

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 38 & 508

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

AN ACT

RELATING TO PARENTAL RIGHTS; PROVIDING FOR THE TERMINATION OR
PERMANENT SUSPENSION OF PARENTAL RIGHTS WHEN CRIMINAL SEXUAL
PENETRATION RESULTS IN CONCEPTION OF A CHILD; CLARIFYING
LANGUAGE IN THE ADOPTION ACT THAT CONSENT FROM THE BIOLOGICAL
FATHER OF A CHILD CONCEIVED AS A RESULT OF CRIMINAL SEXUAL
PENETRATION IS NOT REQUIRED; PROVIDING A PENALTY.

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

SECTION 1. A new section of Chapter 40 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] CONCEPTION RESULTING FROM CRIMINAL SEXUAL
PENETRATION--TERMINATION OF PARENTAL RIGHTS OR PERMANENT
SUSPENSION OF LEGAL AND PHYSICAL CUSTODY AND VISITATION
RIGHTS.--

A. As used in this section:

.193402.4

underscored material = new
[bracketed material] = delete

1 (1) "child" means a child conceived as a
2 result of criminal sexual penetration as found pursuant to
3 Subsection B of this section;

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

10 (3) "respondent" means the biological father
11 of a child whose rights a victim seeks to terminate or
12 permanently suspend pursuant to this section; and

13 (4) "victim" means a woman who became pregnant
14 as a result of criminal sexual penetration as found pursuant to
15 Subsection B of this section.

16 B. In a proceeding pursuant to this section, the
17 court shall find whether the child was conceived as a result of
18 criminal sexual penetration.

19 C. If the court finds that the child was conceived
20 as a result of criminal sexual penetration, the court shall
21 terminate or permanently suspend legal and physical custody and
22 visitation rights of the respondent with respect to the child
23 if, having considered the relationship between the child's
24 biological parents and the circumstances of the child's
25 conception, the court finds that termination of parental rights

.193402.4

1 or permanent suspension of legal and physical custody and
2 visitation rights is necessary to protect the physical, mental
3 and emotional welfare of the victim.

4 D. Proceedings to terminate parental rights or
5 permanently suspend legal and physical custody and visitation
6 rights that involve a child subject to the federal Indian Child
7 Welfare Act of 1978 shall comply with the requirements of that
8 act.

9 E. A motion to terminate parental rights or
10 permanently suspend legal and physical custody and visitation
11 rights pursuant to this section:

12 (1) may be filed only by the victim; and

13 (2) shall be filed within six years from the
14 date the victim knew or had reason to know her pregnancy with
15 the child resulted from criminal sexual penetration perpetrated
16 by the respondent.

17 F. A motion for termination of parental rights or
18 permanent suspension of legal and physical custody and
19 visitation rights filed pursuant to this section shall set
20 forth:

21 (1) whether the victim seeks termination of
22 respondent's parental rights or permanent suspension of
23 respondent's legal and physical custody and visitation rights;

24 (2) the facts and circumstances of the child's
25 conception;

.193402.4

1 (3) the date and place of birth of the child;

2 (4) the name and address of the respondent, if
3 known;

4 (5) the name and address of the person who
5 would retain legal custody of the child upon termination of
6 respondent's parental rights or permanent suspension of legal
7 and physical custody and visitation rights; and

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

10 (a) the tribal affiliations of the
11 child's biological parents;

12 (b) the specific actions taken by the
13 victim to notify the child's biological parents' tribes and the
14 results of the contacts, including the names, addresses, titles
15 and telephone numbers of the persons contacted. Copies of any
16 correspondence with the tribes shall be attached as exhibits to
17 the motion; and

18 (c) the specific efforts made to comply
19 with the placement preferences set forth in the federal Indian
20 Child Welfare Act of 1978 or the placement preferences of the
21 appropriate Indian tribes.

22 G. Notice of the filing of the motion, accompanied
23 by a copy of the motion, shall be served by the victim on all
24 other parties, including, if applicable, the foster parent, the
25 person providing care for the child with whom the child is

.193402.4

1 residing, the custodian of the child, any person appointed to
2 represent any party and any other person the court orders.
3 Service shall be in accordance with the Rules of Civil
4 Procedure for the District Courts for the service of motions,
5 except that foster parents and attorneys of record in the
6 proceeding shall be served by certified mail. The notice shall
7 state specifically that the person served shall file a written
8 response to the motion within thirty days if the person intends
9 to contest the termination of parental rights or permanent
10 suspension of legal and physical custody and visitation rights.
11 In any case involving a child subject to the federal Indian
12 Child Welfare Act of 1978, notice shall also be sent by
13 certified mail to the tribes of the child's biological parents
14 and upon any "Indian custodian", as that term is defined in 25
15 U.S.C. Section 1903(6).

16 H. When a motion to terminate parental rights or
17 permanently suspend legal and physical custody and visitation
18 rights is filed, the victim shall request a hearing on the
19 motion. The hearing date shall be at least thirty days, but no
20 more than sixty days, after service is effected upon the
21 parties entitled to service.

22 I. After a motion is filed, the court shall advise
23 the victim and respondent of the right to counsel, if any, and
24 the court may appoint counsel from the children, youth and
25 families department upon request for a person the court

.193402.4

1 determines to be indigent.

2 J. If there is significant cause, the court may
3 appoint a guardian ad litem for a child who is the subject of a
4 proceeding pursuant to this section. When the court appoints a
5 guardian ad litem, the court shall make a record of its reasons
6 for the appointment. A party to the proceeding or an employee
7 or representative of a party shall not be appointed as guardian
8 ad litem.

9 K. The grounds for a termination of parental rights
10 or permanent suspension of legal and physical custody and
11 visitation rights shall be proved by clear and convincing
12 evidence, except for a proceeding involving a child subject to
13 the federal Indian Child Welfare Act of 1978.

14 L. In a proceeding to terminate parental rights or
15 permanently suspend legal and physical custody and visitation
16 rights that involves a child subject to the federal Indian
17 Child Welfare Act of 1978:

18 (1) the grounds for a termination of parental
19 rights or permanent suspension of legal and physical custody
20 and visitation rights shall be proved beyond a reasonable doubt
21 and shall meet the requirements set forth in 25 U.S.C. Section
22 1912(f); and

23 (2) the court shall, in an order terminating
24 parental rights or permanently suspending legal and physical
25 custody and visitation rights, make specific findings that the

.193402.4

1 requirements of that act have been met.

2 M. A judgment of the court permanently suspending a
3 respondent's legal and physical custody and visitation rights
4 pursuant to this section shall provide:

5 (1) that the respondent has no rights to legal
6 or physical custody of or visitation with the child;

7 (2) that the respondent has no right to
8 consent to or receive notice of a subsequent adoption
9 proceeding concerning the child;

10 (3) that the judgment does not affect the
11 ability of the victim, the child or the state to seek child
12 support for the child from the respondent;

13 (4) that the judgment does not affect the
14 child's right of inheritance from and through the respondent;

15 (5) that the respondent has no right of
16 inheritance from the child; and

17 (6) the name of the person who retains custody
18 of the child.

19 N. A judgment of the court terminating a
20 respondent's parental rights pursuant to this section shall
21 provide:

22 (1) that the respondent has no rights to legal
23 or physical custody of or visitation with the child;

24 (2) that the respondent has no right to
25 consent to or receive notice of a subsequent adoption

.193402.4

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

1 proceeding concerning the child;

2 (3) that the respondent is divested of all
3 legal rights and privileges with respect to the child;

4 (4) that no party may seek child support for
5 the child from the respondent; and

6 (5) the name of the person who retains custody
7 of the child.

8 O. The court shall issue appropriate orders within
9 thirty days after the hearing on a motion filed pursuant to
10 this section.

11 P. The statements made in a proceeding pursuant to
12 this section shall be unavailable for use in any other legal
13 proceeding or action.

14 Q. All records or information concerning a party to
15 a proceeding to terminate parental rights or permanently
16 suspend legal and physical custody and visitation rights
17 pursuant to this section shall be confidential and closed to
18 the public. The records and information shall be disclosed
19 only to the parties and any other person or entity, having a
20 legitimate interest in the case or the work of the court, by
21 order of the court.

22 R. Whoever intentionally and unlawfully releases
23 any information or records closed to the public pursuant to
24 this section or releases or makes other unlawful use of records
25 in violation of this section is guilty of a petty misdemeanor

.193402.4

1 and shall be sentenced pursuant to the provisions of Section
2 31-19-1 NMSA 1978.

3 S. Nothing in this section shall affect the
4 requirements set forth in the Abuse and Neglect Act or the
5 Adoption Act as those acts may relate to a child that is the
6 subject of a proceeding pursuant to this section."

7 SECTION 2. Section 32A-5-19 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 146, as amended) is amended to read:

9 "32A-5-19. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE
10 NOT REQUIRED.--The consent to adoption or relinquishment of
11 parental rights required pursuant to the provisions of the
12 Adoption Act shall not be required from:

13 A. a parent whose rights with reference to the
14 adoptee have been terminated pursuant to law;

15 B. a parent who has relinquished the child to an
16 agency for an adoption;

17 C. a biological father of an adoptee conceived as a
18 result of [~~rape or~~] incest;

19 D. a biological parent of an adoptee conceived as a
20 result of criminal sexual penetration as defined in Section
21 30-9-11 NMSA 1978 when the parent has been convicted of
22 criminal sexual penetration and when the parent's rights have
23 been terminated or permanently suspended pursuant to this 2013
24 act. For the purposes of this subsection, a conviction for
25 rape or criminal sexual penetration pursuant to the laws of

.193402.4

1 another jurisdiction, territory or possession of the United
2 States or of an Indian nation, tribe or pueblo, when that law
3 is equivalent to New Mexico law for criminal sexual
4 penetration, shall be deemed to be a conviction;

5 E. a person who has failed to respond when given
6 notice pursuant to the provisions of Section 32A-5-27 NMSA
7 1978; or

8 F. an alleged father who has failed to register
9 with the putative father registry within ten days of the
10 child's birth and is not otherwise the acknowledged father."

11 SECTION 3. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2013.