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HOUSE BILL 1102

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

GARY K. KING

AN ACT

RELATING TO ADOPTION; MODIFYING AN UNMARRIED BIOLOGICAL FATHER'S
RIGHT TO NOTICE OF AND CONSENT TO ADOPTION OR RELINQUISHMENT OF
PARENTAL RIGHTS; AMENDING AND ENACTING SECTIONS OF THE NMSA
1978.

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

Section 1. Section 32A-5-17 NMSA 1978 (being Laws 1993,
Chapter 77, Section 144, as amended) is amended to read:

"32A-5-17. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE
REQUIRED. --

A. Unless provided otherwise in the Adoption Act,
consent to adoption or relinquishment of parental rights to the
department or an agency licensed by the state of New Mexico
shall be required of the following:

- (1) the adoptee, if ten years of age or older,

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1 except when the court finds that the adoptee does not have the
2 mental capacity to give consent;

3 (2) the adoptee's mother;

4 (3) the adoptee's proposed adoptive [~~father~~]
5 parent;

6 (4) the presumed father of the adoptee;

7 (5) the adoptee's acknowledged father;

8 (6) the department or the agency to whom the
9 adoptee has been relinquished that has placed the adoptee for
10 adoption or the department or the agency that has custody of the
11 adoptee; provided, however, that the court may grant the
12 adoption without the consent of the department or the agency if
13 the court finds the adoption is in the best interests of the
14 adoptee and that the withholding of consent by the department or
15 the agency is unreasonable; and

16 (7) the guardian of the adoptee's parent when,
17 pursuant to provisions of the Uniform Probate Code, that
18 guardian has express authority to consent to adoption.

19 B. In any adoption involving an Indian child,
20 consent to adoption by the petitioner or relinquishment of
21 parental rights shall be obtained from an "Indian custodian", as
22 required pursuant to the provisions of the federal Indian Child
23 Welfare Act of 1978.

24 C. The consent of an unmarried biological father
25 shall not be required unless he has complied with the

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1 requirements stated in Section 32A-5-19.1 NMSA 1978.

2 [C-] D. A consent or relinquishment executed by a
3 parent who is a minor shall not be subject to avoidance or
4 revocation solely by reason of the parent's minority. "

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

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

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

13 B. a parent who has relinquished the child to an
14 agency for an adoption;

15 C. a biological father of an adoptee conceived as a
16 result of rape or incest; or

17 D. any person who has failed to respond when given
18 notice pursuant to the provisions of Section [32-5-27]

19 32A-5-27 NMSA 1978 [~~or~~

20 ~~E. any putative father who has failed to register~~
21 ~~with the putative father registry within 90 days of the child's~~
22 ~~birth]. "~~

23 Section 3. A new Section 32A-5-19.1 NMSA 1978 is enacted
24 to read:

25 "32A-5-19.1. [NEW MATERIAL] UNMARRIED BIOLOGICAL FATHER'S

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1 RIGHT TO NOTICE AND CONSENT. --

2 A. An unmarried biological father has an inchoate
3 interest that acquires constitutional protection only when he
4 demonstrates a timely and full commitment to the
5 responsibilities of parenthood, both during pregnancy and upon
6 the child's birth. The state has a compelling interest in
7 requiring biological fathers to demonstrate that commitment by
8 providing appropriate medical care and financial support and by
9 establishing legal paternity, pursuant to law.

10 B. An unmarried biological father, by virtue of the
11 fact that he has engaged in a sexual relationship with a woman,
12 is deemed to be on notice that a pregnancy and an adoption
13 proceeding regarding that child may occur, and he has a duty to
14 protect his own rights and interests. He is therefore entitled
15 to actual notice of a birth or an adoption proceeding with
16 regard to that child if he has registered with the putative
17 father registry as provided in Section 32A-5-20 NMSA 1978.

18 C. In order to preserve any right to notice and
19 consent, an unmarried biological father may initiate proceedings
20 to establish paternity pursuant to the provisions of the Uniform
21 Parentage Act.

22 D. An unmarried biological father may register with
23 the putative father registry any time from conception until the
24 biological mother signs a relinquishment of parental rights and
25 consent to adoption.

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1 E. An unmarried biological father who has not
2 registered with the putative father registry and has not
3 initiated proceedings to establish paternity under the Uniform
4 Parentage Act is only entitled to notice of an adoption
5 proceeding and is only required to give consent to an adoption
6 if he has established a substantial relationship with the child
7 based on the following requirements:

8 (1) with respect to a child over the age of six
9 months:

10 (a) the father must have visited the
11 child at least monthly when physically and financially able to
12 do so, and when not prevented from doing so by the person or
13 authorized agency having lawful custody of the child;

14 (b) the father must have maintained
15 regular communication with the child or with the person or
16 agency having the care or custody of the child, when physically
17 and financially unable to visit the child, and when not
18 prevented from doing so by the person or authorized agency
19 having lawful custody of the child; or

20 (c) the unmarried biological father must
21 have openly and continuously lived with the mother and child for
22 six months immediately preceding placement of the child with
23 adoptive parents and openly held himself out as the child's
24 father during that period; and

25 (2) with respect to a child under the age of

1 six months, prior to the time the biological mother executes a
2 consent to adoption the unmarried biological father must have
3 done each of the following:

4 (a) paid a fair and reasonable amount of
5 the expenses related to the pregnancy and birth;

6 (b) demonstrated a willingness and
7 commitment to contribute to the support of the child in
8 accordance with the child support guidelines of Section
9 40-4-11.1 NMSA 1978;

10 (c) provided supplies, including
11 nutritional, medical and clothing items, for the benefit of the
12 child; and

13 (d) provided information and, if
14 appropriate, made payments to any government agency providing
15 benefits, including income support, medical services or
16 nutritional assistance to the child or the child's mother.

17 F. The subjective intent of an unmarried biological
18 father, whether expressed or otherwise, unsupported by evidence
19 of an act specified in Subsection E of this section shall not
20 preclude a determination that the father failed to meet the
21 requirements of that subsection."

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 7, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

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has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 1, line 13, strike "AND ENACTING".
2. On pages 1, 2 and 3, strike Section 1 in its entirety.
3. Renumber succeeding sections accordingly.
4. On page 3, line 16, strike the second "or".
5. On page 3, line 19, after "[or" insert a closing bracket.
6. On page 3, lines 20 through 22, remove brackets and line-through.

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7. On page 3, line 21, strike "90" and insert in lieu thereof "ten".

8. On page 3, line 22, strike the period and closing quotation mark and insert in lieu thereof "; or".

9. On page 3, between lines 22 and 23, insert:

"F. any alleged father. "".

10. On pages 3, 4, 5 and 6, strike Section 3 in its entirety and insert in lieu thereof:

"Section 2. Section 32A-5-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 147) is amended to read:

"32A-5-20. PUTATIVE FATHER REGISTRY--NOTICE--PENALTY.--

A. The purpose of the putative father registry is to protect the parental rights of fathers who affirmatively assume responsibility for children they may have fathered and to expedite adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the putative father registry or otherwise acknowledging their children. A biological father shall file with the putative father registry within ten days of the birth of child. The registry does not relieve the obligation of mothers to identify known fathers.

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B. A putative father registry shall be established by the department of health to record the names and addresses of:

(1) any person adjudicated by a court of this state to be the father of a child;

(2) any person who has filed with the registry, before or after birth of a child out of wedlock, a notice of intent to claim paternity of the child;

(3) any person who has filed with the registry an instrument acknowledging paternity; or

(4) any person adjudicated by a court of another state or territory of the United States to be the father of an out-of-wedlock child, when a certified copy of the court order has been filed with the registry.

C. A person filing a notice of intent to claim paternity of a child or an acknowledgment of paternity shall include in the notice the following:

(1) his name;

(2) his current address;

(3) the mother's name and any other identifying information requested by the department of health; and

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(4) the child's name, if known, and any other identifying information requested by the department of health.

D. If the person filing the notice of intent to claim paternity of a child or acknowledgment changes his address, the person shall notify the department of health of his new address in the manner prescribed by the department of health.

E. A person who has filed a notice of intent to claim paternity may at any time revoke a notice of intent to claim paternity previously filed. Upon receipt by the registry of the notice of revocation, the revoked notice of intent to claim paternity shall be deemed a nullity nunc pro tunc.

F. No registration fee shall be charged for registering the intent to claim paternity of a child or acknowledgment of paternity. The department of health may charge a reasonable fee as prescribed by regulation for processing searches of the putative father registry.

G. An unrevoked notice of intent to claim paternity of a child may be introduced in evidence by any party in any proceeding in which that fact may be relevant.

H. The department of health shall, upon request, provide the names and addresses of persons listed with the registry to any court, the department, an agency, the petitioner's attorney or the mother of the child. The information shall not be

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divulged to any other person, except upon order of the court for good cause shown. If the registry has not received a notice of intent to claim paternity or an acknowledgment of paternity, within ten days of the child's birth, the department of health shall provide a written statement to that effect to the person making the inquiry. The person making inquiry shall provide a self-addressed, stamped envelope to the department of health for the department's response to the inquiry.

I. The department of health may promulgate any regulations or forms necessary to implement the provisions of this section.

J. Any person who intentionally and unlawfully releases information from the putative father registry to the public or makes any other unlawful use of the information in violation of the provisions of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. "".

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Respectfully submitted,

Thomas P. Foy, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Mallory, Rios, Sanchez, Stewart

Absent: None

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