

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Beam DATE TYPED 2/5/2005 HB 258

SHORT TITLE Remove Certain Child Custody Presumptions SB _____

ANALYST Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children Youth and Families Department (CYFD)
 Attorney General (AG)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 258 proposes to eliminate the presumption that joint legal custody is in the best interest of a child when a district court determines that a parent has committed an act of domestic abuse against the other parent within the last five years.

Significant Issues

New Mexico currently presumes that joint custody is in the best interest of the child or children. Domestic violence offenders often use the fact that they have joint custody of the children to further abuse and manipulate their victims. The legislation would remove the presumption of joint custody in domestic violence situations in cases where a judge has determined that one parent has committed an act of domestic violence against the other parent within the last five years.

The judge would still have the option of awarding joint custody if it is warranted in each particular case.

House Bill 258 clarifies and adds specificity to the domestic abuse exception in this Act by eliminating ambiguous references and adding time frames for the court. The proposed language spells out that the court, under the domestic abuse exception, shall not presume that joint custody is in the best interest of a child.

PERFORMANCE IMPLICATIONS

CYFD has performance measures relating to improved outcomes for Domestic Violence victims. The effort to remove presumptive joint custody would increase safety for victims of domestic violence as well as the safety of child witnesses to domestic violence.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. The fiscal implications on the judiciary will directly follow the amount of litigation that is generated or, alternatively, avoided by the Act.

TECHNICAL ISSUES

According to the AG, NMSA Section 40-4-9.1 raises the presumption that joint custody is in the best interests of the child in dissolution of marriage cases. This bill would amend that section to prohibit the court from making that presumption if the court determines that domestic abuse occurred between the parents “within the last five years”. Presumably this means that the abuse must have occurred within the five years preceding the filing of the petition for dissolution of marriage, but that is unclear.

AMENDMENTS

The AG recommends that the bill should be amended to define “domestic abuse”. The time period “within the past five years” might also need to be more clearly defined.

WD/njw