

NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.

Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: McSorley DATE TYPED: 3/12/01 HB _____
 SHORT TITLE: Amend Uniform Parentage Act SB 800/aSJC
 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

Administrative Office of the Courts(AOC)
 Human Services Department(HSD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amended SB 800 as follows:

- \$ Removed the language "whether the action could have been brought at an earlier time" as a factor in deciding whether or how long to order retroactive support.
- \$ Modified the language to specify that nothing in the section of the bill would deprive a state agency of its right to reimbursement from an appropriate party if the child was a recipient of public assistance..

Synopsis of Bill

This Act amends the Uniform Parentage Act. The Uniform Parentage Act presently requires the court to assess child support against the father upon determination of paternity retroactive to the birth of a child. The Act amends this provision to make it discretionary to assess child support back to the date of birth of the child. The Act provides the following criteria in order for the court to make the discretionary retroactive child support order:

- 1) whether the action could have been brought earlier;
- 2) whether the father absconded or could not be located; and

3) other equitable defenses.

The Act also provides that a determination of parentage and adjudication of support is binding on

- c A signatory on an acknowledgment of paternity.
- c A nonresident party subject to the court's long-arm jurisdiction as provided in NMSA Section 40-6A-201.
- c The child if:
 - (a) the determination was based on an acknowledgment of paternity
 - (b) the child was a party,
 - (c) there is a stipulation or admission in the final order that the parties are the parents of the child, or
 - (d) in a divorce decree or child support decree, the child is identified as a child of the parties.

Significant Issues

AOC believes that the amendment seeks to change the common law which presently exists in New Mexico relating to actions based on the mandatory requirement that child support payments are awarded retroactive to birth. The common law and the statute do not presently a) allow for equitable defenses to be considered when the award is made and b) limit a child from bringing a child support case against a person who the child suspects of being the biological father even if there is a different acknowledged father. The changes will result in an apparent modification of the common law set forth primarily in Tedford v. Gregory, 959 P.2d 540, 125 N.M. 206 (Ct. App. 1998) and State of New Mexico v. Roybal, 963 P. 2d 548, 125 N.M. 471 (Ct. App. 1998).

HSD delineates the following concerns with the legislation:

- c SB 800 would significantly reduce child support arrears collections and could create additional protracted litigation.
- c SB 800 deviates from both the old and new Uniform Parentage Act. At the present time parents are responsible for their children from birth. Under SB 800, parents would be able to avoid this obligation.
- c SB 800 could result in a lack of judgments for retroactive support in some courts. The language "the action could have been brought at an earlier time" is vague. SB 800 contains no definition for "absconded." Proving absconded in most cases would be difficult.
- c The section of SB 800 regarding a binding determination of parentage is also ambiguous and confusing.
- c SB 800 will preclude the custodial parent from recovery. However, it appears that the state may be able to recover for public assistance.

PERFORMANCE IMPLICATIONS

According to HSD, SB 800 would decrease collections for child support arrears and would eliminate most pre-paternity establishment collection of assigned arrears. Failure to collect assigned arrears would have a detrimental affect on Temporary Assistance to Needy Families (TANF) incentives.

Moreover, the department explains, the bill could result in delays due to increased litigation and would delay paternity establishment and the establishment of child support arrears.

FISCAL IMPLICATIONS

Refer to performance implications for HSD impact.

The fiscal implications on the judiciary will directly follow the amount of litigation that is generated or alternatively, avoided, by the Act.

AOC mentions that the Tedford and Roybal decisions have caused parties to take certain action in a litigated case in order to avoid later litigation based on this line of cases. The proposed statutory language brings closure to the child support issue at an earlier stage because it binds more parties to early decisions of paternity and child support. Fewer people are allowed to later revisit the issue of paternity and child support than is allowed in Tedford and Roybal. This will reduce, AOC says, the complexity of litigation and limit some litigation.

AOC further states that the statutory language also allows the court the discretion to look at the actions of both the mother and the father prior to awarding retroactive child support. In order to make a discretionary decision, the court may have to hear more testimony than previously was relevant.

ADMINISTRATIVE IMPLICATIONS

Refer to performance implications

TECHNICAL ISSUES

AOC suggest that the following issue be clarified: the amended language provides for criteria for the court to consider prior to assessing retroactive child support to the birth of the child. The first criterion appears to be a defense for the father (whether the action could have been brought earlier), the second appears to be an argument against the father (whether the father absconded or could not be located) and the third refers back to other defenses for the father (whether other equitable defenses are applicable).

BD/njw