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FISCAL IMPACT REPORT

ORIGINAL DATE 01/23/09
 LAST UPDATED 02/20/09 HB 150/aHJC

SPONSOR Barela

SHORT TITLE Uniform Child Abduction Prevention Act SB _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Wikipedia (www.wikipedia.com)

National Conference of Commissioners on Uniform State Law (www.nccusl.org)

Responses Received From

Attorney General's Office (AGO)

Public Defender Department (PDD)

Department of Public Safety (DPS)

No Response

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

Human Services Department (HSD)

Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of HJC Amendments

The House Judiciary Committee amendments to House Bill 150 change the original bill as follows.

There is a new subsection F in section 5. The new subsection reads "F. a statement of whether a party or other individual having custody of the child has sought the assistance of a domestic violence shelter and, if known, the approximate date and name of the person seeking the assistance of the shelter; and..."

There is a new subsection C in section 7. The new subsection reads “C. In applying the provisions of the Uniform Child Abduction Prevention Act, a court shall consider that abusers abduct their children before as well as during and after custody litigation. The court shall also consider that some of the risk factors set forth in Subsection A of this section involve the same activities that might be undertaken by a victim of domestic violence who is trying to relocate or flee to escape abuse. If the evidence shows that the parent preparing to leave is fleeing domestic violence, the court shall consider that any order restricting departure or transferring custody may pose safety issues for the victim and the child.”

There is a new subsection G in section 8 of the bill. The new subsection reads “G. A court shall not require the disclosure of a confidential communication that is protected by the Victim Counselor Confidentiality Act, the physician-patient privilege or the psychotherapist-patient privilege.”

The effective date of the Act is amended to be January 1, 2010.

Synopsis of Original Bill

House Bill 150 creates a new statute to be entitled the Uniform Child Abduction Prevention Act. The bill offers several definitions including “abduction” as the wrongful removal or wrongful detention of a child. “Child-custody determination” is defined a judgment decree or other court order providing for the legal custody, physical custody or visitation of a child.

The bill sets out a number of abduction prevention measures: (1) a court on its own motion may order anti-abduction measures if it finds that there is a credible risk of abduction of the child; (2) a party to a child-custody determination may file a petition seeking abduction prevention measures; and, (3) a prosecutor or other public authority may seek a warrant to take physical custody of a child to prevent abduction.

The bill identifies factors to determine the existence of a risk of abduction, including, but not limited to: previous abduction of the child; threat to abduct to child; and, recent activity including abandonment of employment, selling of a residence, closing bank accounts, or obtaining passports.

If a petition is filed pursuant to the Act, the court may impose travel restrictions, may prohibit the removal of the child from the state, and may impose conditions on the exercise of custody including limiting visitation or requiring supervised visitation.

The court may issue a warrant to take physical custody of the child if it appears there is imminent danger that the child will be wrongfully removed.

FISCAL IMPLICATIONS

There may be some administrative cost for statewide update, distribution and documentation of statutory changes. Child protective services staff and law enforcement officers may need to be trained in the new law.

SIGNIFICANT ISSUES

The Attorney General's Office makes some observations about the relationship of this bill to the uniform law. The AGO states that this bill is substantially similar, with some variation, to the "Uniform Child Abduction Prevention Act" approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) on July 13, 2006. According to Wikipedia, as of May of 2009, six states have adopted this, and eight more had legislative actions pending. The stated purpose of the bill is to prevent abduction of children by parents or others acting with them. Section 3C of the bill is different than the draft approved by the NCCUSL. The NCCUSL draft allows a prosecutor or public authority designated under the Uniform Child Custody Jurisdiction and Enforcement Act (referred to in that act as an "appropriate public official") to petition for a warrant to take physical custody of a child. However, that section in this bill implies that a prosecutor or "public authority" may also seek a warrant to take "other appropriate prevention measures". The bill is unclear as to what those measures are, and whether those measures may also be requested in the petition for a warrant.

This bill bears some relation to the existing "Uniform Child-Custody Jurisdiction and Enforcement Act" found at NMSA 1978, § 40-10A-101, et seq.

This bill itself provides no criminal penalties. An existing statute NMSA 1978, § 30-4-4, et seq., provides penalties for custodial interference.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the Attorney General's Office, the Uniform Child-Custody Jurisdiction Act (NMSA 40-10A-101) will continue to provide similar remedies in child-custody actions.

CH/mt:svb