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FISCAL IMPACT REPORT

SPONSOR: Arnold-Jones DATE TYPED: 3/6/03 HB 755

SHORT TITLE: Incompatibility as grounds for divorce SB _____

ANALYST: Chavez

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
NFI	NFI		See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 677

SOURCES OF INFORMATION

Children Youth & Family Department (CYFD)
 Administrative Office Of The Courts (AOC)
 LFC Files

SUMMARY

Synopsis of Bill

House Bill 755 amends Section 40-4-1 NMSA 1978 to provide certain conditions for the use of incompatibility as grounds for dissolution of marriage. House Bill 755 additionally mandates counseling prior to the dissolution of certain marriages.

Significant Issues

House Bill 755 provides that unless *both* parties agree that incompatibility exists OR the district court finds that domestic abuse, as defined in the Family Violence Protection Act, Section 40-13-1 to 40-13-7 NMSA 1978 has occurred and has *entered an order of protection*, a district court *shall not* decree a dissolution of marriage on the grounds of incompatibility if :

1. the wife is pregnant; or
2. there is a minor child in the custody of one or both of the parties.

Domestic Abuse is defined in the Family Violence Protection Act means any incident by a

household member against another household member resulting in:

1. physical harm;
2. severe emotional distress;
3. bodily injury or assault;
4. a threat causing imminent fear of bodily injury by any household member;
5. criminal trespass;
6. criminal damage to property;
7. repeatedly driving by a residence or work place;
8. telephone harassment;
9. stalking;
10. harassment; or
11. harm or threatened harm to children

Household member as defined in the Family Violence Protection Act means a spouse, former spouse, family member, including a relative, parent, present or former stepparent, present or former in-law, child or co-parent of a child, or a person with whom the petitioner has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member.

An *order of protection* is defined in the Family Violence Protection Act as a court order granted for the protection of victims of domestic abuse.

The bill requires that prior to entering a dissolution of marriage decree in which a minor child is in the custody of one or both parties, the parties are required to attend counseling. There are specifications for the counseling requirement stated in the bill. The cost for the mandated counseling will be paid by the parties and may be allocated between the parties by the court.

There may be cases where counseling is not possible because of income limitations. The AOC indicates that the cost of counseling may result in an imbalance regarding who is able to get divorced. AOC further indicates that there could be an equal protection argument because of the statute's application. If the poor couples cannot be granted a divorce because they cannot afford the counseling requirement, the AOC indicates this may create an unconstitutional classification.

FISCAL IMPLICATIONS

The bill contains no appropriation. However, the AOC indicates that the bill requires that under certain circumstances the court is being asked to find that an order of protection has been entered and also the court is being asked to monitor the counseling that couples may be required to attend. The AOC indicates that these requirements will be possible only with additional administrative and judicial time and resources. Additionally, there will be minimal administrative cost for statewide update, distribution, and documentation of statutory changes.

ADMINISTRATIVE IMPLICATIONS

The court will need to perform additional duties as required by the bill.

CONFLICT

House Bill 755 duplicates SB 677.

TECHNICAL ISSUES

1. What is the intended definition of “custody” as used in the bill?

Having custody of a minor child can mean *legal custody*, which is the right to make major decisions affecting the child’s life (e.g., regarding religion, medical care, education) or *physical custody*, which is the actual possession and control of the child, or both. “Joint custody” can mean either joint legal custody (parents share the decision-making, but the child remains with one parent) or “joint physical custody” (child divides time between each parent’s home) or both.

2. Should the purpose of the mandated counseling be included or set out in the bill?

POSSIBLE QUESTIONS

1. Can a domestic abuser force a spouse to remain in the marriage where minor children are involved when an order of protection has not been granted pursuant to the Family Violence Protection Act?
2. Does the bill provide that an abused spouse must attend counseling prior to entering a dissolution of marriage decree if minor children are involved?
3. Does the bill propose to restrict incompatibility as ground for the dissolution of marriage where only minor children are involved and both parties do not agree that incompatibility exists or no order of protection was issued?
4. Does paragraph C apply to a dissolution of marriage decree for any of the grounds of divorce?

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