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HOUSE BILL 455

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

W. Ken Martinez

FOR THE CORRECTIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO CHILDREN; PROVIDING THAT PARENTAL RIGHTS SHALL NOT BE TERMINATED UPON THE SOLE BASIS THAT A PARENT IS INCARCERATED; AMENDING A SECTION OF THE CHILDREN'S CODE.

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

Section 1. Section 32A-4-29 NMSA 1978 (being Laws 1993, Chapter 77, Section 123, as amended) is amended to read:

"32A-4-29. TERMINATION PROCEDURE. --

A. A motion to terminate parental rights may be filed at any stage of the abuse or neglect proceeding. The proceeding may be initiated by any of the following:

- (1) the department;
- (2) a licensed child placement agency; or
- (3) any other person having a legitimate

interest in the matter, including the child's guardian ad

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1 litem, a petitioner for adoption, a foster parent or a  
2 relative of the child.

3 B. The motion for termination of parental rights  
4 shall be signed, verified by the moving party and filed with  
5 the court. The motion shall set forth:

6 (1) the date, place of birth and marital  
7 status of the child, if known;

8 (2) the grounds for termination and the facts  
9 and circumstances supporting the grounds for termination;

10 (3) the names and addresses of the persons or  
11 authorized agency or agency officer to whom custody might be  
12 transferred;

13 (4) whether the child resides or has resided  
14 with a foster parent who desires to adopt this child;

15 (5) whether the motion is in contemplation of  
16 adoption;

17 (6) the relationship or legitimate interest  
18 of the moving party to the child; and

19 (7) whether the child is subject to the  
20 federal Indian Child Welfare Act of 1978 and, if so:

21 (a) the tribal affiliations of the  
22 child's parents;

23 (b) the specific actions taken by the  
24 moving party to notify the parents' tribes and the results of  
25 the contacts, including the names, addresses, titles and

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1 telephone numbers of the persons contacted. Copies of any  
2 correspondence with the tribes shall be attached as exhibits  
3 to the petition; and

4 (c) what specific efforts were made to  
5 comply with the placement preferences set forth in the federal  
6 Indian Child Welfare Act of 1978 or the placement preferences  
7 of the appropriate Indian tribes.

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

12 [~~C.~~] D. A parent who has not previously been a  
13 party to the proceeding shall be named in the motion and shall  
14 become a party to the proceeding unless the court determines  
15 that the parent has not established a protected liberty  
16 interest in his relationship with the child.

17 [~~D.~~] E. Notice of the filing of the motion,  
18 accompanied by a copy of the motion, shall be served by the  
19 moving party on all other parties, the foster parent,  
20 preadoptive parent or relative providing care for the child  
21 with whom the child is residing, foster parents with whom the  
22 child has resided for six months within the previous twelve  
23 months, the custodian of the child, any person appointed to  
24 represent any party and any other person the court orders.

25 Service shall be in accordance with the Rules of Civil

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1 Procedure for the District Courts for the service of motions  
2 in a civil action in this state, except that foster parents  
3 and attorneys of record in this proceeding shall be served by  
4 certified mail. The notice shall state specifically that the  
5 person served shall file a written response to the motion  
6 within twenty days if the person intends to contest the  
7 termination. In any case involving a child subject to the  
8 federal Indian Child Welfare Act of 1978, notice shall also be  
9 sent by certified mail to the tribes of the child's parents  
10 and upon any "Indian custodian" as that term is defined in 25  
11 U.S.C. Section 1903(6). Further notice shall not be required  
12 on a parent who has been provided notice previously pursuant  
13 to Section 32A-4-17 NMSA 1978 and who failed to make an  
14 appearance.

15 ~~[E.]~~ F. If the identity or whereabouts of a person  
16 entitled to service are unknown, the moving party shall file a  
17 motion for an order granting service by publication supported  
18 by the affidavit of the moving party or his agent or attorney  
19 detailing the efforts made to locate the person entitled to  
20 service. Upon being satisfied that reasonable efforts to  
21 locate the person entitled to service have been made and that  
22 information as to the identity or whereabouts of the person is  
23 still insufficient to effect service in accordance with the  
24 Rules of Civil Procedure for the District Courts, the court  
25 shall order service by publication pursuant to the Rules of

. 135707. 1

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1 Civil Procedure for the District Courts.

2 [F-] G. After a motion for the termination of  
3 parental rights is filed, the parent shall be advised of the  
4 right to counsel unless the parent is already represented by  
5 counsel. Counsel shall be appointed, upon request, for any  
6 parent who is unable to obtain counsel due to financial  
7 reasons or, if in the court's discretion, the interests of  
8 justice require appointment of counsel.

9 [G-] H. The court shall assure that a guardian ad  
10 litem represents the child in all proceedings for the  
11 termination of parental rights.

12 [H-] I. When a motion to terminate parental rights  
13 is filed, the moving party shall request a hearing on the  
14 motion. The hearing date shall be at least thirty days, but  
15 no more than sixty days, after service is effected upon the  
16 parties entitled to service under this section.

17 [I-] J. In any action for the termination of  
18 parental rights brought by a party other than the department  
19 and involving a child in the custody of the department, the  
20 department may:

21 (1) litigate a motion for the termination of  
22 parental rights that was initially filed by another party; or

23 (2) move that the motion for the termination  
24 of parental rights be found premature and denied.

25 [J-] K. The grounds for any attempted termination

1 shall be proved by clear and convincing evidence. In any  
2 proceeding involving a child subject to the federal Indian  
3 Child Welfare Act of 1978, the grounds for any attempted  
4 termination shall be proved beyond a reasonable doubt and  
5 shall meet the requirements set forth in 25 U.S.C. Section  
6 1912(f).

7 ~~[K-]~~ L. When the court terminates parental rights,  
8 it shall appoint a custodian for the child and fix  
9 responsibility for the child's support.

10 ~~[L-]~~ M. In any termination proceeding involving a  
11 child subject to the federal Indian Child Welfare Act of 1978,  
12 the court shall in any termination order make specific  
13 findings that the requirements of that act have been met.

14 ~~[M-]~~ N. A judgment of the court terminating  
15 parental rights divests the parent of all legal rights and  
16 privileges and dispenses with both the necessity for the  
17 consent to or receipt of notice of any subsequent adoption  
18 proceeding concerning the child. A judgment of the court  
19 terminating parental rights shall not affect the child's  
20 rights of inheritance from and through the child's biological  
21 parents. "

22 Section 2. EFFECTIVE DATE. -- The effective date of the  
23 provisions of this act is July 1, 2001.