

HOUSE BILL 508

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

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AN ACT

RELATING TO PARENTAL RIGHTS; PROVIDING FOR THE TERMINATION OF PARENTAL RIGHTS WHEN CRIMINAL SEXUAL PENETRATION RESULTS IN CONCEPTION OF A CHILD.

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

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

"NEW MATERIAL TERMINATION OF PARENTAL RIGHTS-- CONCEPTION RESULTING FROM CRIMINAL SEXUAL PENETRATION.--

A. In proceedings to terminate parental rights pursuant to this section, the court shall give primary consideration to the physical, mental and emotional welfare and needs of the child and the circumstances of the child's conception.

B. The court shall terminate parental rights with

1 respect to a child when it is shown that the child was
2 conceived as a result of criminal sexual penetration
3 perpetrated by the parent whose rights a moving party seeks to
4 terminate.

5 C. Proceedings to terminate parental rights that
6 involve a child subject to the federal Indian Child Welfare Act
7 of 1978 shall comply with the requirements of that act.

8 D. A motion to terminate parental rights pursuant
9 to this section may be filed at any time by a parent or
10 guardian of a child.

11 E. A motion for termination of parental rights
12 filed pursuant to this section shall set forth:

13 (1) the relationship or legitimate interest of
14 the moving party to the child;

15 (2) the date and place of birth of the child,
16 if known;

17 (3) the facts and circumstances of the child's
18 conception in support of the motion;

19 (4) the name and address of the person whose
20 parental rights the moving party seeks to terminate, if known;

21 (5) the names and addresses of the persons who
22 would retain legal custody of the child upon termination of
23 parental rights; and

24 (6) whether the child is subject to the
25 federal Indian Child Welfare Act of 1978 and, if so:

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1 (a) the tribal affiliations of the
2 child's parents;

3 (b) the specific actions taken by the
4 moving party to notify the parents' tribes and the results of
5 the contacts, including the names, addresses, titles and
6 telephone numbers of the persons contacted. Copies of any
7 correspondence with the tribes shall be attached as exhibits to
8 the petition; and

9 (c) the specific efforts made to comply
10 with the placement preferences set forth in the federal Indian
11 Child Welfare Act of 1978 or the placement preferences of the
12 appropriate Indian tribes.

13 F. Notice of the filing of the motion, accompanied
14 by a copy of the motion, shall be served by the moving party on
15 all other parties, including, if applicable, the foster parent,
16 the person providing care for the child with whom the child is
17 residing, the custodian of the child, any person appointed to
18 represent any party and any other person the court orders.
19 Service shall be in accordance with the Children's Court Rules
20 for the service of motions, except that foster parents and
21 attorneys of record in the proceeding shall be served by
22 certified mail. The notice shall state specifically that the
23 person served shall file a written response to the motion
24 within twenty days if the person intends to contest the
25 termination. In any case involving a child subject to the

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1 federal Indian Child Welfare Act of 1978, notice shall also be
2 sent by certified mail to the tribes of the child's parents and
3 upon any "Indian custodian", as that term is defined in 25
4 U.S.C. Section 1903(6).

5 G. When a motion to terminate parental rights is
6 filed pursuant to this section, the moving party shall request
7 a hearing on the motion. The hearing date shall be at least
8 thirty days, but no more than sixty days, after service is
9 effected upon the parties entitled to service.

10 H. The grounds for a termination pursuant to this
11 section shall be proved by clear and convincing evidence. The
12 circumstances of the child's conception may be proved by
13 evidence of conviction for criminal sexual penetration or by
14 other evidence presented to the court that indicates that
15 criminal sexual penetration was committed during the time the
16 child was conceived. In any proceeding involving a child
17 subject to the federal Indian Child Welfare Act of 1978, the
18 grounds for any attempted termination shall be proved beyond a
19 reasonable doubt and shall meet the requirements set forth in
20 25 U.S.C. Section 1912(f).

21 I. In a termination proceeding involving a child
22 subject to the federal Indian Child Welfare Act of 1978, the
23 court shall, in a termination order, make specific findings
24 that the requirements of that act have been met.

25 J. A judgment of the court terminating parental

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1 rights pursuant to this section shall not relieve the parent
2 whose rights were terminated of financial responsibility for
3 the child.

4 K. When the court terminates parental rights
5 pursuant to this section, it shall include in its order the
6 name of the person who retains custody of the child, and the
7 court shall fix responsibility for the child's support.

8 L. A judgment of the court terminating parental
9 rights pursuant to this section divests the parent of all legal
10 rights and privileges and dispenses with both the necessity for
11 the consent to or receipt of notice of any subsequent adoption
12 proceeding concerning the child. A judgment of the court
13 terminating parental rights shall not affect the child's rights
14 of inheritance from and through the child's biological parents.

15 M. When the court denies a motion to terminate
16 parental rights pursuant to this section, the court shall issue
17 appropriate orders immediately. The parties may file a request
18 for hearing within thirty days of the date of the hearing
19 denying the termination of parental rights.

20 N. All records or information concerning a party to
21 a proceeding to terminate parental rights pursuant to this
22 section shall be confidential and closed to the public. The
23 records and information shall be disclosed only to the parties,
24 court personnel, attorneys for the parties to the proceeding
25 and, if applicable:

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- 1 (1) court-appointed special advocates;
- 2 (2) the child's guardian ad litem;
- 3 (3) the attorney representing the child in an
- 4 abuse or neglect action, a delinquency action or any other
- 5 action under the Children's Code;
- 6 (4) department personnel;
- 7 (5) any local substitute care review board or
- 8 any agency contracted to implement local substitute care review
- 9 boards;
- 10 (6) law enforcement officials, except when use
- 11 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;
- 12 (7) district attorneys, except when use
- 13 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;
- 14 (8) a state government social services agency
- 15 in another state and when, in the opinion of the department it
- 16 is in the best interest of the child, a governmental social
- 17 services agency of another country;
- 18 (9) those persons or entities of an Indian
- 19 tribe specifically authorized to inspect the records pursuant
- 20 to the federal Indian Child Welfare Act of 1978 or any
- 21 regulations promulgated pursuant to that act;
- 22 (10) a foster parent, if the records are those
- 23 of a child currently placed with that foster parent or of a
- 24 child being considered for placement with that foster parent
- 25 and the records concern the social, medical, psychological or

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1 educational needs of the child;

2 (11) school personnel involved with the child
3 if the records concern the child's social or educational needs;

4 (12) health care or mental health
5 professionals involved in the evaluation or treatment of the
6 child or of the child's parent, guardian, custodian or other
7 family members;

8 (13) protection and advocacy representatives
9 pursuant to the federal Developmental Disabilities Assistance
10 and Bill of Rights Act and the federal Protection and Advocacy
11 for Mentally Ill Individuals Amendments Act of 1991;

12 (14) children's safehouse organizations
13 conducting investigatory interviews of children on behalf of a
14 law enforcement agency or the department; and

15 (15) any other person or entity, by order of
16 the court, having a legitimate interest in the case or the work
17 of the court.

18 O. Whoever intentionally and unlawfully releases
19 any information or records closed to the public pursuant to
20 this section or releases or makes other unlawful use of records
21 in violation of this section is guilty of a petty misdemeanor
22 and shall be sentenced pursuant to the provisions of Section
23 31-19-1 NMSA 1978.

24 P. Nothing in this section shall affect the
25 requirements set forth in the Abuse and Neglect Act or the

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1 Adoption Act as those acts may relate to a child that is the
2 subject of a proceeding pursuant to this section.

3 Q. As used in this section:

4 (1) "child" means a child conceived as a
5 result of criminal sexual penetration or an offense pursuant to
6 the laws of another jurisdiction, territory or possession of
7 the United States or an Indian nation, tribe or pueblo that is
8 equivalent to criminal sexual penetration pursuant to the laws
9 of this state; and

10 (2) "criminal sexual penetration" means
11 criminal sexual penetration pursuant to the laws of this state
12 or an offense pursuant to the laws of another jurisdiction,
13 territory or possession of the United States or an Indian
14 nation, tribe or pueblo that is equivalent to criminal sexual
15 penetration pursuant to the laws of this state."

16 SECTION 2. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2013.