

SENATE BILL 113

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

INTRODUCED BY

Steve Komadina

AN ACT

RELATING TO ADOPTIONS; EXPANDING DEFINITIONS WITHIN THE
ADOPTION ACT; CHANGING PLACEMENT REQUEST AND ORDER PROCEDURES
IN INDEPENDENT ADOPTIONS; AMENDING POST-PLACEMENT REPORTING
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. "adoptive" means ~~any~~ a person who is the
subject of an adoption petition;

B. "agency" means ~~any~~ a person certified,
licensed or otherwise specially empowered by law to place a

1 child in a home in this or any other state for the purpose of
2 adoption;

3 C. "agency adoption" means an adoption when the
4 ~~[child]~~ adoptee is in the custody of ~~[any]~~ an agency prior to
5 placement;

6 D. "acknowledged father" means a father who:

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

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

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

14 (4) has openly held out the adoptee as his
15 own child ~~[or (5) has established a custodial, personal or~~
16 ~~financial relationship with the child. The relationship may~~
17 ~~be established prior to the child's birth]~~ by establishing a
18 custodial, personal or financial relationship with the adoptee
19 as follows:

20 (a) for an adoptee under six months old
21 at the time of placement: 1) has initiated an action to
22 establish paternity; 2) is living with the adoptee at the time
23 the adoption petition is filed; 3) has lived with the mother a
24 minimum of ninety days during the two-hundred-eighty-day-
25 period prior to the birth or placement of the adoptee; 4) has

1 lived with the adoptee within the ninety days immediately
2 preceding the adoptive placement; 5) has provided reasonable
3 and fair financial support to the mother during the pregnancy
4 and in connection with the adoptee's birth in accordance with
5 his means and when not prevented from doing so by the person
6 or authorized agency having lawful custody of the adoptee or
7 the adoptee's mother; or 6) has continuously paid child
8 support to the mother since the adoptee's birth in an amount
9 at least equal to the amount provided in Section 40-4-11.1
10 NMSA 1978, or has brought current any delinquent child support
11 payments; or

12 (b) for an adoptee over six months old
13 at the time of placement: 1) has initiated an action to
14 establish paternity; 2) has lived with the adoptee within the
15 ninety days immediately preceding the adoptive placement; 3)
16 has continuously paid child support to the mother since the
17 adoptee's birth in an amount at least equal to the amount
18 provided in Section 40-4-11.1 NMSA 1978, or is making
19 reasonable efforts to bring delinquent child support payments
20 current; 4) has contact with the adoptee on a monthly basis
21 when physically and financially able and when not prevented by
22 the person or authorized agency having lawful custody of the
23 adoptee; or 5) has regular communication with the adoptee, or
24 with the person or agency having the care or custody of the
25 adoptee, when physically and financially unable to visit the

1 adoptee and when not prevented from doing so by the person or
2 authorized agency having lawful custody of the adoptee;

3 E. "alleged father" means an individual whom the
4 biological mother has identified as the biological father, but
5 the individual has not acknowledged paternity or registered
6 with the putative father registry as provided for in Section
7 32A-5-20 NMSA 1978;

8 F. "consent" means a document:

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

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

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

17 H. "department adoption" means an adoption when
18 the child is in the custody of the department;

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

21 J. "full disclosure" means mandatory and
22 continuous disclosure by the investigator, agency, department
23 or petitioner throughout the adoption proceeding and after
24 finalization of the adoption of all known, nonidentifying
25 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;

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

1 court, the adoptee was born during the attempted marriage or
2 within three hundred days after its termination by death,
3 annulment, declaration of invalidity or divorce; or

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

7 ~~[S. "putative father" means the alleged father of~~
8 ~~the adoptee who has not acknowledged paternity of the adoptee~~
9 ~~pursuant to the putative father registry, as provided for in~~
10 ~~Section 32A-5-20 NMSA 1978;~~

11 ~~T.] S.~~ "record" means any petition, affidavit,
12 consent or relinquishment form, transcript or notes of
13 testimony, deposition, power of attorney, report, decree,
14 order, judgment, correspondence, document, photograph,
15 invoice, receipt, certificate or other printed, written,
16 videotaped or tape-recorded material pertaining to an adoption
17 proceeding;

18 ~~[U.] T.~~ "relinquishment" means the document by
19 which a parent relinquishes parental rights to the department
20 or an agency to enable placement of the parent's child for
21 adoption;

22 ~~[V.] U.~~ "resident" means a person who, prior to
23 filing an adoption petition, has lived in the state for at
24 least six months immediately preceding filing of the petition
25 for adoption or a person who has become domiciled in the state

1 by establishing legal residence with the intention of
2 maintaining the residency indefinitely; and

3 ~~[W-]~~ V. "stepparent adoption" means an adoption of
4 the adoptee by the adoptee's stepparent when the adoptee has
5 lived with the stepparent for at least one year following the
6 marriage of the stepparent to the custodial parent. "

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

9 "32A-5-13. INDEPENDENT ADOPTIONS--REQUEST FOR
10 PLACEMENT--PLACEMENT ORDER--CERTIFICATION.--

11 A. When a placement order is required, the
12 petitioner shall file a request with the court to allow the
13 placement. ~~[The request shall be filed at least thirty days~~
14 ~~prior to an adoptive placement in an independent adoption~~
15 ~~proceeding.]~~ An order permitting the placement shall be
16 obtained prior to actual placement.

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

21 C. In order for a person to be certified to
22 conduct pre-placement studies, the person shall meet the
23 standards promulgated by the department. If the child is an
24 Indian child, the person shall meet the standards set forth in
25 the federal Indian Child Welfare Act of 1978.

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

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

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

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

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

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

25 (4) if the adoptee has been born, the address

1 where the adoptee is residing at the time of the request for
2 placement;

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

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

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

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

23 (9) whether the adoptee is subject to the
24 federal Indian Child Welfare Act of 1978, and, if so, the
25 petition shall allege the actions taken to comply with the

1 federal Indian Child Welfare Act of 1978 and all other
2 allegations required pursuant to that act;

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

7 (11) the name, address and telephone number
8 of the agency or investigator who has agreed to do the pre-
9 placement study.

10 G. The request for placement shall be served on
11 all parties entitled to receive notice of the filing of a
12 petition for adoption, as provided in Section 32A-5-27 NMSA
13 1978. An order allowing placement may be entered prior to
14 service of the request for placement.

15 H. A hearing and the court decision on the request
16 for placement shall occur within thirty days of the filing of
17 the request. ~~[For good cause shown, the court may shorten the~~
18 ~~time to twenty days in which to schedule the hearing and issue~~
19 ~~a court decision. In the event of exigent circumstances,~~
20 ~~including premature birth, the court may shorten the time to~~
21 ~~five days in which to schedule the hearing and issue a court~~
22 ~~decision.]~~

23 I. As part of any court order authorizing
24 placement under this section, the court shall find whether the
25 pre-placement study complies with Section 32A-5-14 NMSA 1978

1 and that the time requirements concerning placement set forth
2 in this section have been met."

3 Section 3. Section 32A-5-16 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 143, as amended) is amended to read:

5 "32A-5-16. TERMINATION PROCEDURES. - -

6 A. A proceeding to terminate parental rights may
7 be initiated in connection with or prior to an adoption
8 proceeding. Venue shall be in the court for the county in
9 which the child is physically present or in the county from
10 which the child was placed. The proceeding may be initiated
11 by any of the following:

12 (1) the department;

13 (2) an agency; or

14 (3) any other person having a legitimate
15 interest in the matter, including a petitioner for adoption,
16 the child's guardian, the child's guardian ad litem in another
17 action, ~~[an agency]~~ a foster parent, a relative of the child
18 or the child.

19 B. ~~[Any]~~ A petition for termination of parental
20 rights shall be signed and verified by the petitioner, be
21 filed with the court and set forth:

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

24 (2) the grounds for termination and the facts
25 and circumstances supporting the grounds for termination;

1 (3) the names and addresses of the person,
2 authorized agency or agency officer to whom custody might be
3 transferred;

4 (4) the basis for the court's jurisdiction;

5 (5) that the petition is in contemplation of
6 adoption;

7 (6) the relationship or legitimate interest
8 of the applicant to the child; and

9 (7) whether the child is an Indian child and,
10 if so:

11 (a) the tribal affiliations of the
12 child's parents;

13 (b) the specific actions taken by the
14 moving party to notify the parents' tribe and the results of
15 the contacts, including the names, addresses, titles and
16 telephone numbers of the persons contacted. Copies of any
17 correspondence with the Indian tribe shall be attached as
18 exhibits to the petition; and

19 (c) what specific efforts were made to
20 comply with the placement preferences set forth in the federal
21 Indian Child Welfare Act of 1978 or the placement preferences
22 of the appropriate Indian tribes.

23 C. Notice of the filing of the petition,
24 accompanied by a copy of the petition, shall be served by the
25 petitioner on the parents of the child, the child's guardian,

1 the legal custodian of the child, the person with whom the
2 child is residing, ~~[any person]~~ the individuals with whom the
3 child has resided within the past six months and the
4 department. Service shall be in accordance with the Rules of
5 Civil Procedure for the District Courts for the service of
6 process in a civil action in this state, with the exception
7 that the department may be served by certified mail. The
8 notice shall state specifically that the person served shall
9 file a written response to the petition within twenty days if
10 the person intends to contest the termination. In any case
11 involving an Indian child, notice shall also be served on the
12 child's Indian tribe pursuant to the federal Indian Child
13 Welfare Act of 1978.

14 D. If the identification or whereabouts of a
15 parent is unknown, the petitioner shall file a motion for an
16 order granting service by publication or an order stating that
17 service by publication is not required. A motion for an order
18 granting service by publication shall be supported by the
19 affidavit of the petitioner, the agency or the petitioner's
20 attorney detailing the efforts made to locate the parent.
21 Upon being satisfied that reasonable efforts to locate the
22 parent have been made and that information as to the identity
23 or whereabouts of the parent is still insufficient to effect
24 service in accordance with SCRA, Rule 1-004, the court shall
25 order service by publication or order that publication is not

1 required because the parent's consent is not required pursuant
2 to the provisions of Section 32A-5-19 NMSA 1978.

3 E. The court shall, upon request, appoint counsel
4 for ~~[any]~~ an indigent parent who is unable to obtain counsel
5 ~~[for financial reasons]~~ or if, in the court's discretion,
6 appointment of counsel for an indigent parent is required in
7 the interest of justice. Payment for the appointed counsel
8 shall be made by the petitioner pursuant to the rate
9 determined by the supreme court of New Mexico for
10 court-appointed attorneys.

11 F. The court shall appoint a guardian ad litem for
12 the child in all contested proceedings for termination of
13 parental rights.

14 G. Within thirty days after the filing of a
15 petition to terminate parental rights, the petitioner shall
16 request a hearing on the petition. The hearing date shall be
17 at least thirty days after service is effected upon the parent
18 of the child or completion of publication.

19 H. The grounds for any attempted termination shall
20 be proved by clear and convincing evidence. In any proceeding
21 involving an Indian child, the grounds for any attempted
22 termination shall be proved beyond a reasonable doubt and meet
23 the requirements set forth in the federal Indian Child Welfare
24 Act of 1978.

25 I. If the court terminates parental rights, it

1 shall appoint a custodian for the child. Upon entering an
2 order terminating the parental rights of a parent, the court
3 may commit the child to the custody of the department, the
4 petitioner or an agency willing to accept custody for the
5 purpose of placing the child for adoption. In any termination
6 proceeding involving an Indian child, the court shall, in any
7 termination order, make specific findings that the
8 requirements of the federal Indian Child Welfare Act of 1978
9 were met.

10 J. A judgment of the court terminating parental
11 rights divests the parent of all legal rights. Termination of
12 parental rights shall not affect the child's right of
13 inheritance through the former parent."

14 Section 4. Section 32A-5-19 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 146, as amended) is amended to read:

16 "32A-5-19. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE
17 NOT REQUIRED.--The consent to adoption or relinquishment of
18 parental rights required pursuant to the provisions of the
19 Adoption Act shall not be required from:

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

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

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

1 D. ~~[any]~~ a person who has failed to respond when
2 given notice pursuant to the provisions of Section 32A-5-27
3 NMSA 1978; or

4 E. ~~[any putative]~~ an alleged father who has failed
5 to register with the putative father registry within ten days
6 of the child's birth and is not otherwise the acknowledged
7 father ~~[or~~

8 ~~F. any alleged father]~~. "

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

11 "32A-5-27. NOTICE OF PETITION--FORM OF SERVICE--
12 WAIVER.--

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

16 (1) the department, by providing a copy to
17 the court clerk for service pursuant to Section ~~[32-5-7]~~
18 32A-5-7 NMSA 1978;

19 (2) any person, agency or institution whose
20 consent or relinquishment is required by Section ~~[32-5-17]~~
21 32A-5-17 NMSA 1978, unless the notice has been previously
22 waived;

23 (3) any acknowledged father of the adoptee;

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

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

3 (6) the spouse of the adoptee;

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

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

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

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

14 (11) any other person designated by the
15 court.

16 B. Notice shall not be served on the following:

17 (1) an alleged [~~or putative fathers~~] father;
18 and

19 (2) [~~any~~] a person whose parental rights have
20 been relinquished or terminated.

21 C. The petitioner shall provide the clerk of the
22 court with a copy of the petition for adoption, to be mailed
23 to the department pursuant to the provisions of Section
24 [~~32-5-7~~] 32A-5-7 NMSA 1978.

25 D. In [~~any~~] an adoption in which the adoptee is an

1 Indian child, in addition to the notice required pursuant to
2 Subsection A of this section, notice of pendency of the
3 adoption proceeding shall be served by the petitioner on the
4 appropriate Indian tribe and on ~~[any]~~ an "Indian custodian"
5 pursuant to the provisions of the federal Indian Child Welfare
6 Act of 1978.

7 E. The notice shall state that the person served
8 shall respond to the petition within twenty days if the person
9 intends to contest the adoption and shall state that the
10 failure to so respond shall be treated as a default and the
11 person's consent to the adoption shall not be required.

12 Provided, however, that this provision shall not apply to an
13 agency, the department or an investigator preparing the post-
14 placement report pursuant to Section ~~[32-5-31]~~ 32A-5-31 NMSA
15 1978. If an agency, the department or an investigator
16 preparing the post-placement report wants to contest the
17 adoption, ~~[they]~~ it shall notify the court within twenty days
18 after completion of the post-placement report.

19 F. Service shall be made pursuant to the Rules of
20 Civil Procedure for the District ~~[Court]~~ Courts. If the
21 whereabouts of a parent whose consent is required is unknown,
22 the investigator, department or agency charged with
23 investigating the adoption under Section ~~[32-5-13]~~ 32A-5-13
24 NMSA 1978 shall investigate the whereabouts of the parent and
25 shall file by affidavit the results of the investigation with

1 the court. Upon a finding by the court that information as to
2 the whereabouts of a parent has been sufficiently investigated
3 and is still insufficient to effect service in accordance with
4 the Rules of Civil Procedure for the District Courts, the
5 court shall issue an order providing for service by
6 publication.

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

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

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

19 Section 6. Section 32A-5-31 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 158) is amended to read:

21 "32A-5-31. POST-PLACEMENT REPORT. - -

22 A. An agency or an individual with the credentials
23 set out in Subsection C of Section [~~32-5-13~~] 32A-5-13 NMSA
24 1978 shall file with the court its post-placement report of
25 the prospective adoptive home and the adoptee. The post-

1 placement report shall be completed as prescribed by
2 department regulations and shall include ~~[a description of]~~
3 the following:

4 (1) the expressed desires of the parents as
5 to the kind of adoptive family sought;

6 (2) the interaction between the adoptee and
7 petitioner;

8 (3) the adjustment of the adoptee since
9 placement;

10 (4) the integration and acceptance of the
11 adoptee in the petitioner's family;

12 (5) the petitioner's ability to meet the
13 physical and emotional needs of the adoptee;

14 (6) whether the adoptive home is a suitable
15 home for the proposed adoption;

16 (7) whether the adoption is in the best
17 interest of the adoptee;

18 (8) the type and frequency of post-placement
19 services given to the petitioner;

20 (9) ~~[any]~~ orders, judgments or decrees
21 affecting the adoptee or ~~[any]~~ children of the petitioner;

22 (10) ~~[any]~~ property owned by the adoptee;

23 (11) full disclosure;

24 (12) the costs, expenses and professional
25 fees connected with the adoption;

1 (13) [~~any~~] other circumstances [~~which~~] that
2 are relevant to the adoption of the adoptee by the petitioner;
3 and

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

9 B. The post-placement report shall contain an
10 evaluation of the proposed adoption with a recommendation as
11 to the granting of the petition for adoption and [~~such~~] other
12 information [~~as~~] required by the court [~~requires~~].

13 C. Unless directed by the court, a post-placement
14 report is not required in cases in which the child is being
15 adopted by a stepparent, a relative or a person named in the
16 child's deceased parent's will pursuant to Section [~~32-5-12~~]
17 32A-5-12 NMSA 1978.

18 D. The investigation for the post-placement report
19 shall be conducted by the department, an agency or an
20 investigator. The department, agency or investigator
21 conducting the post-placement report may be the same as the
22 agency or individual conducting the pre-placement study and
23 they shall be maintained on the same list as that compiled for
24 pre-placement studies under Subsection D of Section [~~32-5-13~~]
25 32A-5-13 NMSA 1978.

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

7 F. For an adoptee who is under one year of age at
8 the time of placement, the department, agency or investigator
9 shall complete and file the written report with the court
10 within sixty days from receipt of notice of the proceeding and
11 ~~[shall deliver]~~ for an adoptee who is one year of age or older
12 at the time of placement, the written report shall be filed
13 with the court within one hundred twenty days from the receipt
14 of notice of the proceeding. Concurrently, the deliverer
15 shall forward a copy of the report to the petitioner's
16 attorney or to the petitioner, if not represented by counsel,
17 and to the department if the report is not generated by the
18 department. Upon a showing of good cause and after notice to
19 the petitioner, the court may grant extensions of time to the
20 department, agency or investigator to file the post-placement
21 report so long as the report is filed at least thirty days
22 before the hearing for the decree of adoption. "

23 Section 7. Section 32A-5-34 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 161) is amended to read:

25 "32A-5-34. FEES AND CHARGES-- DAMAGES. --

1 A. Prior to the final hearing on the petition, the
2 petitioner shall file a full accounting of all disbursements
3 of anything of value made or agreed to be made by or on behalf
4 of the petitioner in connection with the adoption. The
5 accounting report shall be signed under penalty of perjury.
6 The accounting report shall be itemized in detail and shall
7 show the services relating to the adoption or to the placement
8 of the child for adoption that were received by the parents of
9 the child, by the child or by or on behalf of the petitioner.
10 The report shall also include the dates of each payment and
11 the names and addresses of each attorney, physician, hospital,
12 licensed adoption agency or other person or organization who
13 received any funds or any other thing of value from the
14 petitioner in connection with the adoption or the placement of
15 the child with him or who participated in any way in the
16 handling of the funds, either directly or indirectly.

17 B. A prospective adoptive parent, or another
18 person acting on behalf of a prospective adoptive parent,
19 shall make payments for services relating to the adoption or
20 to the placement of the adoptee for adoption for allowed
21 expenses only to third party vendors, as reasonably practical.
22 These payments shall consist of reasonable and actual fees or
23 charges for:

24 (1) the services of an agency in connection
25 with an adoption;

1 (2) medical, hospital, nursing,
2 pharmaceutical, traveling or other similar expenses incurred
3 by a mother or the adoptee in connection with the birth or any
4 illness of an adoptee;

5 (3) reasonable counseling services relating
6 to the adoption;

7 (4) living expenses of a mother and her
8 dependent children, including the adoptee, for a reasonable
9 time before the birth ~~[of her child]~~ or placement of the
10 adoptee and for no more than six weeks after the birth or
11 placement of the adoptee;

12 (5) expenses incurred for the purposes of
13 full disclosure;

14 (6) legal services, court costs and traveling
15 or other administrative expenses connected with an adoption,
16 including any legal service performed for a parent who
17 consents to the adoption of a child or relinquishes the child
18 to an agency;

19 (7) preparation of a pre-placement study and
20 of a post-placement report during the pendency of the adoption
21 proceeding; or

22 (8) any other service or expense the court
23 finds is reasonably necessary for services relating to the
24 adoption or to the placement of the adoptee for adoption.

25 C. Any person who makes payments that are not

1 permitted pursuant to the provisions of this section shall be
2 in violation of this article and subject to the penalties set
3 forth in Section [~~32-5-42~~] 32A-5-42 NMSA 1978.

4 D. Any person who threatens or coerces a parent to
5 complete the relinquishment of parental rights or to complete
6 the consent to an adoption, by demanding repayment of expenses
7 or by any other threat or coercion, shall be liable to the
8 parent for compensatory and punitive damages.

9 E. The accounting required in Subsection A of this
10 section is not applicable to stepparent adoptions or to
11 adoptions under the provisions of the Abuse and Neglect Act,
12 unless ordered by the court.

13 F. Nothing in this section shall be construed to
14 permit payment to a woman for conceiving and carrying a
15 child. "

16 Section 8. Section 32A-5-35 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 162, as amended) is amended to read:

18 "32A-5-35. OPEN ADOPTIONS. --

19 A. The parents of the adoptee and the petitioner
20 may agree to contact between the parents and the petitioner or
21 contact between the adoptee and one or more of the parents or
22 contact between the adoptee and relatives of the parents. An
23 agreement shall, absent a finding to the contrary, be presumed
24 to be in the best interests of the child and shall be included
25 in the decree of adoption. The contact may include exchange

1 of identifying or nonidentifying information or visitation
2 between the parents or the parents' relatives and the
3 petitioner or visitation between the parents or the parents'
4 relatives and the adoptee.

5 B. The court may appoint a guardian ad litem for
6 the adoptee. The court shall appoint a guardian ad litem for
7 the adoptee when visitation between the biological family and
8 the adoptee is contemplated, except when the adoptive
9 placement is made voluntarily through a licensed child
10 placement agency or pursuant to the provisions of Section
11 32A-5-13 NMSA 1978. In all adoptions other than those in
12 which the child is placed by the department, the court may
13 assess the parties for the cost of services rendered by the
14 guardian ad litem.

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

20 D. Every agreement ~~[entered into pursuant to~~
21 ~~provisions of this section]~~ included in a decree of adoption
22 shall contain a clause stating that the parties agree to the
23 continuing jurisdiction of the court and to the agreement and
24 understand and intend that any disagreement or litigation
25 regarding the terms of the agreement shall not affect the

1 validity of the relinquishment of parental rights, the
2 adoption or the custody of the adoptee. The provision of this
3 subsection shall not apply to a biological parent who has
4 voluntarily relinquished parental rights and consented to the
5 adoption.

6 E. The court shall retain jurisdiction after the
7 decree of adoption is entered, if the decree contains an
8 agreement for contact, for the purpose of hearing motions
9 brought to enforce or modify an agreement entered into
10 pursuant to the provisions of this section. The court shall
11 not grant a request to modify the agreement unless the moving
12 party establishes that there has been a change of
13 circumstances and the agreement is no longer in the adoptee's
14 best interests. "