

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 299

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO CHILD SUPPORT; AMENDING A SECTION OF THE NMSA 1978
TO PROVIDE THAT RETROACTIVE CHILD SUPPORT NOT EXCEED THREE
YEARS FROM THE DATE OF FILING FOR SUPPORT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 40-11A-636 NMSA 1978 (being Laws 2009,
Chapter 215, Section 6-636) is amended to read:

"40-11A-636. ORDER ADJUDICATING PARENTAGE.--

A. The district court shall issue an order
adjudicating whether a man alleged or claiming to be the father
is the parent of the child.

B. An order adjudicating parentage shall identify
the child by name and date of birth.

C. Except as otherwise provided in Subsection D of
this section, the district court may assess filing fees,

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underscoring material = new
[bracketed material] = delete

1 reasonable fees of counsel, experts and the child's guardian ad
2 litem, fees for genetic testing, other costs, necessary travel
3 and other reasonable expenses incurred in a proceeding pursuant
4 to this article. The district court may award attorney fees,
5 which may be paid directly to the attorney, who may enforce the
6 order in the attorney's own name. The district court may order
7 these fees, costs and expenses to be paid by any party in
8 proportions and at times as determined by the court, but not
9 exceeding [~~twelve~~] three years from the date of the filing of
10 the action unless there is a substantial showing that paternity
11 could not have been established and an action for child support
12 could not have been brought within [~~twelve~~] three years of the
13 child's birth. The court may order the proportion of any
14 indigent party to be paid from court funds.

15 D. The district court shall not assess fees, costs
16 or expenses against the support-enforcement agency of this
17 state or another state, except as provided by other law.

18 E. On request of a party and for good cause shown,
19 the district court may order that the name of the child be
20 changed.

21 F. If the order of the district court is at
22 variance with the child's birth certificate, the district court
23 shall order the bureau to issue an amended birth certificate.

24 G. The judgment or order may contain any other
25 provision directed against or on behalf of the appropriate

1 party to the proceeding concerning the duty of past and future
 2 support, the custody and guardianship of the child, visitation
 3 with the child, the furnishing of bond or other security for
 4 the payment of the judgment or any other matter within the
 5 jurisdiction of the court. The judgment or order may direct
 6 the father to pay the reasonable expenses of the mother's
 7 pregnancy, birth and confinement. The court shall order child
 8 support retroactive to the date of the child's birth, but not
 9 to exceed ~~[twelve]~~ three years unless there is a substantial
 10 showing that paternity could not have been established and an
 11 action for child support could not have been brought within
 12 ~~[twelve]~~ three years of the child's birth pursuant to the
 13 provisions of Sections 40-4-11 through 40-4-11.3 NMSA 1978;
 14 provided that, in deciding whether or how long to order
 15 retroactive support, the court shall consider:

16 (1) whether the ~~[alleged or presumed father]~~
 17 parent ordered to pay support has absconded or could not be
 18 located; and

19 (2) whether equitable defenses are
 20 applicable.

21 H. Support judgments or orders ordinarily shall be
 22 for periodic payments, which may vary in amount. In the best
 23 interest of the child, a lump-sum payment or the purchase of an
 24 annuity may be ordered in lieu of periodic payments of support;
 25 provided, however, nothing in this section shall deprive a

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1 state agency of its right to reimbursement from an appropriate
2 party should the child be a past or future recipient of public
3 assistance.

4 I. In determining the amount to be paid by a parent
5 for support of the child, a court, child support hearing
6 officer or master shall make such determination in accordance
7 with the provisions of the child support guidelines pursuant to
8 Section 40-4-11.1 NMSA 1978."