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FISCAL IMPACT REPORT

SPONSOR McSorley **ORIGINAL DATE** 02/16/09
LAST UPDATED 03/19/09 **HB** _____
SHORT TITLE NM Uniform Parentage Act **SB** 463/aSJC/aHJC/aSJC
ANALYST Hanika-Ortiz/Baca

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	(\$100.0)	(\$100.0)	Recurring	General Fund (DOH)
	(\$0.1)	(\$0.1)	Recurring	Federal(CSED)

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Health Policy Commission (HPC)
 Department of Health (DOH)
 Office of the Attorney General (AG)
 Administrative Office of the Courts (AOC)
 Human Services Department (HSD)
 Children, Youth & Families Department (CYFD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Amendment amends Article 7, CHILD ASSISTED REPRODUCTION. It replaces gender specific references, corrects “paternity” to “parentage”, and specifies that records referred must be signed.

As appropriate throughout the section, the amendment changes the phrase “of eggs and sperm” to “eggs, sperm and embryos”.

On page 46, the amendment strikes lines 6 through 9 and inserts in lieu thereof:

“A. The intended parent or parents shall consent to the assisted reproduction in a record signed by them before the placement of the eggs, sperm or embryos. Donors shall consent to an assisted reproduction before retrieval of the donor’s eggs or sperm”.

On page 46, the amendment strikes` the phrase “for good cause shown’ and replaces it with:

(2) the parent or parents who consented to the reproduction pursuant to Subsection A of this or a child born as a result section the assisted reproduction pursuant to Subsection A of this section if a child is eighteen years of age or older.

Synopsis of HJC Amendment

The House Judiciary Committee Amendment modifies Article 7 of the bill. It replaces gender specific references, corrects “paternity” to “parentage”, and specifies that records referred to must be signed.

The amendment further requires that donors must consent to an assisted reproduction before retrieval of the donors’ eggs or sperm in addition to consenting to assisted reproduction before the placement of eggs, sperm or embryos.

In addition to a district court order, the amendment makes papers relating to the assisted reproduction available for inspection, with the signed consent of:

- The donor or donors;
- The parent or parents who consented to the assisted reproduction;
- A child born as a result of the assisted reproduction providing the child is 18 years of age or more.

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment clarifies the definition of “bureau” to mean the vital records and health statistics bureau of DOH and "support-enforcement agency" to mean HSD; provides that the Uniform Interstate Family Support Act will have jurisdiction over nonresident persons; and inserts “in so far as possible” when determining paternity pursuant to the act.

New language inserted clarifies that unless parental rights are terminated or “**extinguished by relinquishment and decree of adoption pursuant to the Children’s Code**”, a parent-child relationship established pursuant to the Act applies for all purposes, except determinations of parental rights pursuant to the Children's Code or as otherwise provided by other law.

Provides that a proceeding to rescind an acknowledgment or denial of paternity in the case of a minor signatory, the later of sixty days after their eighteenth birthday or sixty days after the date of the acknowledgment or denial; allows a signatory to challenge the acknowledgment or denial of paternity for two years after it is filed with the bureau or two years after their eighteenth birthday, whichever is later.

Provides that the retention of material used for genetic testing to determine parentage, to be subject to provisions of Section 24-21-5 NMSA 1978; inserts a requirement for notice and opportunity for a hearing before the court may order other relatives to complete genetic testing, in the case of a man who may be the father of a child, and genetic testing specimens for that man are not available; provides that release of the report of genetic testing for parentage only to the parties tested or their representatives, the support-enforcement agency and the court; and replaces the terms “father-child” with “parental”, and “father” with “noncustodial parent” to describe a relationship.

Clarifies that the court has continuing jurisdiction to modify or revoke a judgment or order for future support, except as provided by the Uniform Interstate Family Support Act.

Further clarifies that the "state registrar" is in the bureau; provides that the bureau also make available to HSD **denials** of paternity in conjunction with its duties to enforce child support; and requires all forms of acknowledgment and denial of paternity to be in English and Spanish.

Synopsis of Original Bill

Senate Bill 463 repeals the existing "Uniform Parentage Act", Sections 40-11-1 to 40-11-23 NMSA 1978, and replaces it with a new act that includes more definitions for legal parentage and makes it applicable to more people who may be responsible for the care and support of a minor. The bill contains sections governing the establishment of a parent-child relationship; voluntary acknowledgment of paternity; genetic testing to determine parentage; judicial proceedings to adjudicate parentage; establishing parentage of a child conceived by assisted reproduction; and addresses without authorizing or prohibiting "gestational agreements".

The bill amends the Vital Statistics Act: Sections 24-14-2 through 5, Sections 24-14-12 and 13, Section 24-14-16 and Section 24-14-25 NMSA 1978, to define "bureau" and "vital records and health statistics"; provides that names on a child's birth certificate be established pursuant to the act; provides that a court determining the parent-child relationship do so pursuant to the act; and requires amendments to vital records to include "under penalty of perjury".

The bill also amends the Putative Father Registry, Section 32A-5-20 NMSA 1978, eliminating confidentiality provisions and requiring a search before an adoption may be finalized or parental rights terminated unless the father-child relationship has been established pursuant to the act.

The effective date of the new act is January 1, 2010.

FISCAL IMPLICATIONS

HSD reports that Section 6-639(B) conflicts with the wage withholding requirements in the Support Enforcement Act. This could adversely affect collections by CSED and could reduce financial incentive payments from the federal government for increased collections by the agency (see suggestions for amendments).

DOH reports that the bill will require the Bureau of Vital Records and Health Statistics to establish a registry of paternity within the Putative Father Registry. The Bureau processes approximately 10,000 Acknowledgements of Paternity annually. The bill will eliminate the \$10 fee for Acknowledgements of Paternity which will result in a loss of revenue of about \$100 thousand per year for the Bureau. The bill requires the Bureau to develop a "certificate of search of the putative father registry." The bill will allow DOH to charge a reasonable fee for processing searches of the putative father registry.

AOC reports that the new proceedings, actions and penalties involving the courts may require additional resources.

SIGNIFICANT ISSUES

The new act is modeled after and significantly expands the 2002 Uniform Parentage Act (UPA) adopted by the National Conference of Commissioners of Uniform State Laws. No state has enacted the amended 2002 UPA verbatim.

CYFD believes that no conflict exists with the Children’s Code and Adoption Act as long as the provisions making clear that the Uniform Parentage Act does not determine parental rights under the Children’s Code remain in place.

PERFORMANCE IMPLICATIONS

AOC reports that the bill contains the following provisions not contained in the model act:

Section 6-638; Full Faith and Credit – Determination of Parentage

Section 6-639; Enforcement of Judgment or Order

Section 6-640; Modification of Judgment or Order

Section 6-641; Right to Counsel – Free Transcript on Appeal

Section 6-642; Hearings and Records – Confidentiality

Section 6-643; Birth Records

The AG reports that deviations from the model act range from codifications of provisions governing the putative father registry in other sections of state law, to more substantive changes regarding gestational agreements. For example, Article 4 of the model act provides for a registry of paternity, and contains sections governing registration; notice of proceedings; procedures for notice to the father regarding termination of parental rights; operation of the registry; and search of the registry. This bill amends NMSA Section 32A-5-20 in the Adoption Act which provides for a Putative Father Registry to include provisions which are similar to those in the model act.

The AG further reports that the model act sets forth procedures governing gestational agreements involving “surrogate mothers” and specifically authorize those agreements, whereas this bill provides that the act *does not authorize or prohibit* an agreement between a woman and the intended parents in which the woman relinquishes all rights as the parent of a child to be conceived by assisted reproduction; and which provides that the intended parents become the parents of the child. The bill does not adopt most of the sections in the model act which govern those agreements. The bill provides “If a birth results pursuant to a gestational agreement pursuant to Subsection A of this section and the agreement is unenforceable under other law of New Mexico, the parent-child relationship shall be determined pursuant to Article 2 of the New Mexico Uniform Parentage Act.” This language has the effect of avoiding the issue of whether gestational agreements are permitted or prohibited in New Mexico, and defers to other state laws.

ADMINISTRATIVE IMPLICATIONS

CYFD states that the act provides a procedure for determining parentage to improve child support enforcement. The act will require CYFD to search the putative father registry in a proceeding for adoption or termination of parental rights. The act will also require CYFD to search any existing putative father registries in other states if there is reason to believe that a child may have been conceived or born in another state.

TECHNICAL ISSUES

The Bureau of Vital Records and Health Statistics is within DOH's Public Health Division, not within the Epidemiology and Response Division.

The State Registrar is an employee of DOH, but not within the Public Health Division.

The bill allows DOH to charge a reasonable fee for processing searches of the putative father registry, but not for processing an Acknowledgement of Paternity.

OTHER SUBSTANTIVE ISSUES

DOH notes that the act provides that determinations of maternity would be made as are determinations of paternity without the exclusionary and necessary language of current law, which indicates such provisions will be applied "insofar as practicable." The new language in the act does not seem to acknowledge the biological differences between men and women and their differing roles in the reproduction of children (40-11-21).

DOH also notes that the bill is unclear about surrogates/gestational carriers; is unclear about how to handle a man who asserts paternity through an Acknowledgement of Paternity and the putative father registry but has no genetic connection to the child; defines a child as a person of "any age;" does not fully address the operation of the putative father registry in relation to an Acknowledgement (or Denial) of Paternity; does not address how a person would be able to provide definitive information about any adjudicated or otherwise "known" parent, as the person likely will not have access to the birth record; substantially touches on child support enforcement and related orders; allows the genetic testing of individuals not parties to a parentage determination action, i.e. relatives of potential parents, etc.; appears to indicate that the Bureau would be the "holder" of genetic testing results (Section 5-511, line 8); continues to allow Courts to make findings of parentage without first clarifying with the Bureau whether or not anyone is named on the birth record; still presumes male and female parents only (not homosexual couples); does not address all new scenarios faced by the Bureau given medical advancements; and seems to have two sets of age requirements for an Acknowledgement of Paternity - some under the proposed act and some under the Vital Statistics Act.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The current N.M. Uniform Parentage Act (UPA) will continue to govern the determination of parent and child relationships in New Mexico. The UPA will not be expanded to specifically address parentage issues with assisted reproduction.

AMENDMENTS

HSD suggests the following amendments:

Page 5, Line 21: U. "support-enforcement agency" means a public agency as defined by §27-2-27 (delete the rest of the definition);

Page 7, Line 19: Insert new language: child (except for a woman who is a surrogate mother pursuant to a validly executed agreement pursuant to Section 8-808);

Page 8, line 12: Insert new section: C. A relationship established under this section shall not be terminated except as follows: 1) by entry of a final decree of adoption or 2) by a proceeding by the State pursuant to Article 4 of the Children's Code;

Page 8, line 18: Insert new language: terminated or relinquished, and a final decree of adoption has been entered, a parent-child relationship...;

Page 13, Line 4: Add: paternity signed by a minor is valid if it is consistent with the results of genetic testing or if the child has reached the age of two and the signatory has reached the age of twenty without filing a challenge to the acknowledgement as provided in Section 3-307 or 3-308 and the acknowledgment is otherwise in compliance...;

Page 14, Line 23: Insert new language under a new subsection C: C. For purposes of subsection A(1) evidence that, based on genetic testing, that a man who is the signatory of an acknowledgement of paternity is not rebuttably identified as the father of a child in accordance with Section 5-505 constitutes a material mistake of fact;

Page 17, Line 13: Delete: court, or a support enforcement agency.

Page 18, Line 1: Delete entire section B and re-letter subsequent sections. Under new subsection B, (page 18, line 5) delete: the district court or support enforcement agency shall not order in-utero testing;

Page 22, Line 16: Delete: the district court or the support enforcement agency shall order additional genetic testing...

Page 22, Line 21: Delete: the court or agency shall not order;

Page 25, Line 16: Modify: following persons ~~shall~~ may be joined as parties...;

Page 31, Line 25: Delete: district court or a support enforcement agency; or;

Page 43, Line 9: Substitute the following language: the obligation of the father obligor;

Page 43, Line 12: Delete and insert: The court may order support payments to be made to the mother, the clerk of the court, or a person, corporation or agency designated to collect or administer such funds for the benefit of the child, upon such terms as the court deems appropriate. The court shall order support payments to be made in accordance with Section 40-4A-4.1 NMSA 1978; and

Page 43, Line 22: Add: revoke a judgment or order for future support, except as otherwise specifically provided by the Uniform Interstate Family Support Act, Section 40-6A-1 et seq.