

A. Upon finding that domestic abuse has occurred or upon stipulation of the parties, the court shall enter an order of protection ordering the restrained party to:

(1) refrain from abusing the protected party or any other household member; and

(2) if the order is issued pursuant to this section and if the court also determines that the restrained party presents a credible threat to the physical safety of the household member after the restrained party has received notice and had an opportunity to be heard or by stipulation of the parties, to:

(a) deliver any firearm in the restrained party's possession, care, custody or control to a law enforcement agency, law enforcement officer or federal firearms licensee while the order of protection is in effect; and

(b) refrain from purchasing, receiving, or possessing or attempting to purchase, receive or possess any firearm while the order of protection is in effect.

B. In an order of protection entered pursuant to Subsection A of this section, the court shall specifically describe the acts the court has ordered the restrained party to do or refrain from doing. As a part of any order of protection, the court may:

(1) grant sole possession of the residence or household to the protected party during the period the order of protection is effective or order the restrained party to provide temporary suitable alternative housing for the protected party and any children to whom the restrained party owes a legal obligation of support;

(2) award temporary custody of any children involved when appropriate and provide for visitation rights, child support and temporary support for the protected party on a basis that gives primary consideration to the safety of the protected party and the children;

(3) order that the restrained party shall not initiate contact with the protected party;

(4) restrain a party from transferring, concealing, encumbering or otherwise disposing of the other party's property or the joint property of the parties except in the usual course of business or for the necessities of life and require the parties to account to the court for all such transferences, encumbrances and expenditures made after the order is served or communicated to the restrained party;

(5) order the restrained party to reimburse the protected party or any other household member for expenses reasonably related to the occurrence of domestic abuse, including medical expenses, counseling expenses, the expense of seeking temporary shelter, expenses for the replacement or repair of damaged property or the expense of lost wages;

(6) order the restrained party to participate in, at the restrained party's expense, professional counseling programs deemed appropriate by the court, including counseling programs for perpetrators of domestic abuse, alcohol abuse or abuse of controlled substances; and

(7) order other injunctive relief as the court deems necessary for the protection of a party, including orders to law enforcement agencies as provided by this section.

C. The order of protection shall contain notice that violation of any provision of the order of protection is a violation of state law and that federal law, 18 U.S.C. 922, et seq., prohibits possession of firearms by certain persons.

D. If the order of protection supersedes or alters prior orders of the court pertaining to domestic matters between the parties, the order shall say so on its face. If an action relating to child custody or child support is pending or has concluded with entry of an order at the time the petition for an order of protection was filed, the court may enter an initial order of protection, but the portion of the order dealing with child custody or child support will then be transferred to the court that has or continues to have jurisdiction over the pending or prior custody or support action.

E. A mutual order of protection shall be issued only in cases where both parties have petitioned the court and the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense.

F. No order issued under the Family Violence Protection Act shall affect title to any property or allow a party to transfer, conceal, encumber or otherwise dispose of another party's property or the joint or community property of the parties.

G. Either party may request a review hearing to amend an order of protection. An order of protection involving child custody or support may be modified without proof of a substantial or material change of circumstances.

H. An order of protection shall not be issued unless a petition or a counter petition has been filed.

History: Laws 1987, ch. 286, § 5; 1993, ch. 109, § 3; 2001, ch. 15, § 1; 2008, ch. 40, § 7; 2019, ch. 253, § 3.

40-13-5.1. Extended order of protection.

A. In the sentencing proceeding for a person convicted of criminal sexual penetration pursuant to Section 30-9-11 NMSA 1978, a prosecutor may request that the criminal court grant the victim an order of protection to remain in effect for the duration of the criminal court's jurisdiction over the person.

B. At any time after the expiration of a criminal court's jurisdiction over a person against whom an order of protection was granted pursuant to a request pursuant to Subsection A of this section, the victim may:

(1) file a petition for an order of protection against the person; and

(2) submit evidence of the person's conviction for criminal sexual penetration, including out-of-state, as cause for the court to grant the order of protection.

C. Based on evidence submitted pursuant to Subsection B of this section, a court may take judicial notice of the facts that led to a person's conviction for criminal sexual penetration and a victim shall not be required to appear before the court on the victim's petition for an order of protection; provided, however, that another person may appear on the victim's behalf.

D. A court may grant an order of protection pursuant to this section for any length of time, including for a victim's lifetime.

E. Notwithstanding the provisions of Subsection C of Section 40-13-6 NMSA 1978, an order of protection granted pursuant to this section shall continue until the expiration provided in the order, if any, or until modified or rescinded upon a motion by the victim.

History: Laws 2016, ch. 32, § 1 and Laws 2016, ch. 33, § 1.

40-13-6. Service of order; duration; penalty; remedies not exclusive.

A. An order of protection granted under the Family Violence Protection Act shall be filed with the clerk of the court, and a copy shall be sent by the clerk to the local law enforcement agency. The order shall be personally served upon the restrained party, unless the restrained party or the restrained party's attorney was present at the time the order was issued. The order shall be filed and served without cost to the protected party.

B. A local law enforcement agency receiving an order of protection from the clerk of the court that was issued under the Family Violence Protection Act shall have the order entered in the national crime information center's order of protection file within seventy-two hours of receipt. This does not include temporary orders of protection entered pursuant to the provisions of Section 40-13-4 NMSA 1978.

C. An order of protection granted by the court involving custody or support shall be effective for a fixed period of time not to exceed six months. The order may be extended for good cause upon motion of the protected party for an additional period of time not to exceed six months. Injunctive orders shall continue until modified or rescinded upon motion by either party or until the court approves a subsequent consent agreement entered into by the parties.

D. A peace officer may arrest without a warrant and take into custody a restrained party whom the peace officer has probable cause to believe has violated an order of protection that is issued pursuant to the Family Violence Protection Act or entitled to full faith and credit.

E. A restrained party convicted of violating an order of protection granted by a court under the Family Violence Protection Act is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978. Upon a second or subsequent conviction, an offender shall be sentenced to a jail term of not less than seventy-two consecutive hours that shall not be suspended, deferred or taken under advisement.

F. In addition to any other punishment provided in the Family Violence Protection Act, the court shall order a person convicted to make full restitution to the party injured by the violation of an order of protection and shall order the person convicted to participate in and complete a program of professional counseling, at the person's own expense, if possible.

G. In addition to charging the person with violating an order of protection, a peace officer shall file all other possible criminal charges arising from an incident of domestic abuse when probable cause exists.

H. The remedies provided in the Family Violence Protection Act are in addition to any other civil or criminal remedy available to the protected party or the state.

History: Laws 1987, ch. 286, § 6; 1993, ch. 109, § 4; 1995, ch. 176, § 3; 1997, ch. 59, § 1; 1999, ch. 48, § 1; 2007, ch. 81, § 1; 2008, ch. 40, § 8; 2013, ch. 47, § 10.

40-13-7. Law enforcement officers; emergency assistance; limited liability; providing notification to victims when an alleged perpetrator is released from detention; statement in judgment and sentence document.

A. A person who allegedly has been a victim of domestic abuse may request the assistance of a local law enforcement agency.

B. A local law enforcement officer responding to the request for assistance shall be required to take whatever steps are reasonably necessary to protect the victim from further domestic abuse, including:

(1) advising the victim of the remedies available under the Family Violence Protection Act; the right to file a written statement, a criminal complaint and a request for an arrest warrant; and the availability of domestic violence shelters, medical care, counseling and other services;

(2) upon the request of the victim, providing or arranging for transportation of the victim to a medical facility or place of shelter;

(3) upon the request of the victim, accompanying the victim to the victim's residence to obtain the victim's clothing and personal effects required for immediate

needs and the clothing and personal effects of any children then in the care of the victim;

(4) upon the request of the victim, assist in placing the victim in possession of the dwelling or premises or otherwise assist in execution, enforcement or service of an order of protection;

(5) arresting the alleged perpetrator when appropriate and including a written statement in the attendant police report to indicate that the arrest of the alleged perpetrator was, in whole or in part, premised upon probable cause to believe that the alleged perpetrator committed domestic abuse against the victim and, when appropriate, indicate that the party arrested was the predominant aggressor; and

(6) advising the victim when appropriate of the procedure for initiating proceedings under the Family Violence Protection Act or criminal proceedings and of the importance of preserving evidence.

C. The jail or detention center shall make a reasonable attempt to notify the arresting law enforcement agency or officer when the alleged perpetrator is released from custody. The arresting law enforcement agency shall make a reasonable attempt to notify the victim that the alleged perpetrator is released from custody.

D. Any law enforcement officer responding to a request for assistance under the Family Violence Protection Act is immune from civil liability to the extent allowed by law. Any jail, detention center or law enforcement agency that makes a reasonable attempt to provide notification that an alleged perpetrator is released from custody is immune from civil liability to the extent allowed by law.

E. A statement shall be included in a judgment and sentence document to indicate when a conviction results from the commission of domestic abuse.

History: Laws 1987, ch. 286, § 7; 1995, ch. 54, § 1; 2008, ch. 40, § 9.

40-13-7.1. Medical personnel; documentation of domestic abuse.

A. When medical personnel who are interviewing, examining, attending or treating a person:

(1) receive a report from the person of an act of domestic abuse, the medical personnel shall document the nature of the abuse and the name of the alleged perpetrator of the abuse in the person's medical file and shall provide the person with information and referral to services for victims of domestic abuse; or

(2) may have reason to believe or suspect that the person is a victim of domestic abuse, the medical personnel shall provide the person with information and referral to services for victims of domestic abuse.

B. Medical and other health care related information or communications concerning domestic abuse of a person obtained by or from medical personnel during the course of an interview, examination, diagnosis or treatment are confidential communications unless released:

(1) with the prior written consent of the person;

(2) pursuant to a court order; or

(3) when necessary to provide treatment, payment and operations in accordance with the federal Health Insurance Portability and Accountability Act.

C. As used in this section, "medical personnel" means:

(1) licensed health care practitioners;

(2) licensed emergency medical technicians;

(3) health care practitioners who interview, examine, attend or treat a person and who are under the guidance or supervision of licensed health care practitioners; and

(4) residents and interns.

History: Laws 2005, ch. 281, § 1.

40-13-8. Repealed.

History: Laws 1992, ch. 107, § 1; repealed Laws 2005, ch. 30, § 3.

40-13-9. Domestic violence special commissioners; appointment; qualifications.

A. A domestic violence special commissioner shall be appointed by and serve at the pleasure of the chief judge of the judicial district to which the officer is assigned.

B. A domestic violence special commissioner shall:

(1) be an attorney licensed to practice law in New Mexico;

(2) have a minimum of three years experience in the practice of law and be knowledgeable in the area of domestic relations and domestic violence matters; and

(3) conform to Canons 21-100 through 21-500 and 21-700 of the Code of Judicial Conduct as adopted by the supreme court. Violation of any such canon shall be grounds for dismissal of any domestic violence special commissioner.

History: Laws 2005, ch. 30, § 1.

40-13-10. Special commissioners; powers; duties.

A. A domestic violence special commissioner shall perform the following duties in carrying out the provisions of the Family Violence Protection Act:

(1) review petitions for orders of protection and motions to enforce, modify or terminate orders of protection;

(2) if deemed necessary, interview petitioners. Any interview shall be on the record;

(3) conduct hearings on the merits of petitions for orders of protection and motions to enforce, modify or terminate orders of protection; and

(4) prepare recommendations to the district court regarding petitions for orders of protection and motions to enforce, modify or terminate orders of protection.

B. All orders must be signed by a district court judge before the recommendations of a domestic violence special commissioner become effective.

History: Laws 2005, ch. 30, § 2.

40-13-11. Repealed.

History: Laws 2007, ch. 131, § 1; repealed by Laws 2018, ch. 40, § 10.

40-13-12. Limits on internet publication.

A state agency, court or political subdivision of the state, including a magistrate or municipal court, judicial district, law enforcement agency, county, municipality or home-rule municipality, shall not make available publicly on the internet any information that would likely reveal the identity or location of the party protected under an order of protection. A state agency, court or political subdivision may share court-generated and law enforcement-generated information contained in secure, government registries for protection order enforcement purposes.

History: Laws 2008, ch. 40, § 10.

40-13-13. Relinquishment of firearms; penalty.

A. After the court has issued notice that the restrained party is subject to the provisions of Paragraph (2) of Subsection A of Section 40-13-5 NMSA 1978, the restrained party shall relinquish all firearms in the restrained party's immediate

possession or control or subject to the restrained party's possession or control in a safe manner to a law enforcement officer, a law enforcement agency or federal firearms licensee within forty-eight hours of service of the order.

B. A law enforcement officer or law enforcement agency shall take possession of all firearms subject to the order of protection that are relinquished by the restrained party or are in plain sight or are discovered pursuant to a lawful search.

C. A law enforcement officer or law enforcement agency that takes temporary possession of a firearm pursuant to this section shall:

(1) prepare a receipt identifying all firearms that have been relinquished or taken;

(2) provide a copy of the receipt to the restrained party;

(3) provide a copy of the receipt to the petitioner within seventy-two hours of taking possession of the firearm;

(4) file the original receipt with the court that issued the order of protection within seventy-two hours of taking possession of the firearm; and

(5) ensure that the law enforcement agency retains a copy of the receipt.

D. An order of protection issued pursuant to Section 40-13-5 NMSA 1978 shall include:

(1) a statement that the restrained party shall not purchase, receive, transport, possess or have custody or control of a firearm while the order of protection is in effect;

(2) a description of the requirements for the relinquishment of firearms as provided in this section;

(3) a statement that within seventy-two hours of the issuance of the order of protection the restrained party must file with the court issuing the order:

(a) a receipt identifying all firearms that have been relinquished or taken by a law enforcement officer or law enforcement agency; or

(b) a declaration of non-relinquishment;

(4) the expiration date of relinquishment;

(5) the address of the court that issued the order of protection; and

(6) a statement that violation of any provision of the order of protection is a violation of state law and that federal law, 18 U.S.C. 922, et seq., prohibits possession of firearms by certain persons.

E. If the respondent is present at the hearing on the order of protection, the court shall provide the respondent with a receipt form to identify all firearms to be surrendered or, if the respondent has no firearms to relinquish, a declaration of non-relinquishment. The court shall accept the completed form from the respondent for immediate filing.

F. Evidence establishing ownership or possession of a firearm pursuant to this section shall not be admissible as evidence in any criminal proceeding.

G. The law enforcement agency or federal firearms licensee with custody of a surrendered or seized firearm shall make the firearm available to a formerly restrained party within three business days of receipt of a request from a formerly restrained party who is then currently eligible to own and possess a firearm.

H. A formerly restrained party who has surrendered or had firearms taken by a law enforcement officer or law enforcement agency pursuant to this section who does not wish the firearm returned or who is no longer eligible to possess a firearm may sell or transfer the firearm to a federal firearms licensee. The law enforcement agency shall not release the firearm to a federal firearms licensee until:

(1) the federal firearms licensee has displayed proof that the formerly restrained party has transferred the firearm to the licensee; and

(2) the law enforcement agency has verified the transfer with the formerly restrained party.

I. A law enforcement agency holding a firearm relinquished pursuant to this section may dispose of the firearm twelve months from the date of proper notice to the formerly restrained party of the intent to dispose of the firearm, unless another person claiming to be the lawful owner presents written proof of ownership. If the firearm remains unclaimed after twelve months from the date of notice, no party shall assert ownership and the law enforcement agency may dispose of the firearm. For the purposes of this subsection, "dispose" means to destroy a firearm or sell or transfer the firearm to a federal firearms licensee.

J. The provisions of this section shall not be interpreted to require a federal firearms licensee to purchase or accept possession of a firearm from a restrained party.

K. The administrative office of the courts shall develop a standard receipt form and declaration of non-relinquishment form for use under this section.

History: Laws 2019, ch. 253, § 4.

ARTICLE 13A
Uniform Interstate Enforcement of Domestic Violence Protection Orders

40-13A-1. Short title.

Sections 1 through 9 [40-13A-1 to 40-13A-9 NMSA 1978] of this act may be cited as the "Uniform Interstate Enforcement of Domestic Violence Protection Orders Act".

History: Laws 2013, ch. 47, § 1.

40-13A-2. Definitions.

As used in the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act:

A. "foreign protection order" means a protection order issued by a tribunal of another state;

B. "issuing state" means the state whose tribunal issues a protection order;

C. "mutual foreign protection order" means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent;

D. "protected individual" means a person protected by a protection order;

E. "protection order" means an injunction or other order, issued by a tribunal under the domestic violence, family violence or antistalking laws of the issuing state, to prevent a person from engaging in a violent or threatening act against, harassment of, contact or communication with or physical proximity to another person;

F. "respondent" means the person against whom enforcement of a protection order is sought;

G. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian pueblo, tribe, nation or band that has jurisdiction to issue protection orders; and

H. "tribunal" means a court, agency or other entity authorized by law to issue or modify a protection order.

History: Laws 2013, ch. 47, § 2.

40-13A-3. Judicial enforcement of a foreign protection order.

A. A person may seek enforcement of a valid foreign protection order in a New Mexico tribunal. The tribunal shall enforce the terms of the order, including terms that provide relief that a New Mexico tribunal would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow New Mexico procedures for the enforcement of protection orders.

B. A New Mexico tribunal shall not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

C. A New Mexico tribunal shall enforce the provisions of a valid foreign protection order governing custody and visitation, if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

D. A foreign protection order is valid if it:

(1) identifies the protected individual and the respondent;

(2) is currently in effect;

(3) was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(4) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an ex parte order, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued in a manner consistent with the due process rights of the respondent.

E. A foreign protection order valid on its face is prima facie evidence of its validity.

F. Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

G. A New Mexico tribunal may enforce provisions of a mutual foreign protection order only if:

(1) both parties filed a written pleading seeking a protection order from the tribunal of the issuing state; and

(2) the tribunal of the issuing state made specific findings that each party was entitled to a protection order.

History: Laws 2013, ch. 47, § 3.

40-13A-4. Nonjudicial enforcement of foreign protection order.

A. A New Mexico law enforcement officer, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a New Mexico tribunal. Presentation of a foreign protection order that identifies both the protected individual and the respondent and that, on its face, appears to be in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, a protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

B. If a foreign protection order is not presented, a New Mexico law enforcement officer may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

C. If a New Mexico law enforcement officer determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

D. Registration or filing of a foreign protection order in New Mexico is not required for the enforcement of a valid foreign protection order pursuant to the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

History: Laws 2013, ch. 47, § 4.

40-13A-5. Registration of foreign protection order.

A. A person may register a foreign protection order in New Mexico. To register a foreign protection order, a person shall present to the clerk of the district court:

(1) a copy of the foreign protection order that has been certified by the issuing tribunal; and

(2) an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the foreign protection order is currently in effect.

B. The clerk shall register the foreign protection order in accordance with this section. After the foreign protection order is registered, the clerk shall furnish to the person registering the order a certified copy of the registered order and shall send a copy of the registered order to the local law enforcement agency. The clerk shall not notify the respondent that the foreign protection order has been registered in New Mexico unless requested to do so by the protected individual.

C. A registered foreign protection order that is inaccurate or is not currently in effect shall be corrected or removed from the tribunal's records in accordance with New Mexico law.

D. A foreign protection order registered under the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act may be entered in any state or federal registry of protection orders in accordance with applicable law.

E. A fee shall not be charged for the registration of a foreign protection order.

History: Laws 2013, ch. 47, § 5.

40-13A-6. Limits on internet publication.

A state agency, court or political subdivision of the state, including a magistrate or municipal court, judicial district, law enforcement agency, county, municipality or home-rule municipality, shall not make available publicly on the internet any information regarding the registration of, filing of a petition for or issuance of a protection order, restraining order or injunction pursuant to the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, whether the filing or issuance occurred in New Mexico or any other state. However, the provisions of the preceding sentence shall not apply to a filing or issuance on the New Mexico state judiciary's statewide case management and e-filing system, but the address of a protected person shall be redacted from any such filing or issuance. A state agency, court or political subdivision may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

History: Laws 2013, ch. 47, § 6.

40-13A-7. Other remedies.

A protected individual who pursues remedies under the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act is not precluded from pursuing other legal or equitable remedies against the respondent.

History: Laws 2013, ch. 47, § 7.

40-13A-8. Uniformity of application and construction.

In applying and construing the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact that act.

History: Laws 2013, ch. 47, § 8.

40-13A-9. Transitional provision.

The Uniform Interstate Enforcement of Domestic Violence Protection Orders Act applies to protection orders issued before July 1, 2013 and to continuing actions for enforcement of foreign protection orders commenced before July 1, 2013. A request for enforcement of a foreign protection order made on or after July 1, 2013 for violations of a foreign protection order occurring before July 1, 2013 is governed by the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

History: Laws 2013, ch. 47, § 9.

ARTICLE 13B
Confidential Substitute Address

40-13B-1. Short title.

Chapter 40, Article 13B NMSA 1978 may be cited as the "Confidential Substitute Address Act".

History: Laws 2018, ch. 40, § 1; 2023, ch. 39, § 92.

40-13B-2. Definitions.

As used in the Confidential Substitute Address Act:

A. "agency" means an agency of the state or of a political subdivision of the state;

B. "applicant" means a person who submits an application to participate in the confidential substitute address program;

C. "application assistant" means a person who works or volunteers for a domestic violence or sexual assault program and who assists in preparing an application for the confidential substitute address program;

D. "confidential substitute address" means an address designated for a participant by the secretary of state pursuant to the Confidential Substitute Address Act;

E. "delivery address" means the address where an applicant or a participant receives mail, and it may be the same as the person's residential address;

F. "domestic violence" means "domestic abuse", as defined in the Family Violence Protection Act [Chapter 40, Article 13 NMSA 1978];

G. "participant" means a person certified to participate in the confidential substitute address program pursuant to the Confidential Substitute Address Act;

H. "public record" means "public records", as defined in the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]; and

I. "residential address" means the street address where an applicant or participant resides or will relocate.

History: Laws 2018, ch. 40, § 2.

40-13B-3. Confidential substitute address program; application.

A. The "confidential substitute address program" is created in the office of the secretary of state to provide a process by which a victim of domestic violence may protect the confidentiality of the victim's residential and delivery addresses in public records.

B. An applicant, with the assistance of an application assistant, shall submit an application to the secretary of state on a form prescribed by the secretary of state. The application assistant's signature shall serve as recommendation that the applicant participate in the confidential substitute address program.

C. An application shall be signed and dated by the applicant and the application assistant and shall include:

(1) the applicant's name;

(2) the applicant's statement that the applicant fears for the safety of the applicant, the applicant's child or another person in the applicant's household because of a threat of immediate or future harm;

(3) the applicant's statement that the disclosure of the applicant's residential or delivery address would endanger the applicant, the applicant's child or another person in the applicant's household;

(4) the applicant's statement that the applicant has confidentially relocated in the past ninety days or will relocate within the state in the next ninety days;

(5) a designation of the secretary of state as the applicant's agent for the purpose of receiving mail, deliveries and service of process, notice or demand;

(6) the names and ages of those persons in the applicant's household who will also be participants in the program if the applicant is admitted into the program. Each person in an applicant's household listed in the application shall be considered a separate participant in the program;

(7) the applicant's residential and delivery addresses, if different, the confidentiality of which the applicant seeks to protect;

(8) the applicant's telephone number and email address; and

(9) the applicant's statement under penalty of perjury that the information contained in the application is true.

History: Laws 2018, ch. 40, § 3; 2023, ch. 39, § 93.

40-13B-4. Secretary of state; duties; service on participant.

A. The secretary of state shall:

(1) certify applicants whose applications comply with the requirements of the Confidential Substitute Address Act to participate in the confidential substitute address program;

(2) upon certification with respect to each participant:

(a) issue a confidential substitute address identification card;

(b) designate a confidential substitute address that shall be used in place of the participant's residential or delivery address by state and local government agencies;

(c) receive mail and deliveries sent to a participant's confidential substitute address and forward the mail and deliveries to the participant's delivery address at no charge to the participant;

(d) accept service of process, notice or demand that is required or permitted by law to be served on the participant and immediately forward the process, notice or demand to the participant's delivery address at no charge to the participant; and

(e) maintain records of the following that are received and forwarded by the secretary of state: 1) a participant's certified and registered mail; and 2) any process, notice or demand that is served on a participant; and

(3) administer the provisions of the Intimate Partner Violence Survivor Suffrage Act [1-6C-1 to 1-6C-9 NMSA 1978] to ensure that a participant who is eligible to vote in this state is able to be securely registered to vote and to automatically receive a ballot for each election.

B. Service made pursuant to the provisions of this section is perfected three days after it is accepted by the secretary of state.

History: Laws 2018, ch. 40, § 4; 2019, ch. 226, § 10.

40-13B-5. Agencies; use of confidential substitute address; public records.

A. A participant shall:

(1) contact each agency that requests or uses an address; and

(2) provide the agency with a copy of the participant's confidential substitute address identification card.

B. Agencies that receive copies of confidential substitute address identification cards submitted pursuant to this section shall use the participant's confidential substitute address for all purposes.

C. A school district shall use a participant's confidential substitute address as the participant's address of record and, if necessary, shall verify a student's enrollment eligibility with the secretary of state.

D. A county clerk shall transfer all records related to a participant's voter registration to the secretary of state pursuant to the provisions of the Intimate Partner Violence Survivor Suffrage Act [1-6C-1 to 1-6C-9 NMSA 1978].

E. A participant's residential or delivery address, telephone number and email address that are maintained by an agency are not public records and shall not be disclosed pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978] while a person is a participant.

History: Laws 2018, ch. 40, § 5; 2019, ch. 226, § 11.

40-13B-6. Change of participant name, address or telephone number; requirements.

A. A participant shall notify the secretary of state within ten days of legally changing the participant's name and shall provide the secretary of state with a certified copy of documentation of the legal name change.

B. A participant shall notify the secretary of state within ten days of a change to the participant's residential address, delivery address, telephone number or email address.

C. A participant shall notify the secretary of state within ten days if a new person in the participant's household needs to become a participant in the program.

History: Laws 2018, ch. 40, § 6; 2023, ch. 39, § 94.

40-13B-7. Participant decertification.

A. A participant shall be decertified from the confidential substitute address program if:

(1) the participant submits a request to withdraw from the confidential substitute address program to the secretary of state;

(2) the participant fails to notify the secretary of state of a legal name change or a change to the participant's residential address, delivery address, telephone number or email address;

(3) mail that is forwarded by the secretary of state to the participant's delivery address is returned as undeliverable; or

(4) the participant does not comply with the provisions of the Intimate Partner Violence Survivor Suffrage Act [1-6C-1 to 1-6C-9 NMSA 1978].

B. If the secretary of state determines that one or more of the causes for decertification provided in Subsection A of this section exist, the secretary of state shall send notice of the participant's decertification to the participant's delivery and residential addresses and shall attempt to notify the participant by telephone and email. The participant shall be given ten days from the date of decertification to appeal the decertification.

C. A person who is decertified from the confidential substitute address program shall not continue to use the person's confidential substitute address.

D. For six months after a participant has been decertified, the secretary of state shall forward mail and deliveries to an address provided by the former participant. Upon receipt of mail and deliveries pursuant to this subsection, a former participant shall provide an updated address to the sender.

History: Laws 2018, ch. 40, § 7; 2023, ch. 39, § 95.

40-13B-8. Participant records; confidentiality; disclosure prohibited.

A. The secretary of state and an agency shall not disclose the residential address, delivery address, telephone number or email address of a participant unless the information is required to be disclosed pursuant to a court order. A person or agency

that receives a participant's residential address, delivery address, telephone number or email address pursuant to a court order shall not in turn disclose that information unless pursuant to a court order or unless the person who was a participant has been decertified.

B. The secretary of state shall maintain the confidentiality of all records relating to an applicant for or participant in the confidential substitute address program while the person is a participant and shall:

(1) store all tangible copies of program records in locked equipment;

(2) store all electronic copies of program records in a password-protected system;

(3) restrict access to all program records to secretary of state staff members who are approved to access the records as provided in this section; and

(4) release program records only on a court's order.

C. The secretary of state shall establish a system for restricting access to program records to approved staff members. Before being approved and granted access to program records, the staff member shall:

(1) submit to a criminal background check performed by the department of public safety;

(2) not have a record of a sex offense, felony or a misdemeanor violation related to domestic violence or sexual assault on the results of the person's criminal background check; and

(3) complete forty hours of training, including a domestic violence training course provided by the children, youth and families department and sexual assault training provided by the department of health or the crime victims reparation commission or its successor.

D. The secretary of state shall appoint a person to be the administrator of the election component of the confidential substitute address program in accordance with the Intimate Partner Violence Survivor Suffrage Act [1-6C-1 to 1-6C-9 NMSA 1978]. The administrator shall meet the requirements of Subsection C of this section, and administration of the Intimate Partner Violence Survivor Suffrage Act shall conform to the requirements of Subsections A and B of this section and Subsection E of Section 40-13B-5 NMSA 1978.

History: Laws 2018, ch. 40, § 8; 2019, ch. 226, § 12; 2023, ch. 39, § 96.

40-13B-9. Rules.

The secretary of state shall promulgate rules, including rules regarding records and confidentiality retention, to implement the provisions of the Confidential Substitute Address Act.

History: Laws 2018, ch. 40, § 9.

ARTICLE 14
Adult Adoptions

40-14-1. Short title.

This act [40-14-1 to 40-14-15 NMSA 1978] may be cited as the "Adult Adoption Act".

History: Laws 1993, ch. 296, § 1.

40-14-2. [Definitions.]

As used in the Adult Adoption Act:

A. "adoptee" means any adult who is the subject of an adoption petition;

B. "adult" means any individual who is eighteen years of age or older;

C. "court" means the district court;

D. "parent" means the biological or adoptive parent;

E. "person" means an individual;

F. "petitioner" means any person who signs a petition to adopt under the Adult Adoption Act; and

G. "resident" means a person who, immediately prior to filing an adoption petition, has lived in the state for at least six months or a person who has become domiciled in the state by establishing legal residence with the intention of maintaining the residence indefinitely.

History: Laws 1993, ch. 296, § 2.

40-14-3. Jurisdiction.

The court shall have original jurisdiction over proceedings arising under the Adult Adoption Act.

History: Laws 1993, ch. 296, § 3.

40-14-4. Venue.

A. A petition for adoption may be filed in any county where:

(1) a petitioner resides; or

(2) the adoptee resides.

B. A court that has jurisdiction under the Adult Adoption Act may decline to exercise jurisdiction any time before entering a decree if the court finds that under the circumstances of the case it is an inconvenient forum to make a determination. In that case, the court shall transfer the proceedings on any conditions that are just.

History: Laws 1993, ch. 296, § 4.

40-14-5. Who may be adopted; who may adopt.

A. Any adult may be adopted.

B. Residents who are one of the following may adopt:

(1) any adult who has been approved by the court as a suitable adoptive parent pursuant to the provisions of the Adult Adoption Act; or

(2) a married adult, without the spouse of the married adult joining in the adoption if:

(a) the non-joining spouse is a parent of the adoptee;

(b) the adult who is adopting and the non-joining spouse are legally separated; or

(c) the failure of the non-joining spouse to join in the adoption is excused for reasonable circumstances as determined by the court.

History: Laws 1993, ch. 296, § 5.

40-14-6. Consent to the adoption.

A. Consent to the adoption shall be required of the adoptee or a person legally authorized to consent on behalf of the adoptee if the adoptee is incapacitated and unable to consent to the adoption.

B. A consent shall be in writing, signed by the adoptee 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 advised of the legal consequences of the adoption by independent legal counsel or a judge;

(5) that consent to an adoption cannot be withdrawn;

(6) that the adoptee is voluntarily and unequivocally consenting to the adoption; and

(7) that the adoptee has received or been offered a copy of the consent.

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

D. A consent to adoption shall be signed before and approved by a judge who has jurisdiction over adoption proceedings, within or without this state, and who is in the jurisdiction in which the adoptee or the petitioner resides.

E. The consent shall be filed with the court in which the petition for adoption has been filed before adjudication of the petition.

F. In its discretion, the court may order counseling.

G. A consent to adoption shall not be withdrawn prior to the entry of a decree of adoption unless the court finds, after notice and an opportunity to be heard is given to the petitioner and the adoptee, that the consent was obtained by fraud. In no event shall a consent or relinquishment be withdrawn after the entry of a decree of adoption.

History: Laws 1993, ch. 296, § 6.

40-14-7. Petition; content.

A petition for adoption shall be filed and verified by the petitioner and shall allege:

A. the full name, age and place and duration of residence of the petitioner and, if married, the place and date of marriage; the date and place of any prior marriage, separation or divorce; and the name of any present or prior spouse;

B. the date and place of birth of the adoptee;

C. the birth name of the adoptee, any other names by which the adoptee has been known and the adoptee's proposed new name;

D. where the adoptee is residing at the time of the filing of the petition;

E. that the petitioner desires to establish a parent and child relationship between himself and the adoptee;

F. the relationship, if any, of the petitioner to the adoptee;

G. whether the adoptee is foreign born, and if so, copies of the adoptee's passport and United States visa shall be attached as exhibits to the petition;

H. the length and nature of the relationship between the petitioner and the adoptee and the degree of kinship, if any;

I. the reason the adoption is sought;

J. the names and addresses of any living parents or children of the adoptee;

K. a statement as to why the adoption would be in the best interests of the petitioner, the adoptee and the public; and

L. whether the petitioner or the petitioner's spouse has previously adopted any other adult person and, if so, the name of the person and the date and place of the adoption.

History: Laws 1993, ch. 296, § 7.

40-14-8. Petition; caption.

The caption of a petition for adoption shall be styled "In the Matter of the Adoption Petition of (Petitioner's Name)".

History: Laws 1993, ch. 296, § 8.

40-14-9. Notice of petition; service; waiver.

A. A copy of the petition for adoption shall be served by the petitioner on the following individuals, unless receipt of a copy of the petition has been previously waived in writing:

(1) the adoptee;

(2) the parents of the adoptee;

(3) the legally appointed conservator or guardian of the adoptee;

(4) the spouse of any petitioner who has not joined in the petition;

(5) the spouse of the adoptee;

(6) the surviving parent of a deceased parent of the adoptee; and

(7) any other person designated by the court.

B. The notice shall state that the person served shall respond to the petition within twenty days if the person intends to contest the adoption and shall also state that failure to respond in a timely manner will be treated as a default.

C. Provision of notice for the adoptee and the legally appointed conservator or guardian of the adoptee shall be made pursuant to the Rules of Civil Procedure for the District Courts.

D. As to any other person for whom notice is required under Subsection A of this section, service by certified mail, return receipt requested, is sufficient. If the service cannot be completed after two attempts, the court shall issue an order providing for service by publication.

E. The notice required by this section may be waived in writing by the person entitled to notice.

F. Proof of service of the notice on all persons for whom notice is required shall be filed with the court prior to any hearing that affects the rights of those persons.

History: Laws 1993, ch. 296, § 9.

40-14-10. Response to petition.

A. Any person who responds to a notice of petition for adoption shall file a verified response to the petition within the time limits set forth in Section 12 of the Adult Adoption Act.

B. The verified response shall be made pursuant to the Rules of Civil Procedure for the District Courts and, in addition, shall allege the relationship, if any, of the respondent to the adoptee.

History: Laws 1993, ch. 296, § 10.

40-14-11. Appointment of attorney for incompetent adoptee.

Upon motion of any party, or upon the court's own motion, the court may appoint an attorney for an adoptee whom the court finds to be incompetent. Payment for the appointed attorney shall be assessed against the parties in the court's discretion.

History: Laws 1993, ch. 296, § 11.

40-14-12. Adjudication; disposition; decree of adoption.

A. The court shall conduct a hearing on the petition for adoption. The petitioner and the adoptee shall attend the hearing, unless the court waives a party's appearance for good cause shown by the party. As used in this subsection, "good cause" includes burdensome travel requirements.

B. The petitioner shall present and prove each allegation set forth in the petition for adoption by clear and convincing evidence.

C. The court shall grant a decree of adoption if it finds that the petitioner has proved by clear and convincing evidence that:

(1) the court has jurisdiction to enter a decree of adoption affecting the adoptee;

(2) the adoptee has consented to the adoption;

(3) service of the petition for adoption has been made or dispensed with as to all persons entitled to notice;

(4) at least thirty days have passed since the filing of the petition for adoption;

(5) the petitioner is a suitable adoptive parent and the best interests of the petitioner, adoptee and the public are served by the adoption; and

(6) if the adoptee is foreign born, the adoptee is legally free for adoption.

D. In addition to the findings set forth in Subsection C of this section, the court, in any decree of adoption, shall make findings with respect to each allegation of the petition.

E. If the court determines that any of the findings for a decree of adoption have not been met or that the adoption is not in the best interests of the petitioner, adoptee or the public, the court shall deny the petition.

F. The decree of adoption shall include the new name of the adoptee and shall not include any other name by which the adoptee has been known or the names of the former parents. The decree of adoption shall order that from the date of the decree, the

adoptee shall be the child of the petitioner and accorded the status set forth in Section 13 [40-14-13 NMSA 1978] of the Adult Adoption Act.

G. A decree of adoption shall be entered within six months of the filing of the petition.

H. A decree of adoption may not be attacked upon the expiration of one year from the date of the entry of the decree.

History: Laws 1993, ch. 296, § 12.

40-14-13. Status of adoption and petitioner upon entry of decree of adoption.

A. Once adopted, an adoptee shall take a name agreed upon by the petitioner and the adoptee and approved by the court.

B. After adoption, the adoptee and the petitioner shall sustain the legal relation of parent and child as if the adoptee were the biological child of the petitioner and the petitioner were the biological parent of the child. The adoptee shall have all rights and be subject to all the duties of that relation, including the right of inheritance from and through the petitioner, and the petitioner shall have all rights and be subject to all duties of that relation, including the right of inheritance from and through the adoptee.

History: Laws 1993, ch. 296, § 13.

40-14-14. Birth certificates.

A. Within thirty days after an adoption decree is entered, the petitioner shall prepare an application for a birth certificate in the new name of the adoptee showing the petitioner as the adoptee's parent and shall provide the application to the clerk of the court. The clerk of the court shall forward the application:

(1) for a person born in the United States, to the appropriate vital statistics office of the place, if known, where the adoptee was born; or

(2) for all other persons, to the state registrar of vital statistics. In the case of the adoption of a person born outside the United States, if requested by the petitioner, the court shall make findings, based on evidence from the petitioner and other reliable state or federal sources, on the date and place of birth of the adoptee. The findings shall be certified by the court and included with the application for a birth certificate.

B. The state registrar of vital statistics shall prepare a birth record in the new name of the adoptee in accordance with vital statistics laws.

History: Laws 1993, ch. 296, § 14.

40-14-15. Recognition of foreign decrees.

Every judgment establishing the relationship of parent and child by adult adoption issued pursuant to due process of law by the tribunals of any other jurisdiction within or without the United States shall be recognized in this state, so that the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the judgment were issued by the courts of this state.

History: Laws 1993, ch. 296, § 15.

ARTICLE 15
Family Preservation Act

40-15-1. Short title.

Sections 1 through 4 of this act [40-15-1 to 40-15-4 NMSA 1978] may be cited as the "Family Preservation Act".

History: Laws 2005, ch. 68, § 1.

40-15-2. Legislative purpose.

The purpose of the Family Preservation Act is to confirm the state's policy of support for the family and to emphasize the responsibilities of parents and the state in the healthy development of children and the family as an institution. The Family Preservation Act is also intended to serve as a benchmark against which other legislation may be measured to assess whether it furthers the goals of preserving and enhancing families in New Mexico.

History: Laws 2005, ch. 68, § 2.

40-15-3. Family preservation goals; statement of policy.

It is the policy of the state that its laws and programs shall:

A. support intact, functional families and promote each family's ability and responsibility to raise its children;

B. strengthen families in crisis and at risk of losing their children, so that children can remain safely in their own homes when their homes are safe environments and in their communities;

C. promote the creation of well-paying, stable jobs so that families can provide for their basic needs, including health, education, food, clothing and shelter; and

D. help halt the breakup of the nuclear family, stabilize neighborhoods and strengthen communities.

History: Laws 2005, ch. 68, § 3.

40-15-4. Parental and state responsibilities.

A. Parents have joint primary responsibility for the well-being of their family. Parents have the primary responsibility to:

(1) ensure that their children have adequate food, shelter, health care and a healthy environment;

(2) support their children in all ways possible to grow up to be responsible, caring members of society;

(3) ensure that their children receive quality education both in and out of school to prepare them for active and productive adult lives;

(4) protect their children from the serious dangers of narcotics, alcohol and other harmful substances; and

(5) protect their children from all forms of exploitation harmful to any aspect of their welfare.

B. The state has a responsibility to develop plans to:

(1) make available to families free, quality public primary and secondary education;

(2) provide public safety services so that family members are safe in their homes, schools, workplaces and recreational settings;

(3) make available social service programs that support vulnerable families and protect spouses and children in danger of physical or serious emotional harm;

(4) develop programs that build on the strengths of families and connect them with community resources;

(5) provide parents with access to the training and support they need to raise their children, function effectively as parents and play a key role in helping preschool and growing children learn; and

(6) assist parents in carrying out their primary responsibility of providing for the well-being of their family.

History: Laws 2005, ch. 68, § 4.

ARTICLE 16
Termination of Parental Rights

40-16-1. Termination of parental rights; conception resulting from criminal sexual penetration.

A. At any time, a biological parent may petition the court for termination of the parental rights of a child's other biological parent, where that other biological parent has been convicted of criminal sexual penetration and where the criminal sexual penetration resulted in the conception and birth of the child. The court shall grant the petition if the court determines by clear and convincing evidence that the child was conceived as a result of the criminal sexual penetration for which the other biological parent was convicted.

B. In a proceeding that involves a child subject to the federal Indian Child Welfare Act of 1978, the grounds for any attempted termination shall be proved beyond a reasonable doubt and shall meet the requirements set forth in that act, and the court shall, in a termination order, make specific findings that those requirements were met.

C. A determination pursuant to Subsection A of this section or proof pursuant to Subsection B of this section creates a presumption that termination of parental rights is in the best interest of the child.

D. As used in this section, "criminal sexual penetration" means aggravated criminal sexual penetration in the first degree and criminal sexual penetration in the first, second or third degree pursuant to the laws of this state or an equivalent offense pursuant to the laws of another jurisdiction, territory or possession of the United States or an Indian nation, tribe or pueblo.

History: Laws 2017, ch. 121, § 1.

ARTICLE 17
Extreme Risk Firearm Protection Order

40-17-1. Short title.

Sections 1 through 13 [40-17-1 to 40-17-13 NMSA 1978] of this act may be cited as the "Extreme Risk Firearm Protection Order Act".

History: Laws 2020, ch. 5, § 1.

40-17-2. Definitions.

As used in the Extreme Risk Firearm Protection Order Act:

A. "court" means the district court in the county in which the respondent resides;

B. "extreme risk firearm protection order" means either a temporary extreme risk firearm protection order or a one-year extreme risk firearm protection order granted pursuant to the Extreme Risk Firearm Protection Order Act;

C. "firearm" means any weapon that is designed to expel a projectile by an explosion or the frame or receiver of any such weapon;

D. "law enforcement agency" means the police department of any city or town, the sheriff's office of any county, the New Mexico state police and a district attorney's office in the state and the office of the attorney general;

E. "law enforcement officer" means a public official or public officer vested by law with the power to maintain order, to make arrests for crime or to detain persons suspected of committing a crime, whether that duty extends to all crimes or is limited to specific crimes and includes an attorney employed by a district attorney or the attorney general;

F. "one-year extreme risk firearm protection order" means an extreme risk firearm protection order granted for up to one year following a hearing pursuant to the provisions of Section 7 [40-17-7 NMSA 1978] of the Extreme Risk Firearm Protection Order Act;

G. "petitioner" means a law enforcement officer who files an extreme risk firearm protection order petition;

H. "reporting party" means a person who requests that a law enforcement officer file a petition for an extreme risk firearm protection order and includes a spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, grandparent, grandparent-in-law, co-parent of a child, child, person with whom a respondent has or had a continuing personal relationship, employer or public or private school administrator;

I. "respondent" means the person identified in or subject to an extreme risk firearm protection order petition; and

J. "temporary extreme risk firearm protection order" means an extreme risk firearm protection order issued prior to a hearing pursuant to the provisions of Section 6 [40-17-6 NMSA 1978] of the Extreme Risk Firearm Protection Order Act.

History: Laws 2020, ch. 5, § 2.

40-17-3. Forbearance of costs associated with extreme risk firearm protection orders.

A reporting party who requests that a petitioner seek an extreme risk firearm protection order shall not be required to bear the cost of:

A. the filing, issuance or service of a petition for an extreme risk firearm protection order;

B. the filing, issuance or service of a warrant;

C. the filing, issuance or service of a witness subpoena;

D. service of an extreme risk firearm protection order;

E. obtaining law enforcement reports or photographs or copies of photographs relating to the allegations in the petition; or

F. any cost associated with the confiscation, storage or destruction of a firearm.

History: Laws 2020, ch. 5, § 3.

40-17-4. Extreme risk firearm protection orders; venue.

Proceedings pursuant to the Extreme Risk Firearm Protection Order Act shall be filed, heard and determined in the district court for the county in which the respondent resides.

History: Laws 2020, ch. 5, § 4.

40-17-5. Petition for extreme risk firearm protection order; contents.

A. A petition for an extreme risk firearm protection order shall be filed only by a law enforcement officer employed by a law enforcement agency; provided that, if the respondent is a law enforcement officer, the petition shall be filed by the district attorney or the attorney general.

B. A petitioner may file a petition with the court requesting an extreme risk firearm protection order that shall enjoin the respondent from having in the respondent's possession, custody or control any firearm and shall further enjoin the respondent from purchasing, receiving or attempting to purchase, possess or receive any firearm while the order is in effect.

C. If a law enforcement officer declines to file a requested petition for an extreme risk firearm protection order, the law enforcement officer shall file with the sheriff of the

county in which the respondent resides a notice that the law enforcement officer is declining to file a petition pursuant to this section.

D. A law enforcement officer shall file a petition for an extreme risk firearm protection order upon receipt of credible information from a reporting party that gives the agency or officer probable cause to believe that a respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm.

E. A petition for an extreme risk firearm protection order shall state the specific statements, actions or facts that support the belief that the respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm.

F. A petition for an extreme risk firearm protection order shall be made under oath and shall be accompanied by a sworn affidavit signed by the reporting party setting forth specific facts supporting the order.

G. A petition for an extreme risk firearm protection order shall include:

(1) the name and address of the reporting party;

(2) the name and address of the respondent;

(3) a description of the number, types and locations of firearms or ammunition that the petitioner believes the respondent has custody of, controls, owns or possesses;

(4) a description of the relationship between the reporting party and the respondent; and

(5) a description of any lawsuit, complaint, petition, restraining order, injunction or other legal action between the reporting party and the respondent.

History: Laws 2020, ch. 5, § 5.

40-17-6. Petition for temporary extreme risk firearm protection order; temporary orders; proceedings.

A. Upon the filing of a petition pursuant to the Extreme Risk Firearm Protection Order Act, the court may enter a temporary extreme risk firearm protection order if the court finds from specific facts shown by the petition that there is probable cause to believe that the respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm before notice can be served and a hearing held.

B. If the court finds probable cause pursuant to Subsection A of this section, the court shall issue a temporary extreme risk firearm protection order enjoining the respondent from having in the respondent's possession, custody or control a firearm and shall further enjoin the respondent from purchasing, receiving or attempting to purchase or receive a firearm while the order is in effect.

C. The court shall conduct a hearing within ten days of the issuance of a temporary extreme risk firearm protection order to determine if a one-year extreme risk firearm protection order should be issued pursuant to this section.

D. A temporary extreme risk firearm protection order shall include:

(1) a statement of the grounds supporting the issuance of the order;

(2) the date and time the order was issued;

(3) a statement that the order shall continue until the earlier of ten days or such time as a court considers the petition at a hearing, unless an extension is granted at the request of the respondent pursuant to Subsection E of this section;

(4) the address of the court that issued the order and in which any responsive pleading should be filed; and

(5) the date and time of the scheduled hearing, to be held within ten days of the issuance of the order.

E. The court may continue the hearing at the request of the respondent, but the hearing shall be set within thirty days of the respondent's request for continuance.

F. A temporary extreme risk firearm protection order shall be served by the petitioner along with supporting documents that formed the basis of the order, the notice of hearing and the petition for a one-year extreme risk firearm protection order.

G. If the court declines to issue a temporary extreme risk firearm protection order, the court shall enter an order that includes the reasons for the denial.

History: Laws 2020, ch. 5, § 6.

40-17-7. Hearings on petition; grounds for issuance; contents of order.

In determining whether grounds for any extreme risk firearm protection order exist, the court shall consider, at a minimum, the following:

A. any recent act or threat of violence by the respondent against self or others, regardless of whether the act or threat involved a firearm;

B. a pattern of acts or threats of violence by the respondent within the past twelve months, including acts or threats of violence against self or others;

C. the respondent's mental health history;

D. the respondent's abuse of controlled substances or alcohol;

E. the respondent's previous violations of any court order;

F. previous extreme risk firearm protection orders issued against the respondent;

G. the respondent's criminal history, including arrests and convictions for violent felony offenses, violent misdemeanor offenses, crimes involving domestic violence or stalking;

H. the respondent's history of the use, attempted use or threatened use of physical violence against another person; of stalking another person; or of cruelty to animals; and

I. any recent acquisition or attempts at acquisition of a firearm by the respondent.

History: Laws 2020, ch. 5, § 7.

40-17-8. One-year extreme risk firearm protection order; grounds for issuance; contents of order; termination; expiration; renewal of orders.

A. If, after hearing the matter, the court finds by a preponderance of the evidence that the respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm, the court shall issue a one-year extreme risk firearm protection order.

B. A one-year extreme risk firearm protection order shall include:

(1) a statement of the grounds supporting the issuance of the order;

(2) the date and time the order was issued;

(3) the date and time the order expires;

(4) information pertaining to any recommendation by the court for mental health or substance abuse evaluations, if applicable;

(5) the address of the court that issued the order; and

(6) notice that the respondent is entitled to request termination of the order prior to the expiration of the order.

C. If the court declines to issue a one-year extreme risk firearm protection order, the court shall state in writing the reasons for the court's denial and shall order the return of any firearms to the respondent.

D. A respondent may request that the court terminate a one-year extreme risk firearm protection order at any time prior to the expiration of the order.

E. At any time not less than one month prior to the expiration of a one-year extreme risk firearm protection order, a petitioner may petition the court to extend the order. Each extension of the order shall not exceed one year. A petition filed pursuant to this subsection shall comply with the provisions of Subsections E and F of Section 5 [40-17-5 NMSA 1978] of the Extreme Risk Firearm Protection Order Act and shall be served on the respondent as provided in Section 9 [40-17-9 NMSA 1978] of that act.

F. A one-year extreme risk firearm protection order is a final, immediately appealable order.

History: Laws 2020, ch. 5, § 8.

40-17-9. Service of extreme risk firearm protection orders.

A one-year extreme risk firearm protection order issued pursuant to the Extreme Risk Firearm Protection Order Act shall be personally served upon the respondent by the sheriff's office in the county in which the respondent resides; provided that if the respondent resides in a city or town that has a police department, the police department shall serve the order.

History: Laws 2020, ch. 5, § 9.

40-17-10. Relinquishment of firearms.

A. A respondent who receives a temporary or one-year extreme risk firearm protection order shall relinquish all firearms in the respondent's possession, custody or control or subject to the respondent's possession, custody or control in a safe manner to a law enforcement officer, a law enforcement agency or a federal firearms licensee within forty-eight hours of service of the order or sooner at the discretion of the court.

B. A law enforcement officer, law enforcement agency or federal firearms licensee that takes temporary possession of a firearm pursuant to this section shall:

(1) prepare a receipt identifying all firearms that have been relinquished or taken;

(2) provide a copy of the receipt to the respondent;

(3) provide a copy of the receipt to the petitioner within seventy-two hours of taking possession of the firearms;

(4) file the original receipt with the court that issued the temporary or one-year extreme risk firearm protection order within seventy-two hours of taking possession of the firearms; and

(5) ensure that the law enforcement agency retains a copy of the receipt.

History: Laws 2020, ch. 5, § 10.

40-17-11. Penalties.

A person who fails to relinquish, or who possesses or has custody or control over, any firearm or who purchases, receives or attempts to purchase, possess or receive any firearm, in violation of a temporary extreme risk firearm protection order or a one-year extreme risk firearm protection order is guilty of a misdemeanor punishable pursuant to Section 31-19-1 NMSA 1978.

History: Laws 2020, ch. 5, § 11.

40-17-12. Extreme risk firearm protection order; reporting of orders; availability of data.

A. The clerk of the court shall provide a copy of a one-year extreme risk firearm protection order or temporary extreme risk firearm protection order issued pursuant to the Extreme Risk Firearm Protection Order Act to any law enforcement agency designated to provide information to the national instant criminal background check system.

B. The clerk of the court shall forward a copy of any order issued, renewed or terminated pursuant to the Extreme Risk Firearm Protection Order Act to the petitioner and to the law enforcement agency specified in Subsection A of this section.

C. Upon receipt of a copy of a one-year extreme risk firearm protection order or temporary extreme risk firearm protection order, the law enforcement agency specified in Subsection A of this section shall enter the order into:

(1) the national instant criminal background check system;

(2) all federal or state computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms; and

(3) all computer-based criminal intelligence information systems and databases available in this state used by law enforcement agencies.

D. An extreme risk firearm protection order shall remain in each state system for the period stated in the order. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The extreme risk firearm protection order shall be fully enforceable in any county, city or town in the state.

E. Upon the expiration of or upon receiving notice of the termination of an extreme risk firearm protection order issued pursuant to the Extreme Risk Firearm Protection Order Act, the law enforcement agency specified in Subsection A of this section shall promptly remove the order from any state computer-based system into which it was entered pursuant to Subsection C of this section and shall notify the national instant criminal background check system and all federal computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms.

F. Following the expiration or termination of an order issued pursuant to the Extreme Risk Firearm Protection Order Act and upon written request, the law enforcement agency specified in Subsection A of this section shall provide a sworn affidavit to the respondent affirming that the information contained within the order has been removed from all state databases and systems identified in Subsection C of this section and any other state databases into which information about the order was entered and that the law enforcement agency has notified the national instant criminal background check system and all federal computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms. The affidavit shall be provided to the respondent within five days of the receipt of the request.

G. If any extreme risk firearm protection order is terminated before its expiration date, the clerk of the court shall forward a copy of the termination order to the office of the attorney general and the petitioner.

H. Aggregate statistical data indicating the number of extreme risk firearm protection orders issued, renewed, denied or terminated shall be maintained by the issuing court and the administrative office of the courts and shall be available to the public upon request.

History: Laws 2020, ch. 5, § 12.

40-17-13. Extreme risk firearm protection orders; firearms return; disposition.

A. Any firearm relinquished in accordance with the Extreme Risk Firearm Protection Order Act shall be returned to the respondent within ten days following the expiration or termination of an extreme risk firearm protection order.

B. A respondent shall not be required to acquire any court order granting the return of relinquished firearms.

C. The law enforcement agency in possession of the firearms shall conduct a national criminal records check and shall return the firearms if the agency determines that the respondent is not prohibited from possessing firearms pursuant to state or federal law.

D. Upon written request of the respondent, the law enforcement agency storing a firearm shall transfer possession of the respondent's firearm to a federally licensed firearms dealer or lawful private party purchaser designated by the respondent; provided that the transfer is the result of a sale, that the transferee is the actual owner of the firearm thereafter and, except in the case of a federally licensed firearms dealer, the law enforcement agency has conducted a national criminal records check and determined that the transferee is not prohibited from possessing a firearm pursuant to state or federal law.

E. No fee shall be charged for background checks required pursuant to Subsections C and D of this section.

F. The law enforcement agency transferring possession of a firearm to a transferee shall notify the transferee that it is unlawful to transfer or return the firearm to the respondent while the extreme risk firearm protection order is in effect. A transferee who violates this subsection is guilty of a misdemeanor and may be punished pursuant to Section 31-19-1 NMSA 1978.

History: Laws 2020, ch. 5, § 13.

ARTICLE 18
Special Immigrant Juvenile Classification

40-18-1. Short title.

This act [40-18-1 to 40-18-4 NMSA 1978] may be cited as the "Special Immigrant Juvenile Classification Act".

History: Laws 2023, ch. 134, § 1.

40-18-2. Definitions.

As used in the Special Immigrant Juvenile Classification Act:

A. "abandoned child" means a child who is left without provision for reasonable and necessary care or supervision;

B. "abused child" means a child:

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

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

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

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

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

C. "child" means any unmarried, foreign-born person under the age of twenty-one;

D. "court" means any court in this state with jurisdiction to make decisions concerning the protection, well-being, care or custody of a child;

E. "dependent on the court" means subject to the jurisdiction of a court competent to make decisions concerning the protection, well-being, care and custody of a child, to make findings and issue orders or referrals to support the health, safety and welfare of a child or to remedy the effects on a child of abuse, neglect, abandonment or similar circumstances;

F. "neglected child" means a child:

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

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

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

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

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

G. "similar circumstances" means a similar basis under state law that demonstrates similar harm or effects of those of an abused child, neglected child or abandoned child, including but not limited to the death of a parent, deportation of a parent or incarceration of a parent.

History: Laws 2023, ch. 134, § 2.

40-18-3. Applications and petitions for classification as a special immigrant juvenile.

A. A request may be made by a petitioner pursuant to this section for classification as a special immigrant juvenile as provided in 8 U.S.C. Section 1101(a)(27)(J), in conjunction with a petition for any determination on the care and custody of a child.

B. The application or petition for classification as a special immigrant juvenile shall set forth the facts necessary to establish eligibility pursuant to this section.

History: Laws 2023, ch. 134, § 3.

40-18-4. Jurisdiction of the court; standards; procedures.

A. The court has jurisdiction to make findings of fact and determinations of law in the best interests of the child for classification as a special immigrant juvenile pursuant to 8 U.S.C. Section 1101(a)(27)(J) in all matters and proceedings that involve an abused child, a neglected child or an abandoned child, including but not limited to child custody, guardianship and abuse and neglect proceedings.

B. A court acting pursuant to the Special Immigrant Juvenile Classification Act acts as a juvenile court as defined in 8 C.F.R. Section 204.11(a).

C. Upon review of an application or petition for classification as a special immigrant juvenile pursuant to 8 U.S.C. Section 1101(a)(27)(J), supporting affidavits and any other evidence, the court shall issue findings of fact and rulings of law to determine whether:

(1) the child is dependent on the court;

(2) the child is an abused child, neglected child or abandoned child or has suffered similar circumstances;

(3) the child may not be viably reunified with one or both of the child's parents because the child is an abused child, neglected child or abandoned child or has suffered similar circumstances; and

(4) it is not in the child's best interests to be returned to the child's or parent's country of nationality or country of last habitual residence.

D. A court shall hear and adjudicate an application or petition and issue findings of fact and rulings of law as soon as it is administratively feasible but before the child reaches the age of twenty-one.

E. Nothing in the Special Immigrant Juvenile Classification Act shall preclude the district court from issuing findings of fact and rulings of law similar to the provisions of Subsection C of this section in any other proceeding.

History: Laws 2023, ch. 134, § 4.