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SENATE BILL

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Crystal R. Diamond

AN ACT

RELATING TO CHILDREN; REVISING PROVISIONS FOR CUSTODY HEARINGS.

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 earlier, but in no event shall the hearing~~

underscored material = new
~~[bracketed material] = delete~~

1 ~~be held sooner than two days after the date the petition was~~
2 ~~filed]~~ not more than seventy-two hours after the child is taken
3 into custody, excluding Saturdays, Sundays and holidays. If
4 clearly necessary to prevent abuse or neglect, to preserve the
5 rights of a party or for other good cause shown, the court may
6 grant one continuance that does not exceed five days.

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

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

13 (1) the child is suffering from an illness or
14 injury, and the parent, guardian or custodian is not providing
15 adequate care for the child;

16 (2) the child is in immediate danger from the
17 child's surroundings and removal from those surroundings is
18 necessary for the child's safety or well-being;

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

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

23 (5) the parent, guardian or custodian is not
24 able or willing to provide adequate supervision and care for
25 the child.

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

4 (1) return legal custody of the child to the
5 child's parent, guardian or custodian upon such conditions as
6 will reasonably ensure the safety and well-being of the child,
7 including protective supervision or maintenance at home by the
8 department or participation in programs or services aimed at
9 addressing the underlying causative factors that impact the
10 safety or well-being of the child; or

11 (2) award legal custody of the child to the
12 department.

13 E. Reasonable efforts shall be made to preserve and
14 reunify the family, with the paramount concern being the
15 child's health and safety. When the department determines that
16 the home of an adult relative of the child meets all relevant
17 child protection and licensing standards and placement in the
18 home would be in the best interest of the child, the department
19 shall give a preference to placement of the child in that home.
20 The department shall make reasonable efforts to conduct home
21 studies on appropriate relatives who express an interest in
22 providing placement for the child.

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

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

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

7 (3) order that the child's parent, guardian or
8 custodian allow the child necessary contact with the child's
9 guardian ad litem or attorney.

10 G. At the conclusion of the custody hearing, the
11 court may order the respondent or the child alleged to be
12 neglected or abused, or both, to undergo appropriate diagnostic
13 examinations or evaluations. If the court determines that
14 probable cause does not exist, the court may order the
15 respondent or the child alleged to be neglected or abused, or
16 both, to undergo appropriate diagnostic examinations or
17 evaluations as necessary to protect the child's best interests,
18 based upon the allegations in the petition and the evidence
19 presented at the custody hearing. Copies of any diagnostic or
20 evaluation reports ordered by the court shall be provided to
21 the parties at least five days before the adjudicatory hearing
22 is scheduled. The reports shall not be sent to the court.

23 H. The Rules of Evidence shall not apply to custody
24 hearings.

25 I. Notwithstanding any other provision of law, a

underscoring material = new
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1 party aggrieved by an order entered pursuant to this section
2 shall be permitted to file an immediate appeal as a matter of
3 right. If the order appealed from grants the legal custody of
4 the child to or withholds it from one or more of the parties to
5 the appeal, the appeal shall be expedited and shall be heard at
6 the earliest practicable time. While an appeal pursuant to
7 this section is pending, the court shall have jurisdiction to
8 take further action in the case pursuant to Subsection B of
9 Section 32A-1-17 NMSA 1978."