

HOUSE BILL 266

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

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AN ACT

RELATING TO CHILD CUSTODY; PROVIDING FOR THE PERMANENT
SUSPENSION OF PARENTAL RIGHTS OF A PERPETRATOR OF CRIMINAL
SEXUAL PENETRATION OR CRIMINAL SEXUAL CONTACT UNDER CERTAIN
CIRCUMSTANCES.

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

SECTION 1. [NEW MATERIAL] PERMANENT SUSPENSION OF
PARENTAL RIGHTS--CRIMINAL SEXUAL PENETRATION OR CRIMINAL SEXUAL
CONTACT.--

A. Pursuant to the provisions of this section, a
district court may grant a motion filed by a custodial parent
requesting the permanent suspension of the parental rights of a
respondent who caused a child to be conceived through criminal
sexual penetration or criminal sexual contact. For a motion
filed:

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1 (1) within two years of the date on which the
2 child was born, the permanent suspension of parental rights
3 shall be granted only if the court finds clear and convincing
4 evidence that the child was conceived as a result of the
5 respondent committing criminal sexual penetration or criminal
6 sexual contact;

7 (2) between two and six years from the date on
8 which the child was born, permanent suspension of parental
9 rights shall be granted only if the court finds that the child
10 was conceived as a result of criminal sexual penetration or
11 criminal sexual contact for which the respondent was convicted;
12 and

13 (3) after six years from the date on which the
14 child was born, the parental rights of the respondent shall not
15 be determined pursuant to the provisions of this section.

16 B. A motion for permanent suspension of parental
17 rights of the respondent filed pursuant to this section shall
18 set forth:

19 (1) the current relationship between the
20 custodial parent and the respondent;

21 (2) the facts and circumstances of the child's
22 conception;

23 (3) the date and place of birth of the child;

24 (4) the name and address of the respondent, if
25 known;

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1 (5) the name and address of the person or
2 persons who would have legal and physical custody of the child
3 upon the permanent suspension of the respondent's parental
4 rights; and

5 (6) whether the child and, therefore, the
6 proceedings are subject to the federal Indian Child Welfare Act
7 of 1978 and, if so:

8 (a) the tribal affiliations of the
9 child's biological parents;

10 (b) the specific actions taken by the
11 custodial parent to notify the child's biological parents'
12 tribes and the results of the contacts, including the names,
13 addresses, titles and telephone numbers of the persons
14 contacted. Copies of any correspondence with the tribes shall
15 be attached as exhibits to the motion; and

16 (c) the specific efforts made to comply
17 with the placement preferences set forth in the federal Indian
18 Child Welfare Act of 1978 or the placement preferences of the
19 appropriate Indian tribes.

20 C. Notice of the filing of the motion, accompanied
21 by a copy of the motion, shall be served by the custodial
22 parent on all other parties, including, if applicable, the
23 foster parent, the person providing care for the child with
24 whom the child is residing, the custodian of the child, any
25 person appointed to represent a party and any other person the

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1 court orders. Service shall be in accordance with the Rules of
2 Civil Procedure for the District Courts for the service of
3 motions, except that foster parents and attorneys of record in
4 the proceeding shall be served by certified mail. The notice
5 shall state specifically that the person served shall file a
6 written response to the motion within thirty days if the person
7 intends to contest the permanent suspension of parental rights.
8 In any case involving a child subject to the federal Indian
9 Child Welfare Act of 1978, notice shall also be sent by
10 certified mail to the tribes of the child's biological parents
11 and upon any "Indian custodian", as that term is defined in 25
12 U.S.C. Section 1903(6).

13 D. When a motion to permanently suspend parental
14 rights is filed, the custodial parent shall request a hearing
15 on the motion. The hearing date shall be at least thirty days,
16 but no more than sixty days, after service is effected upon the
17 parties entitled to service.

18 E. After a motion is filed, the court shall advise
19 the custodial parent and respondent of the right to counsel, if
20 any, and the court may appoint counsel from the children, youth
21 and families department upon request for a party whom the court
22 determines to be indigent.

23 F. If there is significant cause, the court may
24 appoint a guardian ad litem for a child who is the subject of a
25 proceeding pursuant to this section. When the court appoints a

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1 guardian ad litem, the court shall make a record of its reasons
2 for the appointment. A party to the proceeding or an employee
3 or representative of a party shall not be appointed as guardian
4 ad litem.

5 G. Notwithstanding the provisions of Paragraphs (1)
6 and (2) of Subsection A of this section, when a child is
7 subject to the provisions of the federal Indian Child Welfare
8 Act of 1978 and the custodial parent files a motion pursuant to
9 the provisions of this section within six years of the date on
10 which the child was born:

11 (1) the grounds for permanent suspension of
12 parental rights shall be proved beyond a reasonable doubt and
13 shall meet the requirements set forth in 25 U.S.C. Section
14 1912(f); and

15 (2) the court shall, in an order permanently
16 suspending parental rights, make specific findings that the
17 requirements of that act have been met.

18 H. A judgment of the court permanently suspending a
19 respondent's parental rights pursuant to this section shall
20 provide:

21 (1) that the respondent has no rights to legal
22 or physical custody of or visitation with the child;

23 (2) that the respondent has no right to
24 consent to or receive notice of a subsequent adoption
25 proceeding concerning the child;

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1 (3) that the judgment does not affect the
2 ability of the custodial parent, the child or the state to seek
3 child support for the child from the respondent;

4 (4) that the judgment does not affect the
5 child's right of inheritance from and through the respondent;

6 (5) that the respondent has no right of
7 inheritance from the child; and

8 (6) the name of the person who retains custody
9 of the child.

10 I. As used in this section:

11 (1) "criminal sexual contact" means the
12 conduct proscribed under Section 30-9-12 or 30-9-13 NMSA 1978
13 or the equivalent laws of another jurisdiction, territory or
14 possession of the United States or an Indian nation, tribe or
15 pueblo;

16 (2) "criminal sexual penetration" means the
17 conduct proscribed under Section 30-9-11 NMSA 1978 or the
18 equivalent laws of another jurisdiction, territory or
19 possession of the United States or an Indian nation, tribe or
20 pueblo;

21 (3) "custodial parent" means a biological or
22 adoptive parent or person who filed a motion pursuant to this
23 section, is acting as a parent and has legal or physical
24 custody of the child or claims a right to have legal or
25 physical custody of the child and is not the respondent;

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(4) "parental rights" includes legal custody,
physical custody and visitation rights; and

(5) "respondent" means a biological parent
alleged by the custodial parent to have caused the conception
of the child through criminal sexual penetration or criminal
sexual contact.