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HOUSE BILL 479

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Sarah Maestas Barnes

AN ACT

RELATING TO CHILD CUSTODY; PROVIDING FOR EMERGENCY ORDERS OF
TEMPORARY CUSTODY PENDING FILING OF A PETITION TO ESTABLISH
PARENTAGE OR FOR DISSOLUTION OF MARRIAGE.

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

SECTION 1. A new section of Chapter 40 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] EX PARTE EMERGENCY ORDERS OF TEMPORARY
CUSTODY.--

A. The district court may issue an ex parte
emergency order of temporary custody on the verified petition
of a parent.

B. The verified petition shall set forth the
grounds for the emergency order of temporary custody,
including:

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underscored material = new
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- 1 (1) the full name, address and telephone
2 number of the petitioner;
- 3 (2) the full name, address and telephone
4 number of the respondent, who is the person alleged to have
5 physical possession of the child or children;
- 6 (3) the full names and birth dates of each
7 child for whom emergency temporary custody is sought;
- 8 (4) the marital status of the parties;
- 9 (5) an affirmative statement that there is no
10 other court order or pending court proceeding to determine
11 custody;
- 12 (6) an affirmative statement that the parents
13 do not reside together and a brief description of the history
14 of the parents' residential arrangements during the child's
15 lifetime;
- 16 (7) an affirmative statement that each child
17 for whom emergency temporary custody is sought spends the
18 majority of the child's time with the petitioner;
- 19 (8) a brief description of the events
20 precipitating the filing of the petition for emergency order of
21 temporary custody; and
- 22 (9) an affirmative statement that the
23 petitioner will file a petition to establish parentage or a
24 petition for dissolution of marriage not later than three
25 business days after filing the petition for emergency order of

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1 temporary custody.

2 C. An emergency order of temporary custody shall
3 include the term and conditions of the temporary custody.

4 D. In addition to granting an emergency order of
5 temporary custody, the court may:

6 (1) enjoin the respondent from threatening to
7 commit or committing acts of domestic abuse against the
8 petitioner or any designated household members; and

9 (2) enjoin the respondent from any contact
10 with the petitioner, including harassing, telephoning,
11 contacting or otherwise communicating with the petitioner.

12 E. Upon the entry of an emergency order of
13 temporary custody, the court shall:

14 (1) cause the emergency order of temporary
15 custody together with notice of hearing to be served
16 immediately on the respondent; and

17 (2) within ten days after the granting of the
18 emergency order of temporary custody, hold a hearing on the
19 question of continuing the order; provided that, if notice of
20 the hearing cannot be served within seventy-two hours, the
21 emergency order of temporary custody shall be automatically
22 extended for ten days.

23 F. If the petition for emergency order of temporary
24 custody is not granted, the court shall serve notice to appear
25 upon the parties and hold a hearing on the petition not less

underscoring material = new
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1 than seventy-two hours or more than ten days after the filing
2 of the petition.

3 G. A district judge shall be available as
4 determined by each judicial district to hear petitions for
5 emergency orders of temporary custody.

6 H. An emergency order of temporary custody shall
7 remain in effect until the hearing on the merits of the
8 petition for an emergency order of temporary custody; provided
9 that, if the petitioner fails to file a petition to establish
10 paternity within three days of filing the petition for
11 emergency order of temporary custody, the emergency order of
12 temporary custody shall expire immediately.

13 I. The respondent may appeal the issuance of an
14 emergency order of temporary custody to the court that issued
15 the order. An appeal may be heard as soon as the next judicial
16 day following the issuance of the order; provided that:

17 (1) the respondent has provided the petitioner
18 a copy of the appeal; and

19 (2) the petitioner has been personally served
20 with the notice of the appeal hearing.

21 J. A law enforcement officer who receives an
22 emergency order of temporary custody from the court or from the
23 petitioner, whether in writing, by telephone or by facsimile
24 transmission, shall:

25 (1) if possible, immediately serve a signed

1 copy of the order on the respondent; and

2 (2) retrieve the children from the respondent
3 and return them to the petitioner."