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FISCAL IMPACT REPORT

SPONSOR McSorley DATE TYPED 3/7/05 HB _____

SHORT TITLE Uniform Parentage Act SB 1057

ANALYST Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			\$250-\$300	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Nonrecurring	Fund Affected
FY 05	FY 06			
	\$ (150.0) See Narrative		Recurring	General Fund

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children Youth and Families Department (CYFD)

Attorney General (AG)

SUMMARY

Synopsis of Bill

Senate Bill 1057 would repeal the existing Uniform Parentage Act and replace it with an entirely new Uniform Parentage Act based on the 2002 Uniform Final Act passed by the National Conference of Commissioners on Uniform State Law (NCCUSL). The proposed Uniform Parentage Act provides a procedure for establishing a legal parent-child relationship. The proposed Uniform Parentage Act contains requirements for notification to parents in a proceeding for adoption or to terminate parental rights. The proposed Uniform Parentage Act also requires CYFD to inquire into where a child was conceived and born and to search any existing registries in other states if CYFD has reason to believe that a child may have been conceived or born in another state.

The bill would amend the statute relating to preparation and filing of birth certificates and the statute setting forth the judicial procedure for establishing facts of a child's birth.

The bill would amend the definitions of "acknowledged," "alleged" and "presumed" father contained in the Adoption Act and add a definition of "mother" to the Adoption Act. The bill also adds a definition of "adjudicated father" to the Uniform Parentage Act, but not to the Adoption Act.

The bill would establish a registry of paternity with the vital statistics bureau. The existing putative father registry, established pursuant to the Adoption Act, would become a part of the registry of paternity for all purposes.

Significant Issues:

The following summary is taken in large part from the "Prefatory Note" to the new Act with certain language added for clarity. It has been combined with a summary prepared by the The National Conference of Commissioners on Uniform State Laws NCCUSL.

The Uniform Parentage Act, as adopted by this bill, is structured as follows:

Article 1, General Provisions, adds many new definitions to clarify the participants in determinations of parentage and adapt the Act to recent scientific developments including genetic testing.

Article 2, Parent-Child Relationship continues a number of the 1973 provisions with little or no change, while eliminating the ambiguous term "natural" to describe a genetic parent. In Article 2, the legal father may be one of the following: an un rebutted presumed father (usually a man married to the birth mother at conception or a man who has lived with a child for the first two years of the child's life and treated the child as his child), a man who has acknowledged paternity under Article 3, an adjudicated father as the result of a judgment in a paternity action, an adoptive father, a man who consents to an assisted reproduction under Article 7, or an adjudicated father in a proceeding confirming a gestational agreement under Article 8.

Article 3, Voluntary Acknowledgment of Paternity, is entirely new and is driven by federal mandates that states provide simplified nonjudicial means to establish paternity, especially for newborns and young children. This article provides a non-judicial, consent proceeding for acknowledgment of paternity.

Article 4, Registry of Paternity, is entirely new and incorporates a tightly integrated registry law to deal with the rights of a man who is neither an acknowledged, presumed or adjudicated father. A primary goal of this article is to facilitate adoption proceedings. Article 4 provides a specific registry for putative and unknown fathers. The registry permits them to be notified if there is a proceeding for adoption or termination of parental rights. Before a child is one-year-old, there must be a certificate of search presented to the court hearing the adoption or termination of parental rights action. If the certificate shows that no putative or unknown father has registered within 30 days of the birth of the child, parental rights may be terminated without further notice. Once a child has reached the age of one year, however, the registry no longer has any effect. Actual notice is then required before any termination of parental rights may occur. There are important exclusions from the effect of the registry. No rights of a father who has established a parent-child relationship may be terminated because there was no registration. Therefore, no presumed

father, adjudicated father or father by acknowledgment may have his parental rights terminated under Article 4.

Article 5, Genetic Testing, comprehensively covers that subject in ten separate sections. Article 5 establishes a separate procedure for genetic testing, so that a court may order testing without a full-blown paternity action. A reasonable probability of sexual contact between the putative father and the mother is enough to initiate the proceeding. A putative father may also initiate the proceeding to obtain the tests to prove that he is not the genetic father. Standards for genetic testing are part of Article 5. The standard for a presumption of paternity as a result of testing is also established by statute. The measure is 99% probability of paternity based on appropriate calculations of "the combined paternity index." The presumption is rebuttable by further genetic evidence that excludes the putative father or that identifies another man as the genetic father. A court may compel genetic testing of a man's blood relatives if he is not available for testing. A child support agency may petition for genetic testing, but only if there is no presumed, acknowledged or adjudicated father. Article 5 also deals with allocation of costs for genetic testing and for confidentiality of results.

Article 6, Proceeding to Adjudicate Parentage, sets forth the parties to, and the procedures for, adjudicating parentage and challenging acknowledgments, presumptions, and judgments.

Article 7, Child of Assisted Reproduction contains provisions applicable to children born as a result of assisted reproductive technologies. It contains more elaborate provisions governing those technologies, which include sperm donation and egg or embryo placement. If a couple consents to any sort of assisted conception, and the woman gives birth to the resultant child, they are the legal parents. A donor of either sperm or eggs used in an assisted conception may not be a legal parent under any circumstances.

Article 8, Gestational Agreement, governs what has become known as "surrogate" motherhood and agreements for those arrangements. It provides for "validation" of such agreements in court, and states that gestational agreements that have not been validated by a court are unenforceable. However, the intended parents may still be held liable for support, fees, and costs even if the agreement is not judicially validated.

New Mexico adopted the 1973 version of the NCCUSL's Uniform Parentage Act in 1986. The new Uniform Parentage Act attempts to recognize the obligations of parents in any possible combination and permutation of marriage, method for conception of the child, and arrangements that intended parents make to have children.

The subject of gestational agreements is one of the most controversial addressed by this Act. A gestational agreement occurs between a woman and a couple obligating that woman to carry a child for the intended parents. The conception must be an assisted conception and may not involve sexual intercourse. The woman who carries the child to birth pursuant to a gestational agreement is not the legal mother of that child, an exception to the general rule. If she is a married woman, her husband must consent to the agreement. He then has no parental rights or obligations with respect to the child. The intended parents become the legal parents of the child. The NCCUSL states that adoption of Article 8 governing those agreements is optional, given that some states have decided that gestational agreements are invalid as against public policy. However, NCCUSL states that they are being used regardless of legal impediments and recommends Article 8 as a way of protecting the rights of the parties and the child born as a result of a gestational agreement. Article 8 of this Act recognizes those agreements, provides a legal procedure for establishing their validity and protecting the rights and health of the parties, and clarifies the

status of a child born as a result. That Article provides for joining of the gestational mother's husband to the proceedings, residency requirements in order to validate a gestational agreement, a home study by CYFD of the intended parents, and termination of a gestational agreement after validation. Before pregnancy occurs, any party may terminate the agreement. However, after pregnancy, only the court may terminate a validated gestational agreement and then only "for good cause shown".

This version of the Uniform Parentage Act was approved by the American Bar Association on February 10, 2003.

DOH has the following concerns with the bill:

1. SB 1057 would designate DOH Vital Statistics Bureau (Bureau) as the entity responsible for establishing and maintaining the Registry of Paternity, and for issuing birth certificates subsequent to judicial orders related to paternities and gestational agreements. It would prohibit the Bureau from charging a fee for acknowledgements of paternities and denials of paternities. The Bureau currently charges \$10.00 for filing a paternity after the birth has been registered. The Bureau is funded solely through the General Fund and fees for services. There is currently no charge for paternities that are submitted by the hospital along with the birth registration.
2. SB 1057 repeals State Statute 32A-5-20 which established the Putative Father Registry. The Bureau currently has over 9,000 names listed. SB 1057 would make no provisions for the further use of this registry, which has been used to register males who allege paternities.
3. SB 1057 would require that hospitals receive training regarding the Uniform Parentage Act. The Bureau currently provides birth registration training as needed to hospitals. The Bureau has only one trainer for both birth and death registrations.
4. SB 1057 would amend the process of obtaining certain birth registration information. This information provides statistical data that is used for program planning regarding birth information and birth outcomes. SB 1057 makes no provisions for registering information of the birth mother or the gestational mother prior to registering information of the "intended parents" in the case of an adjudicated gestational agreement, which establishes the legal "child-parent" relationship through court order.

PERFORMANCE IMPLICATIONS

CYFD is audited by the federal Children's Bureau on the timeliness of adoptions. The additional requirements to notify alleged fathers and determine the circumstances of the child's conception and birth could delay permanency for children and impact CYFD's ability to comply with federal law and standards under the Adoption and Safe Families Act.

FISCAL IMPLICATIONS

DOH indicates that three additional FTES, at an estimated cost of \$120,572 would be needed to fulfill the Bureau's requirements under SB 1057. Additional staff will require increased office space, which is not available in the Bureau's current location. New forms would be required under SB 1057, including "certificates of searches" related to the duties associated with the Regis-

try of Paternity. The cost estimate for printing and storing these new forms is estimated at \$20,000 annually. A one-time cost for modifications to both the manual and electronic processing of the birth registration and issuance systems is estimated at \$100,000.

Further, DOH notes, SB 1057 would prohibit the Bureau from collecting fees for filing acknowledgements of paternity and non-paternity, resulting in a loss of approximately \$30,000 annually to the Bureau. Currently, the Bureau receives \$60,000 annually from the Child Support Enforcement Agency for providing ongoing information regarding paternities. SB 1057 would prohibit this fee collection, resulting in additional lost revenues.

Estimated loss to the General Fund under SB1057	60,000.00
Estimated loss to the DOH under SB1057	90,000.00
Total Estimated loss	\$ 150,000.00

FTE Positions needed to fulfill the need for training of birth registration sites: hospitals, mid-wives, tribal authorities and other entities and staff to prepare, promulgate and file documentation under the proposed SB1057. Costs also include Salaries, benefits, and in-state travel per diem, vehicle maintenance.

Additional Positions required with SB1057

Estimated Cost for two (2) additional FTE Positions for Training and Development and Management	75,712.00
Estimated Cost for one (1) Paralegal	40,560.00
Reclassification of Positions	4,300.00
Total for new Positions	\$ 120,572.00

Additional Cost required with SB1057

Costs to re-engineer current operating system	100,000.00
Estimated Cost of Forms	20,000.00
Estimated Cost for Training and Promulgation of rules	9,400.00
Total Additional Costs	\$ 129,400.00

Total Fiscal Impact required with SB1057

Total Estimated loss	\$ 150,000.00
Total for new Positions	\$ 120,572.00
Total Additional Costs	\$ 129,400.00
Total Fiscal Impact	\$ 399,972.00

The additional notification requirements would result in CYFD expending resources in locating and publishing on alleged fathers and in conducting searches of existing registries in other states. In addition, if CYFD is not able to comply with the federal law and standards (as described above) under the Adoption and Safe Families Act, it will be assessed financial penalties related to the Title IVE funding.

ADMINISTRATIVE IMPLICATIONS

Three addition full-time equivalent (FTE) for DOH would be needed as follows:

- 2 FTE staff to train hospitals and midwives on the Uniform Parentage Act, and
- 1 paralegal FTE to establish and maintain the Registry of Paternity as proposed in SB 1057.

In addition, reclassification of a several clerk positions in the Bureau would be needed to ensure that qualified staff are available to deal with the complexities of the paternity and parentage duties as outlined in SB 1057.

The Bureau would also be required to promulgate rules and to develop and disseminate forms required by SB 1057.

TECHNICAL ISSUES

The proposed bill conflicts with the Adoption Act in the definition of “alleged father.”

The proposed bill contains a definition of “adjudicated father” that is not contained in the Adoption Act. The requirement that CYFD notify an alleged father, who has not registered with the bureau of vital statistics, conflicts with the Adoption Act and with U.S. Constitutional Law. Section 1-102.E. Definitions, line 24: change “public health division” to “Vital Statistics Bureau in the Epidemiology and Response Division”.

DOH suggests changing Section 1-102.M. Definitions, lines 10-11: change “gestational mother” means an adult women who gives birth to a child pursuant to a gestational agreement” to “gestational mother means a woman who gives birth to a child pursuant to a gestational agreement validated under Article 8 of the Uniform Parentage Act”

Under Section 1-102 Definitions, add:

“birth mother” means a woman giving birth to her own genetic child

“intended mother” means the person intended to be the mother under a valid gestational agreement for a child under the Uniform Parentage Act.

“intended parents” – the persons who are parties to a valid gestational agreement for a child under the Uniform Parentage Act.

Section 4-401, line 6, delete the reference to “Section 32A-5-20 NMSA 1978”, because it is repealed in Section 9.13, line 22.

Under Article 9, Section 10, add:

G. When a live birth occurs in this state, the birth registration required to be filed with the Bureau must contain information on either the birth mother or the gestational mother, or the registration will be deemed incomplete, and a birth certificate shall not be issued until the required information is obtained.

OTHER SUBSTANTIVE ISSUES

CYFD provided the following information:

- A child’s need for a permanent home (permanency) must be paramount. However, this bill places the rights of fathers who have not registered or taken any affirmative step to establish a relationship with the child ahead the child’s right to this permanency.
- The proposed Uniform Parentage Act greatly expands the purpose and impact of the existing

Act. Whereas the existing Act does not specifically apply to termination of parental rights and adoption proceedings, the proposed Act expands the existing Act to include significant additional notification requirements in proceedings to terminate parental rights and adoption proceedings.

- The requirement under the proposed Uniform Parentage Act that an alleged father be notified of termination of parental rights and adoption proceedings, whether or not the father has registered with the vital statistics bureau, creates a major shift from the current state statutory and U.S. Constitutional Law. Under U.S. Constitutional Law, a father who comes forward and acknowledges paternity, takes actions to support a child, or develop a parent-child relationship with the child is entitled to the due process protections of the U.S. Constitution. If a father takes none of these actions, the father is not entitled to the protections of the U.S. Constitution.

State law, including the Adoption Act, also does not impose a notification requirement for alleged fathers in termination of parental rights or adoption proceedings.

- The bill creates ambiguity in state law by providing a different definition of alleged father and different notification requirements than those contained in the Adoption Act.
- The shift from current state statutory and U.S. Constitutional Law, as well as the created ambiguity, would greatly affect the integrity of the adoption process, placing children at risk, by leaving open the possibility that an adoption could be attacked by a father without a constitutionally protected interest in the process. In addition, the bill could lead to adoptive placements disrupting due to the uncertainty of the finality of the adoption process.
- The time it takes to terminate parental rights and, therefore, to proceed to adoption of children in CYFD's custody could be significantly extended. While anticipated delays in finalizing adoptions created by the bill would be detrimental to children, there would be no benefit to any parent with a constitutionally protected interest in the process.
- The bill requires notification of termination of parental rights and adoption proceedings to alleged fathers of children at least one year of age, but not to alleged fathers of children under one year of age. The basis for the differentiation of these two categories is not apparent or consistent with the circumstances of children in State custody.
- The bill sets forth procedures to adjudicate the paternity of a child, including when there is already a presumed or acknowledged father. Some actions to adjudicate paternity may be brought at any time and may be joined with a termination of parental rights proceeding. The provision creates uncertainty as to when a child is determined freed for adoption and in the finality of adoptions themselves.
- The bill would expand CYFD's inquiry into the circumstances of the child's conception and birth and place additional requirements on CYFD if it has reason to believe that the child may have been conceived or born in another state.

The DOH further states that:

- In Section 2-204 (4)(a) of SB 1057, Presumption of Paternity, SB 1057 lists "a record filed with the Bureau" as one of the methods for presumption of paternity. This places a burden on DOH to establish and maintain records for non-judicial presumption of paternity rather than on a judicial proceeding. In SB 1057, a valid acknowledgement of paternity or non-paternity filed with the Bureau is equivalent to an adjudication of paternity. This section conforms with 42 U.S.C. § 666 (a) (5) (C) (i) to simplify a civil process for establishing paternity and non-paternity. However, again, this requirement would place a significant burden on the Bureau to establish and maintain records for paternity and non-paternity, as well as to establish and maintain a notification process "in a manner pre-

scribed for services of process in a civil action”. The Bureau would require the ongoing services of a paralegal to fulfill this prescription. SB 1057 would prohibit the Bureau from charging for filing acknowledgements of paternity or denial of paternity but does not provide the Bureau with the staff and funding resources to fulfill the duties required by SB 1057. Section 3-314 of SB 1057 would provide the Bureau with the authority to adopt rules to implement the provisions of article 3-314, but resources are not provided for this process.

- Article 4 of SB 1057 would delegate the responsibility for the establishment of the Registry of Paternity to the Bureau. The numerous record keeping and notification duties required under this Article would require two full time staff in order for the Bureau to comply. In Section 4-403, the Bureau is required to notify the “alleged father” even if he is not in the Registry of Paternity. It is not clear how the Bureau would have the information to fulfill this requirement.
- SB 1057 would prohibit the charging of fees for filing a registration or a rescission of registration of paternity. In Section 4-416 of SB 1057, a child support enforcement agency is not required to pay fees related to providing paternity information. This would result in a loss of revenues for the Bureau from the child support division of the human services department under a current joint powers agreement. Again, a significant workload regarding the Registry of Paternity is delegated to the Bureau without the accompanying resources to fulfill the duties as required in SB 1057. In Section 4-422 the Bureau would be required to furnish a “certificate of search” of the Registry of Paternity. These are new forms and new duties for the Bureau without any new resources.
- In Section 9-903, SB 1057 would repeal a portion of the Vital Statistics Act, including 24-14-13 D through G, and establishes new sections related to the “mother-child” and the “father-child relationships. As under current statute, births must still be reported to the Bureau within 10 days (24-14-13). SB 1057 would also allow a court to order a birth certificate to be prepared if a validated gestational agreement is filed with the district court upon the birth of a child. Presumably, this process would take away the need for the “intended parents” to go through adoption proceedings. However, the sequence and the timing of these two events could create confusion and disruption of the process for registration of births under the “birth mother” or the “gestational mother, and the adjudication of the “child-parent relationship” as defined in SB 1057. Hospitals and midwives could be faced with uncertainty regarding the registration of births because SB 1057 does not clearly define the sequence of birth registrations; instead it deals only with the issuance or amendment of the birth certificate. It is essential to the health and well-being of a child as well as to maintaining accurate and valid health statistics that the Bureau receive information on the “birth mother” or the “gestational mother as well as the “intended mother” to determine the health outcomes of children and mothers.