

1 SENATE BILL 278

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 David M. Gallegos

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10 AN ACT

11 RELATING TO PARENTAL RIGHTS; PROVIDING FOR THE TERMINATION OR
12 PERMANENT SUSPENSION OF PARENTAL RIGHTS WHEN CRIMINAL SEXUAL
13 PENETRATION RESULTS IN CONCEPTION OF A CHILD; AMENDING THE
14 ADOPTION ACT; PROVIDING A PENALTY.

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

17 SECTION 1. Section 32A-5-19 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 146, as amended) is amended to read:

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

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

25 B. a parent who has relinquished the child to an

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1 agency for an adoption;

2 C. a biological father of an adoptee conceived as a
3 result of ~~[rape]~~ criminal sexual penetration, as defined in
4 Section 30-9-11 NMSA 1978, or incest, as defined in Section
5 30-10-3 NMSA 1978;

6 D. a biological parent of an adoptee whose legal
7 and physical custody and visitation rights with respect to the
8 adoptee have been permanently suspended or whose parental
9 rights with respect to the adoptee have been terminated
10 pursuant to Section 2 of this 2023 act;

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

14 ~~[E-]~~ F. an alleged father who has failed to
15 register with the putative father registry within ten days of
16 the child's birth and is not otherwise the acknowledged
17 father."

18 SECTION 2. A new section of Chapter 40 NMSA 1978 is
19 enacted to read:

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

24 A. As used in this section:

25 (1) "child" means a child conceived as a

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1 result of criminal sexual penetration as found pursuant to
2 Subsection B of this section;

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

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

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

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

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

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

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

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

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 Indian
11 Family Protection Act or the federal Indian Child Welfare Act
12 of 1978 and, if so:

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

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

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

25 G. Notice of the filing of the petition,

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1 accompanied by a copy of the petition, shall be served by the
2 petitioner on all other parties, including, if applicable, the
3 foster parent, the person providing care for the child with
4 whom the child is residing, the custodian of the child, any
5 person appointed to represent any party and any other person
6 the court orders. Service shall be in accordance with the
7 Rules of Civil Procedure for the District Courts. The notice
8 shall state specifically that the person served shall file a
9 written response to the motion within thirty days if the person
10 intends to contest the termination of parental rights or
11 permanent suspension of legal and physical custody and
12 visitation rights. In any case involving a child subject to:

13 (1) the Indian Family Protection Act, notice
14 shall also be sent by certified mail to the tribes of the
15 child's biological parents and upon any Indian custodian; or

16 (2) the federal Indian Child Welfare Act of
17 1978, notice shall also be sent by certified mail to the tribes
18 of the child's biological parents and upon any Indian custodian
19 as that term is defined in 25 U.S.C. Section 1903(6).

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

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

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

14 K. 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 Indian Family
17 Protection Act or the federal Indian 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 the Indian Family
22 Protection Act or 25 U.S.C. Section 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

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1 requirements of that act have been met.

2 L. 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 petitioner, 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 M. 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

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

11 O. 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 P. 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 Q. 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

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

3 R. 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 3. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2023.

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