SENATE BILL 107

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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AN ACT

RELATING TO CHILDREN; REVISING PROVISIONS FOR CUSTODY HEARINGS.

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

SECTION 1. Section 32A-4-18 NMSA 1978 (being Laws 1993,

Chapter 77, Section 112, as amended) is amended to read:

"32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--

PROBABLE CAUSE.--

A. When a child alleged to be neglected or abused

has been placed in the legal custody of the department or the

department has petitioned the court for temporary custody, a

custody hearing shall be held [within ten days from the date

the petition is filed to determine if the child should remain

in or be placed in the department's custody pending

adjudication. Upon written request of the respondent, the

hearing may be held earlier, but in no event shall the hearing

1   [be held sooner than two days after the date the petition was

2   filed] not more than seventy-two hours after the child is taken

3   into custody, excluding Saturdays, Sundays and holidays. If

4   clearly necessary to prevent abuse or neglect, to preserve the

5   rights of a party or for other good cause shown, the court may

6   grant one continuance that does not exceed five days.

7   B.   The parent, guardian or custodian of the child

8   alleged to be abused or neglected shall be given reasonable

9   notice of the time and place of the custody hearing.

10   C.   At the custody hearing, the court shall return

11   legal custody of the child to the child's parent, guardian or

12   custodian unless probable cause exists to believe that:

13   (1)   the child is suffering from an illness or

14   injury, and the parent, guardian or custodian is not providing

15   adequate care for the child;

16   (2)   the child is in immediate danger from the

17   child's surroundings and removal from those surroundings is

18   necessary for the child's safety or well-being;

19   (3)   the child will be subject to injury by

20   others if not placed in the custody of the department;

21   (4)   there has been an abandonment of the child

22   by the child's parent, guardian or custodian; or

23   (5)   the parent, guardian or custodian is not

24   able or willing to provide adequate supervision and care for

25   the child.

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1   D.   At the conclusion of the custody hearing, if the

D. At the conclusion of the custody hearing, if the court determines that probable cause exists pursuant to Subsection C of this section, the court may:

(1) return legal custody of the child to the child's parent, guardian or custodian upon such conditions as will reasonably ensure the safety and well-being of the child, including protective supervision or maintenance at home by the department or participation in programs or services aimed at addressing the underlying causative factors that impact the safety or well-being of the child; or

(2) award legal custody of the child to the department.

E. Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety. When the department determines that the home of an adult relative of the child meets all relevant child protection and licensing standards and placement in the home would be in the best interest of the child, the department shall give a preference to placement of the child in that home. The department shall make reasonable efforts to conduct home studies on appropriate relatives who express an interest in providing placement for the child.

F. At the conclusion of the custody hearing, if the court determines that probable cause does not exist pursuant to Subsection C of this section, the court shall:

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(1)   retain jurisdiction and, unless the court permits otherwise, order that the respondent and child remain in the jurisdiction of the court pending the adjudication;

(2)   return legal custody of the child to the child's parent, guardian or custodian with conditions to provide for the safety and well-being of the child; and

(3)   order that the child's parent, guardian or custodian allow the child necessary contact with the child's guardian ad litem or attorney.

G.   At the conclusion of the custody hearing, the court may order the respondent or the child alleged to be neglected or abused, or both, to undergo appropriate diagnostic examinations or evaluations. If the court determines that probable cause does not exist, the court may order the respondent or the child alleged to be neglected or abused, or both, to undergo appropriate diagnostic examinations or evaluations as necessary to protect the child's best interests, based upon the allegations in the petition and the evidence presented at the custody hearing. Copies of any diagnostic or evaluation reports ordered by the court shall be provided to the parties at least five days before the adjudicatory hearing is scheduled. The reports shall not be sent to the court.

H.   The Rules of Evidence shall not apply to custody hearings.

I.   Notwithstanding any other provision of law, a

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- 4 -

1   party aggrieved by an order entered pursuant to this section

2   shall be permitted to file an immediate appeal as a matter of

3   right. If the order appealed from grants the legal custody of

4   the child to or withholds it from one or more of the parties to

5   the appeal, the appeal shall be expedited and shall be heard at

6   the earliest practicable time. While an appeal pursuant to

7   this section is pending, the court shall have jurisdiction to

8   take further action in the case pursuant to Subsection B of

9   Section 32A-1-17 NMSA 1978."

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