

AN ACT

RELATING TO ADOPTIONS; EXPANDING DEFINITIONS WITHIN THE ADOPTION ACT; CHANGING PLACEMENT REQUEST AND ORDER PROCEDURES IN INDEPENDENT ADOPTIONS; AMENDING POST-PLACEMENT REPORT REQUIREMENTS; CHANGING THE REQUIREMENTS REGARDING APPOINTMENT OF A GUARDIAN AD LITEM IN OPEN ADOPTIONS; CHANGING THE JURISDICTION REQUIREMENTS IN OPEN ADOPTIONS.

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

Section 1. Section 32A-5-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 130, as amended) is amended to read:

"32A-5-3. DEFINITIONS.--As used in the Adoption Act:

A. "adoptee" means a person who is the subject of an adoption petition;

B. "agency" means a person certified, licensed or otherwise specially empowered by law to place a child in a home in this or another state for the purpose of adoption;

C. "agency adoption" means an adoption when the adoptee is in the custody of an agency prior to placement;

D. "acknowledged father" means a father who:

(1) acknowledges paternity of the adoptee pursuant to the putative father registry, as provided for in Section 32A-5-20 NMSA 1978;

(2) is named, with his consent, as the adoptee's father on the adoptee's birth certificate;

(3) is obligated to support the adoptee under a written voluntary promise or pursuant to a court order; or

(4) has openly held out the adoptee as his own child; or

(5) has established a custodial, personal or financial relationship with the child. The relationship may be established prior to the child's birth;

E. "alleged father" means an individual whom the biological mother has identified as the biological father, but the individual has not acknowledged paternity or registered with the putative father registry as provided for in Section 32A-5-20 NMSA 1978;

F. "consent" means a document:

(1) signed by a biological parent whereby the parent grants consent to the adoption of the parent's child by another; or

(2) whereby the department or an agency grants its consent to the adoption of a child in its custody;

G. "counselor" means a person certified by the department to conduct adoption counseling in independent adoptions;

H. "department adoption" means an adoption when the child is in the custody of the department prior to placement;

I. "former parent" means a parent whose parental rights have been terminated or relinquished;

J. "full disclosure" means mandatory and continuous disclosure by the investigator, agency, department or petitioner throughout the adoption proceeding and after finalization of the adoption of all known, nonidentifying information regarding the adoptee, including:

(1) health history;

(2) psychological history;

- (3) mental history;
- (4) hospital history;
- (5) medication history;
- (6) genetic history;
- (7) physical descriptions;
- (8) social history;
- (9) placement history; and
- (10) education;

K. "independent adoption" means an adoption when the child is not in the custody of the department or an agency prior to placement;

L. "investigator" means an individual certified by the department to conduct pre-placement studies and post-placement reports;

M. "office" means a place for the regular transaction of business or performance of particular services;

N. "parental rights" means all rights of a parent with reference to a child, including parental right to control, to withhold consent to an adoption or to receive notice of a hearing on a petition for adoption;

O. "placement" means the selection of a family for an adoptee or matching of a family with an adoptee and physical transfer of the adoptee to the family in all adoption proceedings, except in adoptions filed pursuant to Paragraphs (1) and (2) of Subsection C of Section 32A-5-12 NMSA 1978, in which case placement occurs when the parents consent to the adoption, parental rights are terminated or parental consent is implied;

P. "post-placement report" means a written

evaluation of the adoptive family and the adoptee after the adoptee is placed for adoption;

Q. "pre-placement study" means a written evaluation of the adoptive family, the adoptee's biological family and the adoptee;

R. "presumed father" means:

(1) the husband of the biological mother at the time the adoptee was born;

(2) an individual who was married to the mother and either the adoptee was born during the term of the marriage or the adoptee was born within three hundred days after the marriage was terminated by death, annulment, declaration of invalidity or divorce; or

(3) before the adoptee's birth, an individual who attempted to marry the adoptee's biological mother by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid and if the attempted marriage:

(a) could be declared invalid only by a court, the adoptee was born during the attempted marriage or within three hundred days after its termination by death, annulment, declaration of invalidity or divorce; or

(b) is invalid without a court order, the adoptee was born within three hundred days after the termination of cohabitation;

S. "record" means any petition, affidavit, consent or relinquishment form, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, photograph, invoice, receipt, certificate or other printed, written,

videotaped or tape-recorded material pertaining to an adoption proceeding;

T. "relinquishment" means the document by which a parent relinquishes parental rights to the department or an agency to enable placement of the parent's child for adoption;

U. "resident" means a person who, prior to filing an adoption petition, has lived in the state for at least six months immediately preceding filing of the petition for adoption or a person who has become domiciled in the state by establishing legal residence with the intention of maintaining the residency indefinitely; and

V. "stepparent adoption" means an adoption of the adoptee by the adoptee's stepparent when the adoptee has lived with the stepparent for at least one year following the marriage of the stepparent to the custodial parent."

Section 2. Section 32A-5-13 NMSA 1978 (being Laws 1993, Chapter 77, Section 140, as amended) is amended to read:

"32A-5-13. INDEPENDENT ADOPTIONS--REQUEST FOR PLACEMENT--PLACEMENT ORDER--CERTIFICATION.--

A. When a placement order is required, the petitioner shall file a request with the court to allow the placement. An order permitting the placement shall be obtained prior to actual placement.

B. A pre-placement study approving the petitioner as an appropriate adoptive parent shall be filed with the court prior to issuance of a placement order, except as provided in Subsection C of Section 32A-5-12 NMSA 1978.

C. In order for a person to be certified to conduct pre-placement studies, the person shall meet the

standards promulgated by the department. If the child is an Indian child, the person shall meet the standards set forth in the federal Indian Child Welfare Act of 1978.

D. The pre-placement study shall be conducted by an agency or a person certified by the department to conduct the study. A person or agency that wants to be certified to perform pre-placement studies shall file documents verifying their qualifications with the department. The department shall publish a list of persons or agencies certified to conduct a pre-placement study. If necessary to defray additional costs associated with compiling the list, the department may assess and charge a reasonable administrative fee to the person or agency listed.

E. When a person or agency that wants to be certified to perform pre-placement studies files false documentation with the department, the person or agency shall be subject to the provisions of Section 32A-5-42 NMSA 1978.

F. A request for placement shall be filed and verified by the petitioner and shall allege:

(1) the full name, age and place and duration of residence of the petitioner and, if married, the place and date of marriage;

(2) the date and place of birth of the adoptee, if known, or the anticipated date and place of birth of the adoptee;

(3) a detailed statement of the circumstances and persons involved in the proposed placement;

(4) if the adoptee has been born, the address where the adoptee is residing at the time of the request for placement;

(5) if the adoptee has been born, the places where the adoptee has lived within the past three years and the names and addresses of the persons with whom the adoptee has lived. If the adoptee is in the custody of an agency or the department, the address shall be the address of the agency or the county office of the department from which the child was placed;

(6) the existence of any court orders that are known to the petitioner and that regulate custody, visitation or access to the adoptee, copies of which shall be attached to the request for placement as exhibits; if copies of any such court orders are unavailable at the time of filing the request for placement, the copies shall be filed prior to the issuance of the order of placement;

(7) that the petitioner desires to establish a parent and child relationship between the petitioner and the adoptee and that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;

(8) the relationship, if any, of the petitioner to the adoptee;

(9) whether the adoptee is subject to the federal Indian Child Welfare Act of 1978, and, if so, the petition shall allege the actions taken to comply with the federal Indian Child Welfare Act of 1978 and all other allegations required pursuant to that act;

(10) whether the adoption is subject to the Interstate Compact on the Placement of Children and what specific actions have been taken to comply with the Interstate Compact on the Placement of Children; and

(11) the name, address and telephone number

of the agency or investigator who has agreed to do the pre-placement study.

G. The request for placement shall be served on all parties entitled to receive notice of the filing of a petition for adoption, as provided in Section 32A-5-27 NMSA 1978. An order allowing placement may be entered prior to service of the request for placement.

H. A hearing and the court decision on the request for placement shall occur within thirty days of the filing of the request.

I. As part of any court order authorizing placement under this section, the court shall find whether the pre-placement study complies with Section 32A-5-14 NMSA 1978 and that the time requirements concerning placement set forth in this section have been met."

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

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

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

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

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

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



NMSA 1978; or

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

Section 4. Section 32A-5-27 NMSA 1978 (being Laws 1993, Chapter 77, Section 154) is amended to read:

"32A-5-27. NOTICE OF PETITION--FORM OF SERVICE--  
WAIVER.--

A. The petition for adoption shall be served by the petitioner on the following, unless it has been previously waived in writing:

(1) the department, by providing a copy to the court clerk for service pursuant to Section 32A-5-7 NMSA 1978;

(2) any person, agency or institution whose consent or relinquishment is required by Section 32A-5-17 NMSA 1978, unless the notice has been previously waived;

(3) any acknowledged father of the adoptee;

(4) the legally appointed custodian or guardian of the adoptee;

(5) the spouse of any petitioner who has not joined in the petition;

(6) the spouse of the adoptee;

(7) the surviving parent of a deceased parent of the adoptee;

(8) any person known to the petitioner having custody of or visitation with the adoptee under a court order;

(9) any person in whose home the child has resided for at least two months within the preceding six

months;

(10) the agency or individual authorized to investigate the adoption under Section 32A-5-13 NMSA 1978; and

(11) any other person designated by the court.

B. Notice shall not be served on the following:

(1) alleged fathers; and

(2) any person whose parental rights have been relinquished or terminated.

C. The petitioner shall provide the clerk of the court with a copy of the petition for adoption, to be mailed to the department pursuant to the provisions of Section 32A-5-7 NMSA 1978.

D. In any adoption in which the adoptee is an Indian child, in addition to the notice required pursuant to Subsection A of this section, notice of pendency of the adoption proceeding shall be served by the petitioner on the appropriate Indian tribe and on any "Indian custodian" pursuant to the provisions of the federal Indian Child Welfare Act of 1978.

E. The notice shall state that the person served shall respond to the petition within twenty days if the person intends to contest the adoption and shall state that the failure to so respond shall be treated as a default and the person's consent to the adoption shall not be required. Provided, however, that this provision shall not apply to an agency, the department or an investigator preparing the post-placement report pursuant to Section 32A-5-31 NMSA 1978. If an agency, the department or an investigator preparing the

post-placement report wants to contest the adoption, they shall notify the court within twenty days after completion of the post-placement report.

F. Service shall be made pursuant to the Rules of Civil Procedure for the District Court. If the whereabouts of a parent whose consent is required is unknown, the investigator, department or agency charged with investigating the adoption under Section 32A-5-13 NMSA 1978 shall investigate the whereabouts of the parent and shall file by affidavit the results of the investigation with the court. Upon a finding by the court that information as to the whereabouts of a parent has been sufficiently investigated and is still insufficient to effect service in accordance with the Rules of Civil Procedure for the District Courts, the court shall issue an order providing for service by publication.

G. As to any other person for whom notice is required under Subsection A of this section, service by certified mail, return receipt requested, shall be sufficient. If the service cannot be completed after two attempts, the court shall issue an order providing for service by publication.

H. The notice required by this section may be waived in writing by the person entitled to notice.

I. Proof of service of the notice on all persons for whom notice is required by this section shall be filed with the court before any hearing adjudicating the rights of the persons."

Section 5. Section 32A-5-31 NMSA 1978 (being Laws 1993, Chapter 77, Section 158) is amended to read:

"32A-5-31. POST-PLACEMENT REPORT.--

A. An agency or an individual with the credentials set out in Subsection C of Section 32A-5-13 NMSA 1978 shall file with the court its post-placement report of the prospective adoptive home and the adoptee. The post-placement report shall be completed as prescribed by department regulations and shall include a description of the following:

- (1) the expressed desires of the parents as to the kind of adoptive family sought;
- (2) the interaction between the adoptee and petitioner;
- (3) the adjustment of the adoptee since placement;
- (4) the integration and acceptance of the adoptee in the petitioner's family;
- (5) the petitioner's ability to meet the physical and emotional needs of the adoptee;
- (6) whether the adoptive home is a suitable home for the proposed adoption;
- (7) whether the adoption is in the best interest of the adoptee;
- (8) the type and frequency of post-placement services given to the petitioner;
- (9) any orders, judgments or decrees affecting the adoptee or any children of the petitioner;
- (10) any property owned by the adoptee;
- (11) full disclosure;
- (12) the costs, expenses and professional fees connected with the adoption;

(13) any other circumstances that are relevant to the adoption of the adoptee by the petitioner; and

(14) when the adoptee is placed by an agency, an itemized agency statement of all payments made to any person or entity in connection with the adoption, including the date paid, the amount paid, the payee and the purpose of the payment.

B. The post-placement report shall contain an evaluation of the proposed adoption with a recommendation as to the granting of the petition for adoption and such other information as the court requires.

C. Unless directed by the court, a post-placement report is not required in cases in which the child is being adopted by a stepparent, a relative or a person named in the child's deceased parent's will pursuant to Section 32A-5-12 NMSA 1978.

D. The investigation for the post-placement report shall be conducted by the department, an agency or an investigator. The department, agency or investigator conducting the post-placement report may be the same as the agency or individual conducting the pre-placement study and they shall be maintained on the same list as that compiled for pre-placement studies under Subsection D of Section 32A-5-13 NMSA 1978.

E. The department, agency or investigator shall observe the adoptee and interview the petitioner in the petitioner's home as specified in department regulations as soon as possible after the receipt of notice of the action, but in any event within thirty days after receipt of the

notice.

F. The department, agency or investigator shall complete and file the written report with the court within sixty days from receipt of notice of the proceeding for an adoptee that is under one year of age at the time of placement and within one hundred twenty days for an adoptee that is one year of age or older at the time of placement, and shall deliver a copy of the report to the petitioner's attorney or to the petitioner, if not represented by counsel, and to the department. Upon a showing of good cause and after notice to the petitioner, the court may grant extensions of time to the department, agency or investigator to file the post-placement report so long as the report is filed at least thirty days before the hearing for the decree of adoption."

Section 6. Section 32A-5-35 NMSA 1978 (being Laws 1993, Chapter 77, Section 162, as amended) is amended to read:

"32A-5-35. OPEN ADOPTIONS.--

A. The parents of the adoptee and the petitioner may agree to contact between the parents and the petitioner or contact between the adoptee and one or more of the parents or contact between the adoptee and relatives of the parents. An agreement shall, absent a finding to the contrary, be presumed to be in the best interests of the child and may be included in the decree of adoption. The contact may include exchange of identifying or nonidentifying information or visitation between the parents or the parents' relatives and the petitioner or visitation between the parents or the parents' relatives and the adoptee.

B. The court may appoint a guardian ad litem for the adoptee. The court shall appoint a guardian ad litem for the adoptee when visitation between the biological family and the adoptee is contemplated, except when the adoptive placement is made voluntarily through a licensed child placement agency or pursuant to the provisions of Section 32A-5-13 NMSA 1978. In all adoptions other than those in which the child is placed by the department, the court may assess the parties for the cost of services rendered by the guardian ad litem.

C. In determining whether the agreement is in the adoptee's best interests, the court shall consider the adoptee's wishes, but the wishes of the adoptee shall not control the court's findings as to the best interests of the adoptee.

D. Every agreement included in a decree of adoption shall contain a clause stating that the parties agree to the continuing jurisdiction of the court and to the agreement and understand and intend that any disagreement or litigation regarding the terms of the agreement shall not affect the validity of the relinquishment of parental rights, the adoption or the custody of the adoptee. The provisions of this subsection shall not apply to a biological parent who has voluntarily relinquished parental rights and consented to the adoption.

SB 695  
Page 15

E. The court shall retain jurisdiction after the decree of adoption is entered, if the decree contains an agreement for contact, for the purpose of hearing motions brought to enforce or modify an agreement entered into pursuant to the provisions of this section. The court shall

not grant a request to modify the agreement unless the moving party establishes that there has been a change of circumstances and the agreement is no longer in the adoptee's best interests." \_\_\_\_\_

\_\_\_\_\_