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HOUSE BILL 811

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Rory J. Ogle

AN ACT

**RELATING TO CHILDREN; AMENDING AND ENACTING SECTIONS OF THE
ABUSE AND NEGLECT ACT TO PROVIDE THAT, IN CERTAIN INSTANCES, A
PARENT MAY NOMINATE PERSONS AS POTENTIAL GUARDIANS OR ADOPTIVE
PARENTS AND TO PROVIDE FOR THE TERMINATION OF PARENTAL RIGHTS
OF CERTAIN PARENTS WHO ARE INCARCERATED OR OTHERWISE
UNAVAILABLE.**

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

**Section 1. A new section of the Abuse and Neglect Act is
enacted to read:**

**" [NEW MATERIAL] UNAVAILABLE PARENT--NOMINATION OF
POTENTIAL GUARDIAN OR ADOPTIVE PARENT. --**

**A. After a finding by a court that probable cause
exists to believe that a child has been abused or neglected, a
noncustodial or unavailable parent may nominate, in writing,**

underscored material = new
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1 one or more relatives or other persons as potential guardians
2 or adoptive parents. Within sixty days of receipt of a
3 nomination, the department shall investigate the suitability of
4 the nominees and report the results of its investigation to the
5 court.

6 B. The court shall consider the nominees and the
7 department report in any future hearing at which the rights and
8 disposition of the child are determined. "

9 Section 2. Section 32A-4-28 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 122, as amended) is amended to read:

11 "32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION
12 DECREE. --

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

18 B. The court shall terminate parental rights with
19 respect to a child when:

20 (1) there has been an abandonment of the child
21 by his parents;

22 (2) the child has been a neglected or abused
23 child [~~as defined in the Abuse and Neglect Act~~] and the court
24 finds that the conditions and causes of the neglect and abuse
25 are unlikely to change in the foreseeable future despite

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1 reasonable efforts by the department or other appropriate
2 agency to assist the parent in adjusting the conditions that
3 render the parent unable to properly care for the child. The
4 court may find in some cases that efforts by the department or
5 another agency are unnecessary, when:

6 (a) there is a clear showing that the
7 efforts would be futile;

8 (b) the parent has subjected the child
9 to aggravated circumstances; or

10 (c) the parental rights of the parent to
11 a sibling of the child have been terminated involuntarily; [or]

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

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

17 (b) the parent-child relationship has
18 disintegrated;

19 (c) a psychological parent-child
20 relationship has developed between the substitute family and
21 the child;

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

25 (e) the substitute family desires to

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1 adopt the child; and

2 (f) a presumption of abandonment created
3 by the conditions described in Subparagraphs (a) through (e) of
4 this paragraph has not been rebutted; or

5 (4) the child has been a neglected or abused
6 child and the parent is incarcerated or otherwise unavailable
7 for an extended period of time and will not be available to
8 care for the child for eighteen months or longer after the
9 proceeding. In considering whether to terminate parental
10 rights pursuant to this paragraph, the court shall consider:

11 (a) the age of the child and the extent
12 to which a parent-child relationship exists;

13 (b) pursuant to Subsection C of this
14 section, the suitability of the parent's nominees as guardians
15 or adoptive parents for the child;

16 (c) the developmental and permanency
17 needs of the child; and

18 (d) the period of time necessary for the
19 parent to be able to provide a stable home appropriate to the
20 child's needs following an anticipated parole or probation.

21 C. Within thirty days of the filing of a motion to
22 terminate parental rights, an incarcerated or otherwise
23 unavailable parent has the right to nominate, in writing,
24 relatives or other persons as guardians or adoptive parents.
25 Within sixty days of receiving the nomination, the department

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1 shall investigate the nominees and report the results of its
2 investigation to the parent and the court. Prior to a hearing
3 on the motion to terminate parental rights, the court shall
4 hold a separate hearing to determine whether any of the
5 nominees are adequate adoptive parents or guardians.

6 [E.] D. A finding by the court that all of the
7 conditions set forth in Subparagraphs (a) through (f) of
8 Paragraph (3) of Subsection B of this section exist shall
9 create a rebuttable presumption of abandonment.

10 [~~D.—The department shall not file a motion, and~~
11 ~~shall not join a motion filed by another party, to terminate~~
12 ~~parental rights when the sole factual basis for the motion is~~
13 ~~that a child's parent is incarcerated.]~~

14 E. The termination of parental rights involving a
15 child subject to the federal Indian Child Welfare Act of 1978
16 shall comply with the requirements of that act.

17 F. If the court finds that parental rights should
18 be terminated; that the requirements for the adoption of a
19 child have been satisfied; that the prospective adoptive parent
20 is a party to the action; and that good cause exists to waive
21 the filing of a separate petition for adoption, the court may
22 proceed to grant adoption of the child, absent an appeal of the
23 termination of parental rights. The court shall not waive any
24 time requirements set forth in the Adoption Act unless the
25 termination of parental rights occurred pursuant to the

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1 provisions of Paragraph (3) of Subsection B of this section.
2 The court may enter a decree of adoption only after finding
3 that the party seeking to adopt the child has satisfied all of
4 the requirements set forth in the Adoption Act. Unless
5 otherwise stipulated by all parties, an adoption decree shall
6 take effect sixty days after the termination of parental
7 rights, to allow the department sufficient time to provide
8 counseling for the child and otherwise prepare the child for
9 the adoption. The adoption decree shall conform to the
10 requirements of the Adoption Act and shall have the same force
11 and effect as other adoption decrees entered pursuant to that
12 act. The court clerk shall assign an adoption case number to
13 the adoption decree. "

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