

1 HOUSE BILL 506

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Gail Chasey

5
6
7
8
9
10 AN ACT

11 RELATING TO CHILDREN; CLARIFYING GROUNDS FOR TERMINATION OF
12 PARENTAL RIGHTS PRIOR TO ADOPTION.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 32A-5-15 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 142, as amended) is amended to read:

17 "32A-5-15. INITIATION OF TERMINATION OF PARENTAL
18 RIGHTS.--

19 A. A proceeding to terminate parental rights may be
20 initiated in connection with or prior to an adoption
21 proceeding. The physical, mental and emotional welfare and
22 needs of the child shall be the primary consideration for the
23 termination of parental rights. The court may terminate the
24 rights of the child's parents as provided by the Adoption Act.

25 [~~B. The court shall terminate parental rights with~~

.206472.5

underscored material = new
[bracketed material] = delete

1 ~~respect to a child when:~~

2 ~~(1) the child has been abandoned by the~~
3 ~~parents;~~

4 ~~(2) the child has been a neglected or abused~~
5 ~~child and the court finds that the conditions and causes of the~~
6 ~~neglect and abuse are unlikely to change in the foreseeable~~
7 ~~future; or~~

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

11 ~~(a) the child has lived in the home of~~
12 ~~others for an extended period of time;~~

13 ~~(b) the parent-child relationship has~~
14 ~~disintegrated;~~

15 ~~(c) a psychological parent-child~~
16 ~~relationship has developed between the substitute family and~~
17 ~~the child;~~

18 ~~(d) if the court deems the child of~~
19 ~~sufficient capacity to express a preference, the child no~~
20 ~~longer prefers to live with the natural parent;~~

21 ~~(e) the substitute family desires to~~
22 ~~adopt the child; and~~

23 ~~(f) a presumption of abandonment created~~
24 ~~by the conditions described in Subparagraphs (a) through (e) of~~
25 ~~this paragraph has not been rebutted.~~

underscored material = new
[bracketed material] = delete

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

5 B. A proceeding to terminate parental rights based
6 on abuse, neglect or abandonment pursuant to the Abuse and
7 Neglect Act may be initiated only by the department, and only
8 pursuant to the provisions of the Abuse and Neglect Act.

9 C. A proceeding to terminate parental rights based
10 on the presumption of abandonment may be initiated by:

11 (1) an agency; or

12 (2) any other person having a legitimate
13 interest in the matter, including a petitioner for adoption,
14 the child's guardian, the child's guardian ad litem or attorney
15 in another action, a foster parent, a relative of the child or
16 the child.

17 D. The termination of parental rights involving an
18 Indian child shall comply with the requirements of the federal
19 Indian Child Welfare Act of 1978."

20 SECTION 2. Section 32A-5-16 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 143, as amended) is amended to read:

22 "32A-5-16. TERMINATION PROCEDURES.--

23 A. ~~[A proceeding to terminate parental rights may~~
24 ~~be initiated in connection with or prior to an adoption~~
25 ~~proceeding.]~~ Venue shall be in the court for the county in

.206472.5

underscored material = new
[bracketed material] = delete

1 which the child is physically present or in the county from
2 which the child was placed. [~~The proceeding may be initiated~~
3 ~~by any of the following:~~

4 ~~(1) the department;~~
5 ~~(2) an agency; or~~
6 ~~(3) any other person having a legitimate~~
7 ~~interest in the matter, including a petitioner for adoption,~~
8 ~~the child's guardian, the child's guardian ad litem or attorney~~
9 ~~in another action, a foster parent, a relative of the child or~~
10 ~~the child.]~~

11 B. A petition for termination of parental rights
12 shall be signed and verified by the petitioner, be filed with
13 the court and set forth:

14 (1) the date, place of birth and marital
15 status of the child, if known;
16 (2) the grounds for termination and the facts
17 and circumstances supporting the grounds for termination;
18 (3) the names and addresses of the person,
19 authorized agency or agency officer to whom custody might be
20 transferred;
21 (4) the basis for the court's jurisdiction;
22 (5) that the petition is in contemplation of
23 adoption;
24 (6) the relationship or legitimate interest of
25 the applicant to the child; and

.206472.5

underscoring material = new
~~[bracketed material] = delete~~

1 (7) whether the child is an Indian child and,
2 if so:

3 (a) the tribal affiliations of the
4 child's parents;

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

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

15 C. Notice of the filing of the petition,
16 accompanied by a copy of the petition, shall be served by the
17 petitioner on the parents of the child, the child's guardian,
18 the legal custodian of the child, the person with whom the
19 child is residing, the individuals with whom the child has
20 resided within the past six months and the department. Service
21 shall be in accordance with the Rules of Civil Procedure for
22 the District Courts for the service of process in a civil
23 action in this state, with the exception that the department
24 may be served by certified mail. The notice shall state
25 specifically that the person served shall file a written

.206472.5

underscoring material = new
~~[bracketed material] = delete~~

1 response to the petition within twenty days if the person
2 intends to contest the termination. In any case involving an
3 Indian child, notice shall also be served on the child's Indian
4 tribe pursuant to the federal Indian Child Welfare Act of 1978.

5 D. If the identification or whereabouts of a parent
6 is unknown, the petitioner shall file a motion for an order
7 granting service by publication or an order stating that
8 service by publication is not required. A motion for an order
9 granting service by publication shall be supported by the
10 affidavit of the petitioner, the agency or the petitioner's
11 attorney detailing the efforts made to locate the parent. Upon
12 being satisfied that reasonable efforts to locate the parent
13 have been made and that information as to the identity or
14 whereabouts of the parent is still insufficient to effect
15 service in accordance with SCRA, Rule 1-004, the court shall
16 order service by publication or order that publication is not
17 required because the parent's consent is not required pursuant
18 to the provisions of Section 32A-5-19 NMSA 1978.

19 E. The court shall, upon request, appoint counsel
20 for an indigent parent who is unable to obtain counsel or if,
21 in the court's discretion, appointment of counsel for an
22 indigent parent is required in the interest of justice.
23 Payment for the appointed counsel shall be made by the
24 petitioner pursuant to the rate determined by the supreme court
25 of New Mexico for court-appointed attorneys.

.206472.5

underscored material = new
[bracketed material] = delete

1 F. The court shall appoint a guardian ad litem for
2 the child in all contested proceedings for termination of
3 parental rights. If the child is fourteen years of age or
4 older and in the custody of the department, the child's
5 attorney appointed pursuant to the Abuse and Neglect Act shall
6 represent the child in any proceedings for termination of
7 parental rights under this section.

8 G. Within thirty days after the filing of a
9 petition to terminate parental rights, the petitioner shall
10 request a hearing on the petition unless the petitioner has
11 requested and been granted an extension of time to request a
12 hearing. The hearing date shall be at least thirty days after
13 service is effected upon the parent of the child or completion
14 of publication. The petition shall be dismissed if the
15 petitioner has not requested a hearing as provided in this
16 subsection.

17 H. The grounds for any attempted termination shall
18 be proved by clear and convincing evidence. In any proceeding
19 involving an Indian child, the grounds for any attempted
20 termination shall be proved beyond a reasonable doubt and meet
21 the requirements set forth in the federal Indian Child Welfare
22 Act of 1978.

23 I. If the court terminates parental rights, it
24 shall appoint a custodian for the child. Upon entering an
25 order terminating the parental rights of a parent, the court

underscored material = new
[bracketed material] = delete

1 may commit the child to the custody of the department, the
2 petitioner or an agency willing to accept custody for the
3 purpose of placing the child for adoption. In any termination
4 proceeding involving an Indian child, the court shall, in any
5 termination order, make specific findings that the requirements
6 of the federal Indian Child Welfare Act of 1978 were met.

7 ~~[J. A judgment of the court terminating parental~~
8 ~~rights divests the parent of all legal rights. Termination of~~
9 ~~parental rights shall not affect the child's right of~~
10 ~~inheritance through the former parent.]~~

11 J. If the petitioner alleges presumptive
12 abandonment of the child, the petition shall set out facts that
13 prove that all of the following conditions exist:

14 (1) the child has lived in the home of others
15 for at least one year;

16 (2) the parent-child relationship has
17 disintegrated;

18 (3) a psychological parent-child relationship
19 has developed between the substitute family and the child;

20 (4) if the court deems the child of sufficient
21 capacity to express a preference, the child no longer prefers
22 to live with the natural parent; and

23 (5) the substitute family desires to adopt the
24 child.

25 K. A finding by the court that the child has been

underscoring material = new
~~[bracketed material] = delete~~

1 in the care of others, including care by other relatives,
2 either by a court order or otherwise, and all the conditions in
3 Subsection J of this section exist, shall create a rebuttable
4 presumption of abandonment."

5 SECTION 3. REPEAL.--Section 32A-5-18 NMSA 1978 (being
6 Laws 1993, Chapter 77, Section 145) is repealed.

7 - 9 -

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25