

HOUSE BILL 415

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

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AN ACT

RELATING TO CHILDREN; PROVIDING CRITERIA TO DETERMINE IF  
PARENTAL RIGHTS SHOULD BE TERMINATED WHEN A CHILD HAS BEEN IN  
THE CUSTODY OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT FOR  
A LENGTHY PERIOD; AMENDING A SECTION OF THE CHILDREN'S CODE.

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

Section 1. Section 32A-4-29 NMSA 1978 (being Laws 1993,  
Chapter 77, Section 123, as amended) is amended to read:

"32A-4-29. TERMINATION PROCEDURE. - -

A. A motion to terminate parental rights may be  
filed at any stage of the abuse or neglect proceeding. The  
proceeding may be initiated by any of the following:

- (1) the department;
- (2) a licensed child placement agency; or
- (3) any other person having a legitimate

1 interest in the matter, including the child's guardian ad  
2 litem, a petitioner for adoption, a foster parent or a  
3 relative of the child.

4 B. The motion for termination of parental rights  
5 shall be signed, verified by the moving party and filed with  
6 the court. The motion shall set forth:

7 (1) the date, place of birth and marital  
8 status of the child, if known;

9 (2) the grounds for termination and the facts  
10 and circumstances supporting the grounds for termination;

11 (3) the names and addresses of the persons or  
12 authorized agency or agency officer to whom custody might be  
13 transferred;

14 (4) whether the child resides or has resided  
15 with a foster parent who desires to adopt this child;

16 (5) whether the motion is in contemplation of  
17 adoption;

18 (6) the relationship or legitimate interest  
19 of the moving party to the child; and

20 (7) whether the child is subject to the  
21 federal Indian Child Welfare Act of 1978 and, if so:

22 (a) the tribal affiliations of the  
23 child's parents;

24 (b) the specific actions taken by the  
25 moving party to notify the parents' tribes and the results of

1 the contacts, including the names, addresses, titles and  
2 telephone numbers of the persons contacted. Copies of any  
3 correspondence with the tribes shall be attached as exhibits  
4 to the petition; and

5 (c) what specific efforts were made to  
6 comply with the placement preferences set forth in the federal  
7 Indian Child Welfare Act of 1978 or the placement preferences  
8 of the appropriate Indian tribes.

9 C. A parent who has not previously been a party to  
10 the proceeding shall be named in the motion and shall become a  
11 party to the proceeding unless the court determines that the  
12 parent has not established a protected liberty interest in his  
13 relationship with the child.

14 D. Notice of the filing of the motion, accompanied  
15 by a copy of the motion, shall be served by the moving party  
16 on all other parties, the foster parent, preadoptive parent or  
17 relative providing care for the child with whom the child is  
18 residing, foster parents with whom the child has resided for  
19 six months within the previous twelve months, the custodian of  
20 the child, any person appointed to represent any party and any  
21 other person the court orders. Service shall be in accordance  
22 with the Rules of Civil Procedure for the District Courts for  
23 the service of motions in a civil action in this state, except  
24 that foster parents and attorneys of record in this proceeding  
25 shall be served by certified mail. The notice shall state

1 specifically that the person served shall file a written  
2 response to the motion within twenty days if the person  
3 intends to contest the termination. In any case involving a  
4 child subject to the federal Indian Child Welfare Act of 1978,  
5 notice shall also be sent by certified mail to the tribes of  
6 the child's parents and upon any "Indian custodian" as that  
7 term is defined in 25 U.S.C. Section 1903(6). Further notice  
8 shall not be required on a parent who has been provided notice  
9 previously pursuant to Section 32A-4-17 NMSA 1978 and who  
10 failed to make an appearance.

11 E. If the identity or whereabouts of a person  
12 entitled to service are unknown, the moving party shall file a  
13 motion for an order granting service by publication supported  
14 by the affidavit of the moving party or his agent or attorney  
15 detailing the efforts made to locate the person entitled to  
16 service. Upon being satisfied that reasonable efforts to  
17 locate the person entitled to service have been made and that  
18 information as to the identity or whereabouts of the person is  
19 still insufficient to effect service in accordance with the  
20 Rules of Civil Procedure for the District Courts, the court  
21 shall order service by publication pursuant to the Rules of  
22 Civil Procedure for the District Courts.

23 F. After a motion for the termination of parental  
24 rights is filed, the parent shall be advised of the right to  
25 counsel unless the parent is already represented by counsel.

1 Counsel shall be appointed, upon request, for any parent who  
2 is unable to obtain counsel due to financial reasons or, if in  
3 the court's discretion, the interests of justice require  
4 appointment of counsel.

5 G. The court shall assure that a guardian ad litem  
6 represents the child in all proceedings for the termination of  
7 parental rights.

8 H. When a motion to terminate parental rights is  
9 filed, the moving party shall request a hearing on the motion.  
10 The hearing date shall be at least thirty days, but no more  
11 than sixty days, after service is effected upon the parties  
12 entitled to service under this section.

13 I. In any action for the termination of parental  
14 rights brought by a party other than the department and  
15 involving a child in the custody of the department, the  
16 department may:

17 (1) litigate a motion for the termination of  
18 parental rights that was initially filed by another party; or

19 (2) move that the motion for the termination  
20 of parental rights be found premature and denied.

21 J. When a motion to terminate parental rights is  
22 filed, the department shall perform concurrent planning.

23 K. When a child has been in the custody of the  
24 department for not less than fifteen of the previous twenty-  
25 two months, the department shall file a motion to terminate

1 parental rights, unless:

2 (1) a parent has made substantial progress  
3 toward eliminating the problem that caused the child's  
4 placement in foster care; it is likely that the child will be  
5 able to safely return to the parent's home within three  
6 months; and the child's return to the parent's home will be in  
7 the child's best interests;

8 (2) the child has a close and positive  
9 relationship with a parent and a permanent plan that does not  
10 include termination of parental rights will provide the most  
11 secure and appropriate placement for the child;

12 (3) the child is thirteen years of age or  
13 older, is firmly opposed to termination of parental rights and  
14 is likely to disrupt an attempt to place him with an adoptive  
15 family;

16 (4) a parent is terminally ill, but in  
17 remission, and does not want his parental rights to be  
18 terminated; provided that the parent has designated a guardian  
19 for his child;

20 (5) the child is not capable of functioning  
21 if placed in a family setting. In such a case, the court  
22 shall reevaluate the status of the child every ninety days  
23 unless there is a final court determination that the child  
24 cannot be placed in a family setting;

25 (6) grounds do not exist for termination of

1 parental rights; or

2 (7) the child is an unaccompanied, refugee  
3 minor and the situation regarding the child involves  
4 international legal issues or compelling foreign policy  
5 issues.

6 [J-] L. The grounds for any attempted termination  
7 shall be proved by clear and convincing evidence. In any  
8 proceeding involving a child subject to the federal Indian  
9 Child Welfare Act of 1978, the grounds for any attempted  
10 termination shall be proved beyond a reasonable doubt and  
11 shall meet the requirements set forth in 25 U.S.C. Section  
12 1912(f).

13 [K-] M. When the court terminates parental rights,  
14 it shall appoint a custodian for the child and fix  
15 responsibility for the child's support.

16 [L-] N. In any termination proceeding involving a  
17 child subject to the federal Indian Child Welfare Act of 1978,  
18 the court shall in any termination order make specific  
19 findings that the requirements of that act have been met.

20 [M-] O. A judgment of the court terminating  
21 parental rights divests the parent of all legal rights and  
22 privileges and dispenses with both the necessity for the  
23 consent to or receipt of notice of any subsequent adoption  
24 proceeding concerning the child. A judgment of the court  
25 terminating parental rights shall not affect the child's

underscored material = new  
[bracketed material] = delete

1 rights of inheritance from and through the child's biological  
2 parents. "

3 Section 2. EFFECTIVE DATE. --The effective date of the  
4 provisions of this act is July 1, 2001.

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