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HOUSE BILL 247

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

Gail Chasey

AN ACT

RELATING TO THE ABUSE AND NEGLECT ACT; PROVIDING A RIGHT OF IMMEDIATE APPEAL FROM THE CHILDREN'S COURT FOR CERTAIN ORDERS.

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

SECTION 1. Section 32A-4-18 NMSA 1978 (being Laws 1993, Chapter 77, Section 112, as amended) is amended to read:

"32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--PROBABLE CAUSE.--

A. When a child alleged to be neglected or abused has been placed in the legal custody of the department or the department has petitioned the court for temporary custody, a custody hearing shall be held within ten days from the date the petition is filed to determine if the child should remain in or be placed in the department's custody pending adjudication.

Upon written request of the respondent, the hearing may be held

1 earlier, but in no event shall the hearing be held sooner than  
2 two days after the date the petition was filed.

3 B. The parent, guardian or custodian of the child  
4 alleged to be abused or neglected shall be given reasonable  
5 notice of the time and place of the custody hearing.

6 C. At the custody hearing, the court shall return  
7 legal custody of the child to the child's parent, guardian or  
8 custodian unless probable cause exists to believe that:

9 (1) the child is suffering from an illness or  
10 injury, and the parent, guardian or custodian is not providing  
11 adequate care for the child;

12 (2) the child is in immediate danger from the  
13 child's surroundings, and removal from those surroundings is  
14 necessary for the child's safety or well-being;

15 (3) the child will be subject to injury by  
16 others if not placed in the custody of the department;

17 (4) there has been an abandonment of the child  
18 by the child's parent, guardian or custodian; or

19 (5) the parent, guardian or custodian is not  
20 able or willing to provide adequate supervision and care for  
21 the child.

22 D. At the conclusion of the custody hearing, if the  
23 court determines that probable cause exists pursuant to  
24 Subsection C of this section, the court may:

25 (1) return legal custody of the child to the

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1 child's parent, guardian or custodian upon such conditions as  
2 will reasonably ensure the safety and well-being of the child,  
3 including protective supervision by the department; or

4 (2) award legal custody of the child to the  
5 department.

6 E. Reasonable efforts shall be made to preserve and  
7 reunify the family, with the paramount concern being the  
8 child's health and safety.

9 F. At the conclusion of the custody hearing, if the  
10 court determines that probable cause does not exist pursuant to  
11 Subsection C of this section, the court shall:

12 (1) retain jurisdiction and, unless the court  
13 permits otherwise, order that the respondent and child remain  
14 in the jurisdiction of the court pending the adjudication;

15 (2) return legal custody of the child to the  
16 child's parent, guardian or custodian with conditions to  
17 provide for the safety and well-being of the child; and

18 (3) order that the child's parent, guardian or  
19 custodian allow the child necessary contact with the child's  
20 guardian ad litem or attorney.

21 G. At the conclusion of the custody hearing, the  
22 court may order the respondent or the child alleged to be  
23 neglected or abused, or both, to undergo appropriate diagnostic  
24 examinations or evaluations. If the court determines that  
25 probable cause does not exist, the court may order the

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1 respondent or the child alleged to be neglected or abused, or  
2 both, to undergo appropriate diagnostic examinations or  
3 evaluations as necessary to protect the child's best interests,  
4 based upon the allegations in the petition and the evidence  
5 presented at the custody hearing. Copies of any diagnostic or  
6 evaluation reports ordered by the court shall be provided to  
7 the parties at least five days before the adjudicatory hearing  
8 is scheduled. The reports shall not be sent to the court.

9 H. The Rules of Evidence shall not apply to custody  
10 hearings.

11 I. Notwithstanding any other provision of law, a  
12 party aggrieved by an order entered pursuant to this section  
13 shall be permitted to file an immediate appeal as a matter of  
14 right. The appeal shall be expedited pursuant to rules adopted  
15 by the supreme court.

16 [~~F.~~] J. Nothing in this section shall be construed  
17 to abridge the rights of Indian children pursuant to the  
18 federal Indian Child Welfare Act of 1978."

19 SECTION 2. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is July 1, 2014.