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FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/18

SPONSOR Powdrell-Culbert LAST UPDATED _____ HB 171

SHORT TITLE Blind Parents' Rights Act SB _____

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY18 | FY19 | FY20 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|---------------|---------------|-------------------|---------------------------|---------------|
| Total | NFI | Indeterminate | Indeterminate | Indeterminate | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Commission for the Blind (CB)
 Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of Bill

House Bill 171 specifies rights of blind parents in disputes regarding the custody of their children, and in allegations of child abuse or neglect. The bill would prohibit the legal system from using a parent's blindness as a factor in the adjudication of the dispute.

In Section 2 of House Bill 171, definitions include those of "blind parent" and "parental rights", among others.

Section 3 enumerates parental rights of blind parents, as follows:

- 1) Blindness should not be basis for denying or restricting parental rights,
- 2) If a blind parent's blindness is part of allegation of the blind parent's inability to exercise her/his parental rights, the burden of proof lies upon the person or entity making that allegation,
- 3) Blind parents may rebut an allegation made under (2) above by demonstrating that supportive services could "alleviate or mitigate any detrimental impact that the blind parent's blindness may have on a child",

- 4) Courts, state agencies and others alleging parental inabilities must make a finding of fact of the ability of supportive services to bring the parent(s)'s parenting abilities to an adequate level,
- 5) Nothing in this act would limit other rights or remedies for blind persons, and
- 6) Blind parents could recover reasonable court costs and attorney fees, including those arising in a domestic dispute in which the allegation has made of the blind parent's unfitness related to his/her blindness.

FISCAL IMPLICATIONS

There is no appropriation in House Bill 171.

CYFD and CB do not anticipate a fiscal impact to those agencies. However, AOC, although unable to make an estimate of additional fiscal impact to the courts, makes the following comments:

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 additional litigation generated by enforcement of this new definition of "parental right" across several different areas of the law related to children. HB 171 purportedly applies to both court and administrative proceedings that are ultimately appealed to court: "If a **court, state agency or other entity** limits or denies a blind parent's parental right, it shall make *specific written findings setting forth the clear and convincing evidence...*" These additional steps are not currently required, requires a special burden of proof, and would increase the cost of each case in terms of judicial time spent on creating this record. HB 171 also provides for attorneys' fees and costs when a blind parent's rights are violated as provided in the new act. Additional penalties tend to increase the length of litigation and the motives to appeal. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional personnel and resources to handle the increase. AOC is currently working on possible parameters to measure resulting case increase and the costs thereof.

SIGNIFICANT ISSUES

The Commission for the Blind, writing in favor of the bill, states

At present, blind parents are at risk of having their children taken away due to preconceived and erroneous attitudes about blindness. Competent and capable blind parents have had their newborn children taken away, and blind parents have all too commonly had their blindness inappropriately used against them in child custody disputes. This has resulted in harm to the parent-child relationship, resulting in the infliction of emotional harm to children and damage to the family unit.

Having a well-defined set of guidelines will enable CYFD and other child protective service providers to make appropriate and uniform decisions when it comes to blind parents and the children of blind parents. This will allow for more effective provision of services that will better safeguard the child, and help prevent litigation and legal liability against the CYFD or child protective service provider. In addition, because blindness is a

"low incidence" disability, the cases of CYFD involvement should be relatively uncommon. When such involvement does take place, the passage of HB 171 will allow for such involvement to consume fewer administrative resources. HB 171 will also help reduce family court burdens by discouraging the filing of frivolous or groundless claims regarding the ability of a blind parent.

The Administrative Office of the Courts, on the other hand, writes

HB 171 has sweeping implications across domestic relations and abuse and neglect cases by carving out special protections for blind parents as opposed to any other parents, including all other disabled parents (with either mental or physical impairments, or both). Current law requires that the best interests of the children come first, with parental rights being appropriately weighed, disabled or not. The judiciary's focus is on the best interests of the children and the ability of each parent to meet the physical, emotional, and educational needs of the child.

Parents have a constitutional right to parent children unless the parents are shown to be unfit. Unfitness must be shown by clear and convincing evidence. While the overall physical condition of the parent can be considered as one factor of many in child custody decisions, the AOC is not aware of any case where an individual was denied the right to parent solely because the parent was blind. It is not appropriate to elevate one disability over another disability and give it special status. Enacting HB 171 will open the floodgates of other bills purporting to protect certain classes of parents defined as disabled in specific ways. HB 171 is built on a foundation that assumes current processes do not currently sufficiently protect the rights of blind parents. There is no evidence or case law indicating that current processes based on the best interests of the children are not sufficient...

The courts are participating in performance-based budgeting. This bill would increase the amount of time a judge would have to spend on each case involving a blind parent with relevant allegations by requiring additional findings of fact and evidence in the first place. The bill may also have an impact on the measures of the district courts in cases disposed of as a percentage of cases filed and percentage change in case filings by type...

The definitions and apparent scope of HB 171 beyond domestic relations custody cases to include abuse and neglect, kinship guardianship, etc. matters is excessively sweeping and overly broad. It is true that all these proceedings are included in the definitions of child custody determinations under the Uniform Child-Custody Jurisdiction and Enforcement Act, Sec. 40-10A-102(4) NMSA 1978. However, existing processes in these areas are narrowly defined, with specific standards of proofs and findings required. HB 171 includes several different new standards, such as the ability to parent as well as the effect of "supportive parenting services," which is not further defined. In addition, Section 3(D) requires that "the court, state agency or other entity with jurisdiction shall also make a finding of fact as to the prospects for supportive parenting services to allow the blind parent to adequately parent the child in the future," which is somewhat speculative.

TECHNICAL ISSUES

The definition of "blind parent" differs from the definition of "blind person" in Section 22-14-25

NMSA 1978.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

A parent's blindness could continue to be taken into account in situations where her/his capability to parent is in question, and blindness would not be considered in a different light than other forms of parental disability.

LAC/sb/jle