

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 336

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

INTRODUCED BY

John A. Heaton

AN ACT

**RELATING TO CHILDREN; AMENDING THE ABUSE AND NEGLECT ACT TO
PROVIDE THAT, IN CERTAIN INSTANCES, A PARENT MAY NOMINATE
PERSONS AS POTENTIAL GUARDIANS OR ADOPTIVE PARENTS AND TO
PROVIDE FOR THE TERMINATION OF PARENTAL RIGHTS OF CERTAIN
PARENTS WHO ARE INCARCERATED OR OTHERWISE UNAVAILABLE.**

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

**Section 1. A new section of the Abuse and Neglect Act is
enacted to read:**

**" [NEW MATERIAL] UNAVAILABLE PARENT--NOMINATION OF
POTENTIAL GUARDIAN OR ADOPTIVE PARENT. --**

**A. At any time after a finding by a court that
probable cause exists to believe that a child has been abused
or neglected, a noncustodial or unavailable parent may
nominate, in writing, one or more relatives or other persons**

underscored material = new
[bracketed material] = delete

1 as potential guardians or adoptive parents. Within sixty days
2 of receipt of a nomination, the department shall investigate
3 the suitability of the nominees and report the results of its
4 investigation to the court.

5 B. The court shall consider the nominees and the
6 department report in any future hearing at which the rights
7 and disposition of the child are determined. "

8 Section 2. Section 32A-4-28 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 122, as amended) is amended to read:

10 "32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION
11 DECREE. --

12 A. In proceedings to terminate parental rights,
13 the court shall give primary consideration to the physical,
14 mental and emotional welfare and needs of the child, including
15 the likelihood of the child being adopted if parental rights
16 are terminated.

17 B. The court shall terminate parental rights with
18 respect to a child when:

19 (1) there has been an abandonment of the
20 child by his parents;

21 (2) the child has been a neglected or abused
22 child [as defined in the Abuse and Neglect Act] and the court
23 finds that the conditions and causes of the neglect and abuse
24 are unlikely to change in the foreseeable future despite
25 reasonable efforts by the department or other appropriate

1 agency to assist the parent in adjusting the conditions that
2 render the parent unable to properly care for the child. The
3 court may find in some cases that efforts by the department or
4 another agency are unnecessary, when:

5 (a) there is a clear showing that the
6 efforts would be futile;

7 (b) the parent has subjected the child
8 to aggravated circumstances; or

9 (c) the parental rights of the parent
10 to a sibling of the child have been terminated involuntarily;
11 [~~or~~]

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

15 (a) the child has lived in the home of
16 others for an extended period of time;

17 (b) the parent-child relationship has
18 disintegrated;

19 (c) a psychological parent-child
20 relationship has developed between the substitute family and
21 the child;

22 (d) if the court deems the child of
23 sufficient capacity to express a preference, the child no
24 longer prefers to live with the natural parent;

25 (e) the substitute family desires to

underscored material = new
[bracketed material] = delete

1 adopt the child; and

2 (f) a presumption of abandonment
3 created by the conditions described in Subparagraphs (a)
4 through (e) of this paragraph has not been rebutted; or

5 (4) the child has been a neglected or abused
6 child and the parent is incarcerated or otherwise unavailable
7 for an extended period of time and will not be available to
8 care for the child for eighteen months or longer after the
9 proceeding. In considering whether to terminate parental
10 rights pursuant to this paragraph, the court shall consider:

11 (a) the age of the child and the extent
12 to which a parent-child relationship exists;

13 (b) pursuant to Subsection C of this
14 section, the suitability of the parent's nominees as guardians
15 or adoptive parents for the child;

16 (c) the developmental and permanency
17 needs of the child; and

18 (d) the period of time necessary for
19 the parent to be able to provide a stable home appropriate to
20 the child's needs following an anticipated parole or
21 probation.

22 C. Within thirty days of the filing of a motion to
23 terminate parental rights, an incarcerated or otherwise
24 unavailable parent has the right to nominate, in writing,
25 relatives or other persons as guardians or adoptive parents.

. 134523. 1

1 Within sixty days of receiving the nomination, the department
2 shall investigate the nominees and report the results of its
3 investigation to the parent and the court. Prior to a hearing
4 on the motion to terminate parental rights, the court shall
5 hold a separate hearing to determine whether any of the
6 nominees are adequate adoptive parents or guardians.

7 [~~C-~~] D. A finding by the court that all of the
8 conditions set forth in Subparagraphs (a) through (f) of
9 Paragraph (3) of Subsection B of this section exist shall
10 create a rebuttable presumption of abandonment.

11 [~~D-~~] E. The termination of parental rights
12 involving a child subject to the federal Indian Child Welfare
13 Act of 1978 shall comply with the requirements of that act.

14 [~~E-~~] F. If the court finds that parental rights
15 should be terminated; that the requirements for the adoption
16 of a child have been satisfied; that the prospective adoptive
17 parent is a party to the action; and that good cause exists to
18 waive the filing of a separate petition for adoption, the
19 court may proceed to grant adoption of the child, absent an
20 appeal of the termination of parental rights. The court shall
21 not waive any time requirements set forth in the Adoption Act
22 unless the termination of parental rights occurred pursuant to
23 the provisions of Paragraph (3) of Subsection B of this
24 section. The court may enter a decree of adoption only after
25 finding that the party seeking to adopt the child has

underscored material = new
[bracketed material] = delete

1 satisfied all of the requirements set forth in the Adoption
2 Act. Unless otherwise stipulated by all parties, an adoption
3 decree shall take effect sixty days after the termination of
4 parental rights, to allow the department sufficient time to
5 provide counseling for the child and otherwise prepare the
6 child for the adoption. The adoption decree shall conform to
7 the requirements of the Adoption Act and shall have the same
8 force and effect as other adoption decrees entered pursuant to
9 that act. The court clerk shall assign an adoption case
10 number to the adoption decree. "