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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/11
 LAST UPDATED 03/18/11

SPONSOR HJC HB CS/299/aSJC

SHORT TITLE Retroactive Child Support Not Exceed 3 Years SB _____

ANALYST Earnest

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to House Bill 299 changes the time period for which a custodial parent may seek the establishment of a retroactive support order from three years to six years from the date the action for support was filed and provides that the six-year limitation on retroactive child support shall not limit a claim under Section 40-11A-607 NMSA 1978 brought by a child who has reached the age of majority.

Synopsis of Original Bill

The House Judiciary Committee substitute for House Bill 299 amends Section 40-11A-636 NMSA 1978 to limit the period of time for which a custodial parent may seek the establishment of a retroactive support order from twelve years to three years from the date of filing.

FISCAL IMPLICATIONS

None identified.

SIGNIFICANT ISSUES

While limiting the time period for retroactive child support payments, HSD notes that the bill leaves intact the custodial parent's right to file for a longer retroactive support period if there is a substantial showing that paternity could not have been established and an action for child support could not have been brought within the designated period from the child's birth -- for example, if the non-custodial parent had concealed his or her whereabouts.

Further, HSD reports that the courts are divided and apply different sets of guidelines for periods beyond three years (when the guidelines were last amended). Limiting the retroactive arrears period to three years resolves this problem. The change proposed by HB 299 would encourage custodial parents to take action to assert their claims for support before the arrears grow too large and would encourage non-custodial parents to pay ongoing support on a regular basis as the balance does not seem overwhelming.

The AOC suggests:

HB 299 would provide relief for child support obligors who have failed to make payments of child support to their child or children. The legislation might allow the noncustodial parent to minimize his financial responsibility, because the obligor would only be required to pay back payments owed over the course of the 3 years from the date the action was filed with the court, no matter how many years of arrears exist. As an unintended effect, this change may cause a noncustodial parent to delay filing his own parentage case to minimize his financial obligation, where he may already own three years in back support.

In actual practice, while the custodial parent is waiting to obtain child support, she may be relying on TANF, Medicaid, and other State-paid benefits, instead of getting the father's support for the child or children.

HSD reports that of the 54 child support programs in the United States and territories, 29 states limit the time frame in which a custodial parent may seek the establishment of retroactive child support to three years or less. Fifteen states limit the arrears period to the date of the filing of the petition.

ADMINISTRATIVE IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. New cases may arise when the administrative process of collecting child support cannot resolve the case within the 3 year time limits imposed by HB 299, and custodial parents file their cases with the courts for resolution.

On the other hand, the courts will only have to calculate 3 years of child support arrears, instead of the current 12 years. Child support obligors would have less to pay back which could be achieved in a shorter period of time, which may also shorten the amount of time that the case has to return to court for enforcement or changes in arrears payments.

According to HSD, existing child support cases carry a combined total of \$621.9 million in arrears, largely as a result of the lengthy period of time during which a custodial parent may establish a support obligation. Over time, reducing the retroactive arrears period will bring down the total arrears owed in HSD-CSED cases. Reducing the arrears period will reduce the number and duration of child support hearings as parties should be more readily able to reach stipulated agreements. This should help to make the courts more efficient.

TECHNICAL ISSUES

HSD noted that the legislation is inconsistent in the duration limitations between the amended item “C.” and existing item “G.”

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