

1 SENATE BILL 406

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO CHILD WELFARE; REMOVING A PRESUMPTION OF
12 ABANDONMENT AS A BASIS TO CONSIDER TERMINATION OF PARENTAL
13 RIGHTS IN ABUSE OR NEGLECT CASES.

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

16 SECTION 1. Section 32A-4-28 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 122, as amended) is amended to read:

18 "32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION
19 DECREE.--

20 A. In proceedings to terminate parental rights, the
21 court shall give primary consideration to the physical, mental
22 and emotional welfare and needs of the child, including the
23 likelihood of the child being adopted if parental rights are
24 terminated.

25 B. The court shall terminate parental rights with

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1 respect to a child when:

2 (1) there has been an abandonment of the child
3 by the child's parents; or

4 (2) the child has been a neglected or abused
5 child as defined in the Abuse and Neglect Act and the court
6 finds that the conditions and causes of the neglect and abuse
7 are unlikely to change in the foreseeable future despite
8 reasonable efforts by the department or other appropriate
9 agency to assist the parent in adjusting the conditions that
10 render the parent unable to properly care for the child. The
11 court may find in some cases that efforts by the department or
12 another agency are unnecessary, when:

13 (a) there is a clear showing that the
14 efforts would be futile; or

15 (b) the parent has subjected the child
16 to aggravated circumstances [~~or~~

17 ~~(3) the child has been placed in the care of~~
18 ~~others, including care by other relatives, either by a court~~
19 ~~order or otherwise and the following conditions exist:~~

20 ~~(a) the child has lived in the home of~~
21 ~~others for an extended period of time;~~

22 ~~(b) the parent-child relationship has~~
23 ~~disintegrated;~~

24 ~~(c) a psychological parent-child~~
25 ~~relationship has developed between the substitute family and~~

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1 ~~the child;~~

2 ~~(d) if the court deems the child of~~
3 ~~sufficient capacity to express a preference, the child no~~
4 ~~longer prefers to live with the natural parent;~~

5 ~~(e) the substitute family desires to~~
6 ~~adopt the child; and~~

7 ~~(f) a presumption of abandonment created~~
8 ~~by the conditions described in Subparagraphs (a) through (e) of~~
9 ~~this paragraph has not been rebutted.~~

10 ~~C. A finding by the court that all of the~~
11 ~~conditions set forth in Subparagraphs (a) through (f) of~~
12 ~~Paragraph (3) of Subsection B of this section exist shall~~
13 ~~create a rebuttable presumption of abandonment].~~

14 ~~[D.]~~ C. The department shall not file a motion, and
15 shall not join a motion filed by another party, to terminate
16 parental rights:

17 (1) when the sole factual basis for the motion
18 is that a child's parent is or was formerly incarcerated; or

19 (2) if the motion is based, to any extent, on
20 the fact that the child is an Indian child or that the child's
21 parent or parents are Indian.

22 ~~[E.]~~ D. If the court finds that parental rights
23 should be terminated; that the requirements for the adoption of
24 a child have been satisfied; that the prospective adoptive
25 parent is a party to the action; and that good cause exists to

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1 waive the filing of a separate petition for adoption, the court
2 may proceed to grant adoption of the child, absent an appeal of
3 the termination of parental rights. The court shall not waive
4 any time requirements set forth in the Adoption Act [~~unless the~~
5 ~~termination of parental rights occurred pursuant to the~~
6 ~~provisions of Paragraph (3) of Subsection B of this section~~].
7 The court may enter a decree of adoption only after finding
8 that the party seeking to adopt the child has satisfied all of
9 the requirements set forth in the Adoption Act. Unless
10 otherwise stipulated by all parties, an adoption decree shall
11 take effect sixty days after the termination of parental
12 rights, to allow the department sufficient time to provide
13 counseling for the child and otherwise prepare the child for
14 the adoption. The adoption decree shall conform to the
15 requirements of the Adoption Act and shall have the same force
16 and effect as other adoption decrees entered pursuant to that
17 act. The court clerk shall assign an adoption case number to
18 the adoption decree."

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