

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 742

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

INTRODUCED BY

AN ACT

RELATING TO CHILDREN; PROVIDING THAT PARENTAL RIGHTS SHALL NOT  
BE TERMINATED UPON THE SOLE BASIS THAT A PARENT IS  
INCARCERATED; AMENDING A SECTION OF THE CHILDREN'S CODE.

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

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

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

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

B. The court shall terminate parental rights with

1 respect to a child when:

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

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;

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

17 (c) the parental rights of the parent  
18 to a sibling of the child have been terminated involuntarily;  
19 or

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

23 (a) the child has lived in the home of  
24 others for an extended period of time;

25 (b) the parent-child relationship has

1 disintegrated;

2 (c) a psychological parent-child  
3 relationship has developed between the substitute family and  
4 the child;

5 (d) if the court deems the child of  
6 sufficient capacity to express a preference, the child no  
7 longer prefers to live with the natural parent;

8 (e) the substitute family desires to  
9 adopt the child; and

10 (f) a presumption of abandonment  
11 created by the conditions described in Subparagraphs (a)  
12 through (e) of this paragraph has not been rebutted.

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

17 D. The department shall not file a motion, and  
18 shall not join a motion filed by another party, to terminate  
19 parental rights when the sole factual basis for the motion is  
20 that a child's parent is incarcerated.

21 [~~D.~~] E. The termination of parental rights  
22 involving a child subject to the federal Indian Child Welfare  
23 Act of 1978 shall comply with the requirements of that act.

24 [~~E.~~] F. If the court finds that parental rights  
25 should be terminated; that the requirements for the adoption

underscored material = new  
[bracketed material] = delete

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

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