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SENATE BILL 1160

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY
LEONARD LEE RAWSON

AN ACT

RELATING TO PARENTAL RIGHTS; PROVIDING JUDICIAL DISCRETION
REGARDING NOTICE AND PUBLICATION IN CERTAIN CIRCUMSTANCES.

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

Section 1. Section 32A-5-16 NMSA 1978 (being Laws 1993,
Chapter 77, Section 143) is amended to read:

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

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

- (1) the department;
- (2) an agency; or

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1 (3) any other person having a legitimate
2 interest in the matter, including a petitioner for adoption, the
3 child's guardian, the child's guardian ad litem in another
4 action, an agency, a foster parent, a relative of the child or
5 the child.

6 B. Any petition for termination of parental rights
7 shall be signed and verified by the petitioner, be filed with
8 the court and set forth:

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

11 (2) the grounds for termination and the facts
12 and circumstances supporting the grounds for termination;

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

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

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

19 (6) the relationship or legitimate interest of
20 the applicant to the child; and

21 (7) whether the child is an Indian child and,
22 if so:

23 (a) the tribal affiliations of the
24 child's parents;

25 (b) the specific actions taken by the

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1 moving party to notify the parents' tribe and the results of the
2 contacts, including the names, addresses, titles and telephone
3 numbers of the persons contacted. Copies of any correspondence
4 with the Indian tribe shall be attached as exhibits to the
5 petition; and

6 (c) what specific efforts were made to
7 comply with the placement preferences set forth in the federal
8 Indian Child Welfare Act of 1978 or the placement preferences of
9 the appropriate Indian tribes.

10 C. Notice of the filing of the petition, accompanied
11 by a copy of the petition, shall be served by the petitioner on
12 the parents of the child, the child's guardian, the legal
13 custodian of the child, the person with whom the child is
14 residing, any person with whom the child has resided within the
15 past six months and the department. Service shall be in
16 accordance with the Rules of Civil Procedure for the District
17 Courts for the service of process in a civil action in this
18 state, with the exception that the department may be served by
19 certified mail. The notice shall state specifically that the
20 person served [~~must~~] shall file a written response to the
21 petition within twenty days if the person intends to contest the
22 termination. In any case involving an Indian child, notice
23 shall also be served on the child's Indian tribe pursuant to the
24 federal Indian Child Welfare Act of 1978.

25 D. If the identification or whereabouts of a parent

1 is unknown, the petitioner shall file a motion for an order
2 granting service by publication supported by the affidavit of
3 the petitioner, the agency or the petitioner's attorney
4 detailing the efforts made to locate the parent. Upon being
5 satisfied that reasonable efforts to locate the parent have been
6 made and that information as to the identity or whereabouts of
7 the parent is still insufficient to effect service in accordance
8 with SCRA, Rule 1-004, the court [~~shall~~] may order service by
9 publication.

10 E. The court shall, upon request, appoint counsel
11 for any parent who is unable to obtain counsel for financial
12 reasons or if, in the court's discretion, appointment of counsel
13 is required in the interest of justice. Payment for the
14 appointed counsel shall be made by the petitioner.

15 F. The court shall appoint a guardian ad litem for
16 the child in all contested proceedings for termination of
17 parental rights.

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

23 H. The grounds for any attempted termination shall
24 be proved by clear and convincing evidence. In any proceeding
25 involving an Indian child, the grounds for any attempted

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1 termination shall be proved beyond a reasonable doubt and meet
2 the requirements set forth in the federal Indian Child Welfare
3 Act of 1978.

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

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

17 Section 2. Section 32A-5-27 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 154) is amended to read:

19 "32A-5-27. NOTICE OF PETITION--FORM OF SERVICE--WAIVER. --

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

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

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1 (2) any person, agency or institution whose
2 consent or relinquishment is required by Section [~~32-5-17~~
3 32A-5-17 NMSA 1978, unless the notice has been previously
4 waived;

5 (3) any acknowledged father of the adoptee;

6 (4) the legally appointed custodian or guardian
7 of the adoptee;

8 (5) the spouse of any petitioner who has not
9 joined in the petition;

10 (6) the spouse of the adoptee;

11 (7) the surviving parent of a deceased parent
12 of the adoptee;

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

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

17 (10) the agency or individual authorized to
18 investigate the adoption under Section [~~32-5-13~~] 32A-5-13 NMSA
19 1978; and

20 (11) any other person designated by the court.

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

22 (1) alleged or putative fathers; and

23 (2) any person whose parental rights have been
24 relinquished or terminated.

25 C. The petitioner shall provide the clerk of the

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1 court with a copy of the petition for adoption, to be mailed to
2 the department pursuant to the provisions of Section
3 [~~32-5-7~~] 32A-5-7 NMSA 1978.

4 D. In any adoption in which the adoptee is an Indian
5 child, in addition to the notice required pursuant to Subsection
6 A of this section, notice of pendency of the adoption proceeding
7 shall be served by the petitioner on the appropriate Indian
8 tribe and on any "Indian custodian" pursuant to the provisions
9 of the federal Indian Child Welfare Act of 1978.

10 E. The notice shall state that the person served
11 shall respond to the petition within twenty days if the person
12 intends to contest the adoption and shall state that the failure
13 to so respond shall be treated as a default and the person's
14 consent to the adoption shall not be required. Provided,
15 however, that this provision shall not apply to an agency, the
16 department or an investigator preparing the post-placement
17 report pursuant to Section [~~32-5-31~~] 32A-5-31 NMSA 1978. If an
18 agency, the department or an investigator preparing the post-
19 placement report wants to contest the adoption, they shall
20 notify the court within twenty days after completion of the
21 post-placement report.

22 F. Service shall be made pursuant to the Rules of
23 Civil Procedure for the District [~~Court~~] Courts. If the
24 whereabouts of a parent whose consent is required is unknown,
25 the investigator, department or agency charged with

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1 investigating the adoption under Section [~~32-5-13~~] 32A-5-13 NMSA
2 1978 shall investigate the whereabouts of the parent and shall
3 file by affidavit the results of the investigation with the
4 court. Upon a finding by the court that information as to the
5 whereabouts of a parent has been sufficiently investigated and
6 is still insufficient to effect service in accordance with the
7 Rules of Civil Procedure for the District Courts, the court
8 [~~shall~~] may issue an order providing for service by publication.

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

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

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