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

respect to a child when:

(1) there has been an abandonment of the

child by his parents;

(2) the child has been a neglected or

abused child as defined in the Abuse and Neglect Act and the

court finds that the conditions and causes of the neglect

and abuse are unlikely to change in the foreseeable future

despite reasonable efforts by the department or other

appropriate agency to assist the parent in adjusting the

conditions that render the parent unable to properly care for the child. The court may find in some cases that efforts by the department or another agency are unnecessary, when:

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

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

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

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

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

        (b) the parent-child relationship has disintegrated;

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

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

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

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

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

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

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

F. If the court finds that parental rights should be terminated; that the requirements for the adoption of a child have been satisfied; that the prospective adoptive parent is a party to the action; and that good cause exists to waive the filing of a separate petition for adoption, the court may proceed to grant adoption of the child, absent an appeal of the termination of parental rights. The court shall not waive any time requirements set forth in the Adoption Act unless the termination of parental rights occurred pursuant to the provisions of Paragraph (3) of Subsection B of this section. The court may enter a decree of adoption only after finding that the party seeking to

adopt the child has satisfied all of the requirements set forth in the Adoption Act. Unless otherwise stipulated by all parties, an adoption decree shall take effect sixty days after the termination of parental rights, to allow the department sufficient time to provide counseling for the child and otherwise prepare the child for the adoption. The adoption decree shall conform to the requirements of the Adoption Act and shall have the same force and effect as other adoption decrees entered pursuant to that act. The court clerk shall assign an adoption case number to the adoption decree."

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