

1 SENATE BILL 429

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

4 Linda M. López and Antoinette Sedillo Lopez

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10 AN ACT

11 RELATING TO CHILD WELFARE; ENACTING THE REINSTATEMENT OF
12 PARENTAL RIGHTS ACT.

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

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

17 "[NEW MATERIAL] SHORT TITLE.--This act may be cited as the
18 "Reinstatement of Parental Rights Act"."

19 SECTION 2. A new section of the Children's Code is
20 enacted to read:

21 "[NEW MATERIAL] DEFINITION--FORMER PARENT.--As used in the
22 Reinstatement of Parental Rights Act, "former parent" means a
23 parent whose rights to the parent's child were legally
24 terminated or a parent who has relinquished the parent's
25 rights."

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1 SECTION 3. A new section of the Children's Code is
2 enacted to read:

3 "[NEW MATERIAL] JURISDICTION AND VENUE.--

4 A. The court has exclusive original jurisdiction of
5 all proceedings pursuant to the Reinstatement of Parental
6 Rights Act.

7 B. A petition initiating proceedings pursuant to
8 the Reinstatement of Parental Rights Act shall be filed in the
9 court of the county:

10 (1) of the child's legal residence;

11 (2) where the child resides; or

12 (3) where the former parent seeking
13 reinstatement resides.

14 C. Any party may request a change of venue.

15 D. A change of venue shall be granted if all
16 parties are in agreement.

17 E. A change of venue may be granted:

18 (1) upon a showing that a different venue is
19 where most of the information upon which the court must base
20 its findings is located; or

21 (2) for good cause.

22 F. Any party may exercise the right of excusal
23 pursuant to Section 38-3-9 NMSA 1978."

24 SECTION 4. A new section of the Children's Code is
25 enacted to read:

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1 "[NEW MATERIAL] PETITION.--

2 A. A petition initiating proceedings pursuant to
3 the Reinstatement of Parental Rights Act may be filed by a
4 child, a former parent or the department.

5 B. A petition for reinstatement pursuant to the
6 Reinstatement of Parental Rights Act shall be entitled, "In the
7 Matter of the Reinstatement of Parental Rights of _____ and
8 concerning _____, a child", shall be filed as a new case with
9 the court and shall set forth with specificity:

10 (1) that reinstatement is in the best interest
11 of the child;

12 (2) that a material change in circumstance
13 exists in which the former parent or parents can now be
14 reasonably expected to provide for the safety and stability of
15 the child;

16 (3) that at least twelve months have elapsed
17 since the termination of parental rights order was entered and
18 any appeals have been exhausted. The twelve-month requirement
19 may be waived if:

20 (a) the child will turn eighteen years
21 of age in fewer than twelve months;

22 (b) the department files the petition
23 and alleges that good cause exists; or

24 (c) extraordinary circumstances exist;

25 (4) that the child is currently or was

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1 previously in the department's custody;

2 (5) the name and birth date of the child;

3 (6) the date the former parent's or parents'
4 rights were relinquished or terminated;

5 (7) that the child has not reached permanency
6 through adoption or permanent guardianship, the adoption or
7 permanent guardianship was granted but not sustained or the
8 adoptive parent or permanent guardian consents to the
9 proceeding;

10 (8) that the child is not in an adoptive or
11 other potentially permanent placement that will result in
12 sustained permanency for the child, and a potential permanent
13 placement is not likely to occur within six months from the
14 filing of the petition;

15 (9) whether the child is an Indian child; and

16 (10) the birth name of the child; any other
17 names by which the child has been known; and, if a name change
18 is requested, the child's proposed name, which could be the
19 child's former name.

20 C. The following documents shall be attached to the
21 petition:

22 (1) consent to the reinstatement by:

23 (a) the child who is the subject of the
24 reinstatement, if ten years of age or older, except when the
25 court finds that the child does not have the mental capacity to

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1 give consent; and

2 (b) the former parent whose rights are
3 proposed to be reinstated; or

4 (2) an order terminating a prior adoption or
5 guardianship or consent of the adoptive parent or guardian; and

6 (3) a plan for transitioning the child back
7 into the former parent's home within a reasonable period,
8 depending on the facts and circumstances of the case but not to
9 exceed ninety days, or a request for the department to provide
10 transition services and establish a plan to transition the
11 child into the former parent's home.

12 D. An amended petition may be filed by the former
13 parent's attorney, the child's attorney or the department."

14 SECTION 5. A new section of the Children's Code is
15 enacted to read:

16 "[NEW MATERIAL] LEGAL STATUS OF ADOPTION OR
17 GUARDIANSHIP.--

18 A. If a child is adopted or in a permanent
19 guardianship and the adoptive parents or guardians of the child
20 do not consent to the reinstatement of parental rights of the
21 former parent, then the case is not ripe for reinstatement.

22 B. Prior to the filing of a petition for
23 reinstatement, the adoptive parent's rights shall have been
24 relinquished or terminated, or the permanent guardianship shall
25 have been terminated pursuant to the provisions of the

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1 Children's Code."

2 SECTION 6. A new section of the Children's Code is
3 enacted to read:

4 "[NEW MATERIAL] APPOINTMENT OF COUNSEL.--

5 A. Upon the filing of a petition for reinstatement,
6 an attorney shall be appointed by the court to represent a
7 former parent who is named in the petition and whose rights the
8 petition seeks to have reinstated if the former parent is
9 indigent or if the appointment of an attorney is required in
10 the interest of justice. If the former parent consents, the
11 attorney who previously served as the former parent's attorney
12 in an abuse and neglect case may be appointed.

13 B. Upon the filing of a petition for reinstatement,
14 an attorney shall be appointed by the court to represent the
15 child. If the child consents, the attorney who is currently
16 serving as the child's attorney in an abuse or neglect case or
17 who previously served as the child's attorney in an abuse or
18 neglect case may be appointed."

19 SECTION 7. A new section of the Children's Code is
20 enacted to read:

21 "[NEW MATERIAL] NOTICE OF PETITION--SUMMONS--FORM OF
22 SERVICE--WAIVER.--

23 A. A petition for reinstatement, notice of hearing
24 and summons shall be served by the petitioner on the department
25 unless service has been previously waived in writing. The

1 clerk of the court shall mail to the director of the protective
2 services division of the department a copy of the petition for
3 reinstatement, notice of hearing and summons within one working
4 day of the notice of hearing being filed with the court. Upon
5 written request to the court, the department may seek
6 alternative methods of service pursuant to the Rules of Civil
7 Procedure for the District Courts.

8 B. The following shall be served by certified mail,
9 return receipt requested or pursuant to the Rules of Civil
10 Procedure for the District Courts:

11 (1) any person whose consent is required;

12 (2) any person known to the petitioner having
13 custody or visitation with the child under court order; and

14 (3) the Indian tribe or tribes and the Indian
15 custodian, if the child is an Indian child, pursuant to the
16 provisions of the Indian Family Protection Act.

17 C. The summons shall state that the person served
18 shall respond to the petition within twenty days if the person
19 or agency intends to contest the reinstatement. The notice
20 shall also state that failure to so respond shall be treated as
21 a default.

22 D. The service required by this section may be
23 waived in writing by the persons entitled to service. The
24 department cannot waive service.

25 E. Proof of service of a petition, summons and

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1 notice of hearing on all persons for whom service is required
2 by this section shall be filed with the court.

3 F. The persons required to be served pursuant to
4 Subsection B of this section have a right to intervene and file
5 a response.

6 G. Service as set forth in this section is not
7 required for a former parent who is not a party to the petition
8 for reinstatement."

9 SECTION 8. A new section of the Children's Code is
10 enacted to read:

11 "[NEW MATERIAL] INITIAL HEARING.--

12 A. The court shall hold an initial hearing within
13 twenty days of the filing of a petition for reinstatement of
14 parental rights.

15 B. The court shall issue a notice of a hearing
16 within one day of the filing of a petition for reinstatement of
17 parental rights.

18 C. The rules of evidence shall not apply.

19 D. If, upon completion of an initial hearing, the
20 court finds that there is probable cause to believe that the
21 requirements of the petition have been met and that the best
22 interests of the child may be served by reinstatement of
23 parental rights, the court shall set a hearing on the merits of
24 the petition to be held within sixty days.

25 E. If, upon completion of an initial hearing, the

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1 court does not find probable cause, the petition may be denied
2 or the court may allow an amendment to the petition, in which
3 case an initial hearing shall be held within ten days of filing
4 the amended petition."

5 SECTION 9. A new section of the Children's Code is
6 enacted to read:

7 "[NEW MATERIAL] MERITS HEARING.--

8 A. Upon a finding of probable cause, the court
9 shall conduct a hearing on the merits of the petition for the
10 reinstatement of parental rights.

11 B. A merits hearing shall be held no later than
12 sixty days from the initial hearing. Upon a finding of
13 extraordinary circumstances, the hearing may be continued for
14 no more than an additional forty-five days.

15 C. Prior to a merits hearing, all parties shall
16 attend a mandatory meeting to develop a proposed plan to
17 transition the child into the former parent's home and identify
18 any necessary transition services. Upon the request of any
19 party, the court shall order mediation in lieu of or in
20 addition to the mandatory meeting.

21 D. The grounds for reinstatement of parental rights
22 shall be proved by a preponderance of evidence, and the rules
23 of evidence shall apply.

24 E. The court shall grant a petition for
25 reinstatement if the court finds the following:

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1 (1) reinstatement is in the best interest of
2 the child;

3 (2) a material change in circumstance exists
4 in which the former parent or parents can provide for the
5 safety and stability of the child;

6 (3) the date the former parent's rights were
7 terminated was established, what that date was, and that at
8 least twelve months have elapsed since the termination of
9 parental rights order was entered and any appeals have been
10 exhausted. The twelve-month requirement may be waived if:

11 (a) the child will turn eighteen years
12 of age in fewer than twelve months;

13 (b) the department files the petition
14 and alleges good cause exists; or

15 (c) extraordinary circumstances exist;

16 (4) the child is currently or was previously
17 in the department's custody;

18 (5) the child has not reached permanency
19 through adoption or permanent guardianship, the adoption or
20 permanent guardianship was granted but not sustained or the
21 adoptive parent or permanent guardian consents to the
22 proceeding;

23 (6) the child is not in an adoptive or other
24 potentially permanent placement that will result in permanency
25 for the child, and a potential permanent placement is not

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1 likely to occur within six months from the filing of the
2 petition;

3 (7) the Indian tribe or the Indian custodian
4 received notice of the proceedings if the child is an Indian
5 child;

6 (8) all required consents have been attained;
7 and

8 (9) a plan to transition is not necessary to
9 transition the child into the former parent's home.

10 F. At the conclusion of the hearing, the court
11 shall order one of the following:

12 (1) if all requirements in Subsection E of
13 this section have been met, the petition is granted and the
14 former parent is granted legal and physical custody of the
15 child;

16 (2) if all the requirements in Subsection E of
17 this section except for the requirement in Paragraph (9) of
18 that subsection have been met, the court shall order a plan to
19 transition the child into the former parent's home and any
20 necessary transition services; or

21 (3) the petition is denied.

22 G. When the court orders a plan to transition a
23 child back into the child's former parent's home, the plan
24 shall include a transition into the former parent's home within
25 ninety days and any requested transition services and shall

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1 designate the former parent's rights and responsibilities
2 during the transition period. Legal custody of the child
3 remains with the legal custodian during the transition period.

4 H. At the end of a plan to transition the child
5 back into the child's former parent's home, the court shall
6 proceed as follows:

7 (1) the court shall enter an order granting
8 the petition if all parties are in agreement; or

9 (2) the court shall hold a hearing to
10 determine whether the petition should be granted or denied, or
11 if additional time to transition is necessary, the court may
12 extend the plan to transition the child back into the former
13 parent's home for up to an additional ninety days."

14 SECTION 10. A new section of the Children's Code is
15 enacted to read:

16 "[NEW MATERIAL] FINAL ORDER OF REINSTATEMENT.--

17 A. When the court grants a petition for
18 reinstatement of parental rights, the court shall enter a final
19 order of reinstatement of parental rights that shall restore
20 all rights, powers, privileges, immunities, duties and
21 obligations of the parent as to the child, including those
22 relating to custody, control and support of the child. The
23 order of reinstatement shall include the new or restored name
24 of the child, if requested and consented to by the child who is
25 the subject of the reinstatement and who has achieved

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1 sufficient age and maturity.

2 B. The granting of a petition for reinstatement of
3 parental rights does not vacate or otherwise affect the
4 validity of the original termination order as to any non-
5 petitioning parties. A judgment of the court reinstating the
6 parental rights to a parent divests the consenting adoptive
7 parent, the permanent guardian or the department of legal and
8 physical custody or guardianship of the child.

9 C. The court shall order the dismissal of any
10 pending matter relating to the child originating out of the
11 case against the petitioning parent pursuant to the provisions
12 of the Abuse and Neglect Act and direct the clerk's office to
13 provide a certified copy of the final order of reinstatement of
14 parental rights to the parent at no cost.

15 D. If the rights of both former parents are
16 reinstated and the parents do not reside together, then the
17 court may enter a temporary custody and time-sharing order.
18 The parties whose rights have been reinstated shall petition
19 the domestic relations court for a final custody plan."

20 SECTION 11. A new section of the Children's Code is
21 enacted to read:

22 "[NEW MATERIAL] DEPARTMENT'S DUTIES AND AUTHORITY NOT
23 ABROGATED.--

24 A. Nothing in the Reinstatement of Parental Rights
25 Act shall supersede the department's obligation and ability to
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1 investigate allegations of abuse or neglect on a child who is
2 the subject of a petition for reinstatement of parental rights.

3 B. If a child is removed from the child's former
4 parent's home prior to reinstatement, the department shall file
5 notice with the court."

6 SECTION 12. A new section of the Children's Code is
7 enacted to read:

8 "[NEW MATERIAL] CHILD SUPPORT AND COSTS.--Any parent whose
9 parental rights are reinstated is not liable for any unpaid
10 child support or the unpaid costs of any services provided to
11 the child from the date of the original order terminating the
12 parental rights to the date of the order reinstating the
13 parental rights."

14 SECTION 13. A new section of the Children's Code is
15 enacted to read:

16 "[NEW MATERIAL] BIRTH CERTIFICATES.--

17 A. A parent whose parental rights have been
18 reinstated may prepare an application for a birth certificate
19 in the new or restored name of the parent's child, showing the
20 parent as the child's parent. The parent shall forward the
21 application to the registrar of vital statistics in the state
22 where the child was born.

23 B. The state registrar of the vital records and
24 health statistics bureau of the department of health shall
25 prepare a birth record in the new or restored name of the child

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1 and the name of the reinstated parent in accordance with the
2 Vital Statistics Act."

3 SECTION 14. A new section of the Children's Code is
4 enacted to read:

5 "[NEW MATERIAL] APPEAL.--Indigent former parents and
6 children are entitled to court-appointed counsel upon appeal."