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FISCAL IMPACT REPORT

SPONSOR: Atkins DATE TYPED: 02/15/01 HB 523
 SHORT TITLE: Expending Child Support Payments SB _____
 ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Human Services Department
Attorney General

SUMMARY

Synopsis of Bill

HB 523 proposes to amend § 40-4-11 NMSA 1978 to require that child support orders include provisions that (1) establish the custodial parent’s fiduciary responsibilities for children receiving child support, and allow courts to require custodial parents to provide an accounting for child support payments if the court determines that reasonable cause exists to believe that there has been a misappropriation of funds.; and (2) require parents to spend support payments only on behalf of the minor child and in the minor child’s best interest.

Significant Issues

State and federal Food Stamp, Temporary Assistance to Needy Families (TANF) and Medicaid statutes and regulations require that child support payments be considered as income in determining the eligibility and payments made. Child support payments are often large in comparison to a family’s other income, and may provide support for the entire family.

HSD explains that child support is not presently viewed as money belonging to a child. That support is a Non-Custodial Parent’s (NCP) contribution to the family unit. Under this act the custodial parent would be required to maintain an accounting for the non-custodial parent to prove that the custodial parent used the funds only for the children.

HSD reports NMSA Sec. 40-4-11 has 2 codified versions Chp. 87 Sec. 1 Laws of 1978 is codified under the same 40-4-11 Section number. The difference between the two is Chp. 87 Sec. 1 Laws of

1978 contains the requirement to utilize the support guidelines. Otherwise they are virtually identical.

Chp. 87 Sec. 3 laws of 1978 can be removed as duplicative as long as Sec. 1 is unchanged and the provisions of NMSA 1978 Sec. 40-4-11.1 are not affected.

ADMINISTRATIVE IMPLICATIONS

The Human Services Department believes allowing courts to require custodial parents to provide an accounting for child support payments upon court determination of misappropriation of funds would leave every support order open to collateral attack and second guessing. The department further points out Child Support Enforcement Division does not have the manpower or resources to address this type of accounting requirement. In addition, the department indicates that trying to maintain an accounting of this type is an impossible burden and the process would increase litigation and cause major delays in processing child support cases.

CONFLICT

HB 523 could potentially conflict with state and federal welfare program requirements. HSD states there is a possibility legal action could be taken against custodial parents applying for or receiving public assistance because these programs currently require that child support be considered as income for the entire assistance group. HSD says that there are major conflicts with the language and intent of the support guidelines act and with federal legislation such as PRWORA.

AMENDMENTS

HSD proposed that the bill be amended as follows:

Under subsection D, which HB 523 proposes to add to §40-4-11 NMSA 1978, add an item 3, as follows:

"A statement that nothing contained in the order shall be construed as overriding program regulations of the Food Stamp, Medicaid, state or tribal Temporary Assistance for Needy Families program, state or tribal Child Support Enforcement program, or any other federal, state, tribal or local public assistance program which considers child support as family income, nor shall the order be construed in any manner impeding the ability of the custodial parent to apply for any federal, state, tribal or local assistance program which takes child support into consideration in determining eligibility or amount of benefit."

However, the amendment may be problematic if other parents not on assistance are required to account for how they spent child support payments.

OTHER SUBSTANTIVE ISSUES

HSD is concerned that the bill would require custodial parents to have the knowledge and experience of accountants and lawyers to determine what expenses would be allowed.

BD/njw:ar