

HOUSE FLOOR SUBSTITUTE FOR
HOUSE BILL 387

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

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; AMENDING THE
ADOPTION ACT; 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:

(1) "child" means a child conceived as a
result of criminal sexual penetration as found pursuant to

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underscored material = new
[bracketed material] = delete

1 Subsection B of this section;

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

8 (3) "petitioner" means a woman who became
9 pregnant as a result of criminal sexual penetration as found
10 pursuant to Subsection B of this section; and

11 (4) "respondent" means the biological father
12 of a child whose rights a petitioner seeks to terminate or
13 permanently suspend pursuant to this section and who is not
14 legally married to the petitioner.

15 B. In a proceeding pursuant to this section, the
16 court shall find whether clear and convincing evidence exists
17 that the child was conceived as a result of criminal sexual
18 penetration. For the purposes of this section, a court need
19 not determine that a respondent was convicted of criminal
20 sexual penetration.

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

1 biological parents and the circumstances of the child's
2 conception, the court finds that termination of parental rights
3 or permanent suspension of legal and physical custody and
4 visitation rights is necessary to protect the physical, mental
5 or emotional welfare of the petitioner and is in the best
6 interest of the child.

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

12 E. A petition to terminate parental rights or
13 permanently suspend legal and physical custody and visitation
14 rights pursuant to this section shall be filed within six years
15 from the date the petitioner knew or had reason to know the
16 identity of the perpetrator of the criminal sexual penetration
17 that resulted in the pregnancy.

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

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

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

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

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

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

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

12 (a) the tribal affiliations of the
13 child's biological parents;

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

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

24 G. Notice of the filing of the petition,
25 accompanied by a copy of the petition, shall be served by the

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

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

22 I. If there is significant cause, the court may
23 appoint a guardian ad litem for a child who is the subject of a
24 proceeding pursuant to this section. When the court appoints a
25 guardian ad litem, the court shall make a record of its reasons

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1 for the appointment. A party to the proceeding or an employee
2 or representative of a party shall not be appointed as guardian
3 ad litem.

4 J. The grounds for a termination of parental rights
5 or permanent suspension of legal and physical custody and
6 visitation rights shall be proved by clear and convincing
7 evidence, except for a proceeding involving a child subject to
8 the federal Indian Child Welfare Act of 1978.

9 K. In a proceeding to terminate parental rights or
10 permanently suspend legal and physical custody and visitation
11 rights that involves a child subject to the federal Indian
12 Child Welfare Act of 1978:

13 (1) the grounds for a termination of parental
14 rights or permanent suspension of legal and physical custody
15 and visitation rights shall be proved beyond a reasonable doubt
16 and shall meet the requirements set forth in 25 U.S.C. Section
17 1912(f); and

18 (2) the court shall, in an order terminating
19 parental rights or permanently suspending legal and physical
20 custody and visitation rights, make specific findings that the
21 requirements of that act have been met.

22 L. A judgment of the court permanently suspending a
23 respondent's legal and physical custody and visitation rights
24 pursuant to this section shall provide:

25 (1) that the respondent has no rights to legal

1 or physical custody of or visitation with the child;

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

5 (3) that the judgment does not affect the
6 ability of the petitioner, the child or the state to seek child
7 support for the child from the respondent;

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

10 (5) that the respondent has no right of
11 inheritance from the child; and

12 (6) the name of the person who retains custody
13 of the child.

14 M. A judgment of the court terminating a
15 respondent's parental rights pursuant to this section shall
16 provide:

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

19 (2) that the respondent has no right to
20 consent to or receive notice of a subsequent adoption
21 proceeding concerning the child;

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

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

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1 (5) the name of the person who retains custody
2 of the child.

3 N. The court shall issue appropriate orders within
4 thirty days after the hearing on a petition filed pursuant to
5 this section.

6 O. The statements made in a proceeding pursuant to
7 this section shall be unavailable for use in any other legal
8 proceeding or action.

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

17 Q. Whoever intentionally and unlawfully releases
18 any information or records closed to the public pursuant to
19 this section or releases or makes other unlawful use of records
20 in violation of this section is guilty of a petty misdemeanor
21 and shall be sentenced pursuant to the provisions of Section
22 31-19-1 NMSA 1978.

23 R. Nothing in this section shall affect the
24 requirements set forth in the Abuse and Neglect Act or the
25 Adoption Act as those acts may relate to a child that is the

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1 subject of a proceeding pursuant to this section."

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

4 "32A-5-19. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE
5 NOT REQUIRED.--The consent to adoption or relinquishment of
6 parental rights required pursuant to the provisions of the
7 Adoption Act shall not be required from:

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

10 B. a parent who has relinquished the child to an
11 agency for an adoption;

12 C. a biological father of an adoptee conceived as a
13 result of [~~rape~~] criminal sexual penetration, as defined in
14 Section 30-9-11 NMSA 1978, or incest, as defined in Section
15 30-10-3 NMSA 1978;

16 D. a biological parent of an adoptee whose legal
17 and physical custody and visitation rights with respect to the
18 adoptee have been permanently suspended or whose parental
19 rights with respect to the adoptee have been terminated
20 pursuant to Section 1 of this 2015 act;

21 [~~D.~~] E. a person who has failed to respond when
22 given notice pursuant to the provisions of Section 32A-5-27
23 NMSA 1978; or

24 [~~E.~~] F. an alleged father who has failed to
25 register with the putative father registry within ten days of

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1 the child's birth and is not otherwise the acknowledged
2 father."

3 SECTION 3. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2015.