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HOUSE BILL 601

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Lisa L. Lutz

AN ACT

RELATING TO DOMESTIC RELATIONS; EXPANDING THE FACTORS THAT A COURT SHALL CONSIDER WHEN DETERMINING JOINT CUSTODY; INCLUDING DOMESTIC VIOLENCE AS A CONSIDERATION.

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

Section 1. Section 40-4-9.1 NMSA 1978 (being Laws 1986, Chapter 41, Section 1) is amended to read:

"40-4-9.1. JOINT CUSTODY--STANDARDS FOR DETERMINATION-- PARENTING PLAN. --

A. There shall be a presumption that joint custody is in the best ~~[interest]~~ interests of a child in an initial custody determination. An award of joint custody does not imply an equal division of financial responsibility for the child. Joint custody shall not be awarded as a substitute for an existing custody arrangement unless there has been a

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1 substantial and material change in circumstances since the
2 entry of the prior custody order or decree, which change
3 affects the welfare of the child such that joint custody is
4 presently in the best interests of the child. With respect to
5 any proceeding in which it is proposed that joint custody be
6 terminated, the court shall not terminate joint custody unless
7 there has been a substantial and material change in
8 circumstances affecting the welfare of the child, since entry
9 of the joint custody order, such that joint custody is no
10 longer in the best interests of the child.

11 B. In determining whether a joint custody order is
12 in the best interests of the child, in addition to the factors
13 provided in Section 40-4-9 NMSA 1978, the court shall consider
14 the following factors:

15 (1) whether the child has established a close
16 relationship with each parent;

17 (2) whether each parent is capable of
18 providing adequate care for the child throughout each period
19 of responsibility, including arranging for the child's care by
20 others as needed;

21 (3) whether each parent is willing to accept
22 all responsibilities of parenting, including a willingness to
23 accept care of the child at specified times and to relinquish
24 care to the other parent at specified times;

25 (4) whether the child can best maintain and

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1 strengthen a relationship with both parents through
2 predictable, frequent contact and whether the child's
3 development will profit from such involvement and influence
4 from both parents;

5 (5) whether each parent is able to allow the
6 other to provide care without intrusion, that is, to respect
7 the other's parental rights and responsibilities and [~~his or~~
8 ~~her~~] right to privacy;

9 (6) the suitability of a parenting plan for
10 the implementation of joint custody, preferably, although not
11 necessarily, one arrived at through parental agreement;

12 (7) geographic distance between the parents'
13 residences; and

14 (8) willingness or ability of the parents to
15 communicate, cooperate or agree on issues regarding the
16 child's needs.

17 C. In addition to the factors provided in
18 Subsection B of this section, in determining whether a joint
19 custody order is in the best interests of the child the court
20 shall determine, through an evidentiary hearing, if either
21 parent or other person seeking custody has engaged in one or
22 more acts of domestic violence against the child, a parent of
23 the child or other persons residing with the child. A finding
24 of evidence of domestic violence against the child, a parent
25 of the child or other persons residing with the child creates

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1 a rebuttable presumption that sole or joint custody of the
2 child by the perpetrator of the domestic violence is not in
3 the best interest of the child. Upon making such a
4 determination, the court shall set forth:

5 (1) findings of fact that support the
6 determination that one or more acts of domestic violence
7 occurred; and

8 (2) a finding that the custody or visitation
9 ordered by the court adequately protects the child and the
10 abused parent or other victim of domestic violence who resides
11 with the child.

12 [~~C.~~] D. In any proceeding in which the custody of
13 a child is at issue, the court shall not prefer one parent as
14 a custodian solely because of gender.

15 [~~D.~~] E. In any case in which the parents agree to
16 a form of custody, the court should award custody consistent
17 with the agreement unless the court determines that such
18 agreement is not in the best [~~interest~~] interests of the
19 child.

20 [~~E.~~] F. In making an order of joint custody, the
21 court may specify the circumstances, if any, under which the
22 consent of both legal custodians is required to be obtained in
23 order to exercise legal control of the child and the
24 consequences of the failure to obtain mutual consent.

25 [~~F.~~] G. When joint custody is awarded, the court

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1 shall approve a parenting plan for the implementation of the
2 prospective custody arrangement prior to the award of joint
3 custody. The parenting plan shall include a division of a
4 child's time and care into periods of responsibility for each
5 parent. It may also include:

6 (1) statements regarding the child's
7 religion, education, child care, recreational activities and
8 medical and dental care;

9 (2) designation of specific decision-making
10 responsibilities;

11 (3) methods of communicating information
12 about the child, transporting the child, exchanging care for
13 the child and maintaining telephone and mail contact between
14 parent and child;

15 (4) procedures for future decision making,
16 including procedures for dispute resolution; and

17 (5) other statements regarding the welfare of
18 the child or designed to clarify and facilitate parenting
19 under joint custody arrangements.

20 In a case where joint custody is not agreed to or
21 necessary aspects of the parenting plan are contested, the
22 parties shall each submit parenting plans. The court may
23 accept the plan proposed by either party or it may combine or
24 revise these plans as it deems necessary in the child's best
25 [interest] interests. The time of filing of parenting plans

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1 shall be set by local rule. A plan adopted by the court shall
2 be entered as an order of the court.

3 ~~[G.]~~ H. Where custody is contested, the court
4 shall refer that issue to mediation if feasible. The court
5 may also use auxiliary services such as professional
6 evaluation by application of Rule 706 of the New Mexico rules
7 of evidence or Rule 53 of the rules of civil procedure for the
8 district ~~[court]~~ courts.

9 ~~[H.]~~ I. Notwithstanding any other provisions of
10 law, access to records and information pertaining to a minor
11 child, including ~~[but not limited to]~~ medical, dental and
12 school records, shall not be denied to a parent because that
13 parent is not the child's physical custodial parent or because
14 that parent is not a joint custodial parent.

15 ~~[I.]~~ J. Whenever a request for joint custody is
16 granted or denied, the court shall state in its decision its
17 basis for granting or denying the request for joint custody.
18 A statement that joint custody is or is not in the best
19 interests of the child is not sufficient to meet the
20 requirements of this subsection.

21 ~~[J.]~~ K. An award of joint custody means that:
22 (1) each parent shall have significant, well-
23 defined periods of responsibility for the child;
24 (2) each parent shall have, and be allowed
25 and expected to carry out, responsibility for the child's

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1 financial, physical, emotional and developmental needs during
2 that parent's periods of responsibility;

3 (3) the parents shall consult with each other
4 on major decisions involving the child before implementing
5 those decisions; that is, neither parent shall make a decision
6 or take an action which results in a major change in a child's
7 life until the matter has been discussed with the other parent
8 and the parents agree. If the parents, after discussion,
9 cannot agree and if one parent wishes to effect a major change
10 while the other does not wish the major change to occur, then
11 no change shall occur until the issue has been resolved as
12 provided in this subsection;

13 (4) the following guidelines [~~shall~~] apply to
14 major changes in a child's life:

15 (a) if either parent plans to change
16 his home city or state of residence, he shall provide to the
17 other parent thirty days' notice in writing stating the date
18 and destination of move;

19 (b) the religious denomination and
20 religious activities, or lack thereof, which were being
21 practiced during the marriage should not be changed unless the
22 parties agree or it has been otherwise resolved as provided in
23 this subsection;

24 (c) both parents shall have access to
25 school records, teachers and activities. The type of

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1 education, public or private, which was in place during the
2 marriage should continue, whenever possible, and school
3 districts should not be changed unless the parties agree or it
4 has been otherwise resolved as provided in this subsection;

5 (d) both parents shall have access to
6 medical and dental treatment providers and records. Each
7 parent has authority to make emergency medical decisions.
8 Neither parent may contract for major elective medical or
9 dental treatment unless both parents agree or it has been
10 otherwise resolved as provided in this subsection; and

11 (e) both parents may attend the child's
12 public activities and both parents should know the necessary
13 schedules. Whatever recreational activities the child
14 participated in during the marriage should continue with the
15 child's agreement, regardless of which of the parents has
16 physical custody. Also, neither parent may enroll the child
17 in a new recreational activity unless the parties agree or it
18 has been otherwise resolved as provided in this subsection;
19 and

20 (5) decisions regarding major changes in a
21 child's life may be decided by:

22 (a) agreement between the joint
23 custodial parents;

24 (b) ~~[a requirement]~~ requiring that the
25 parents seek family counseling, conciliation or mediation

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1 service to assist in resolving their differences;

2 (c) agreement by the parents to submit
3 the dispute to binding arbitration;

4 (d) allocating ultimate responsibility
5 for a particular major decision area to one legal custodian;

6 (e) terminating joint custody and
7 awarding sole custody to one person;

8 (f) reference to a master pursuant to
9 Rule 53 of the Rules of Civil Procedure for the District
10 Courts; or

11 (g) the district court.

12 [~~K.~~] L. When any person other than a natural or
13 adoptive parent seeks custody of a child, no such person shall
14 be awarded custody absent a showing of unfitness of the
15 natural or adoptive parent.

16 [~~L.~~] M. As used in this section:

17 (1) "child" means a person under the age of
18 [~~18~~] eighteen;

19 (2) "custody" means the authority and
20 responsibility to make major decisions in a child's best
21 [~~interest~~] interests in the areas of residence, medical and
22 dental treatment, education or child care, religion and
23 recreation;

24 (3) "joint custody" means an order of the
25 court awarding custody of a child to two parents. Joint

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1 custody does not imply an equal division of the child's time
2 between the parents or an equal division of financial
3 responsibility for the child;

4 (4) "parent" means a natural parent, adoptive
5 parent or person who is acting as a parent who has or shares
6 legal custody of a child or who claims a right to have or
7 share legal custody;

8 (5) "parenting plan" means a document
9 submitted for approval of the court setting forth the
10 responsibilities of each parent individually and the parents
11 jointly in a joint custody arrangement;

12 (6) "period of responsibility" [is] means a
13 specified period of time during which a parent is responsible
14 for providing for a child's physical, developmental and
15 emotional needs, including the decision making required in
16 daily living. Specified periods of responsibility shall not
17 be changed in an instance or more permanently except by the
18 methods of decision making described under [~~the definition of~~
19 ~~joint custody~~] Subsection K of this section;

20 (7) "sole custody" means an order of the
21 court awarding custody of a child to one parent; and

22 (8) "visitation" [is] means a period of time
23 available to a noncustodial parent, under a sole custody
24 arrangement, during which a child resides with or is under the
25 care and control of the noncustodial parent. "

1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 March 1, 1999
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8 Mr. Speaker:
9

10 Your JUDICIARY COMMITTEE, to whom has been
11 referred
12

13 HOUSE BILL 601
14

15 has had it under consideration and reports same with
16 recommendation that it DO NOT PASS, but that

17 HOUSE JUDICIARY COMMITTEE SUBSTITUTE
18 FOR HOUSE BILL 601
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20 DO PASS.
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Respectfully submitted,

R. David Pederson, Chairman

Adopted _____

Not Adopted _____

—

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Luna, Sanchez

Absent: None

J: \99Billswp\H0601

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 601

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

RELATING TO DOMESTIC RELATIONS; EXPANDING THE FACTORS THAT A COURT SHALL CONSIDER WHEN DETERMINING JOINT CUSTODY; INCLUDING DOMESTIC VIOLENCE AS A CONSIDERATION.

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

Section 1. Section 40-4-9.1 NMSA 1978 (being Laws 1986, Chapter 41, Section 1) is amended to read:

"40-4-9.1. JOINT CUSTODY--STANDARDS FOR DETERMINATION-- PARENTING PLAN.--

A. There shall be a presumption that joint custody is in the best ~~[interest]~~ interests of a child in an initial custody determination, except in cases involving domestic abuse as provided in Subsection C of this section. An award of joint custody does not imply an equal division of financial responsibility for the child. Joint custody shall not be awarded as a substitute for an existing custody arrangement unless there has been a substantial and material change in circumstances since the entry of the prior custody order or

1 decree, which change affects the welfare of the child such
2 that joint custody is presently in the best interests of the
3 child. With respect to any proceeding in which it is proposed
4 that joint custody be terminated, the court shall not
5 terminate joint custody unless there has been a substantial
6 and material change in circumstances affecting the welfare of
7 the child, since entry of the joint custody order, such that
8 joint custody is no longer in the best interests of the child.

9 B. In determining whether a joint custody order is
10 in the best interests of the child, in addition to the factors
11 provided in Section 40-4-9 NMSA 1978, the court shall consider
12 the following factors:

13 (1) whether the child has established a close
14 relationship with each parent;

15 (2) whether each parent is capable of
16 providing adequate care for the child throughout each period
17 of responsibility, including arranging for the child's care by
18 others as needed;

19 (3) whether each parent is willing to accept
20 all responsibilities of parenting, including a willingness to
21 accept care of the child at specified times and to relinquish
22 care to the other parent at specified times;

23 (4) whether the child can best maintain and
24 strengthen a relationship with both parents through
25 predictable, frequent contact and whether the child's
development will profit from such involvement and influence
from both parents;

(5) whether each parent is able to allow the

1 other to provide care without intrusion, that is, to respect
2 the other's parental rights and responsibilities and [~~his or~~
3 ~~her~~] right to privacy;

4 (6) the suitability of a parenting plan for
5 the implementation of joint custody, preferably, although not
6 necessarily, one arrived at through parental agreement;

7 (7) geographic distance between the parents'
8 residences; and

9 (8) willingness or ability of the parents to
10 communicate, cooperate or agree on issues regarding the
11 child's needs.

12 C. If there is a judicial determination in a prior
13 or the present proceeding that either parent or other person
14 seeking custody has engaged in one or more acts of domestic
15 abuse against the child, a parent of the child or other
16 household member, there is no presumption that joint custody
17 is in the best interests of the child.

18 D. Upon making a determination that domestic abuse
19 has occurred, the court:

20 (1) may consider the factors in Subsection B
21 of this section in determining whether a joint custody order
22 is in the best interests of the child; and

23 (2) shall set forth findings that the custody
24 or visitation ordered by the court adequately protects the
25 child, the abused parent or other household member.

[~~C-~~] E. In any proceeding in which the custody of
a child is at issue, the court shall not prefer one parent as
a custodian solely because of gender.

underscored material = new
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1 ~~[D-]~~ F. In any case in which the parents agree to
2 a form of custody, the court should award custody consistent
3 with the agreement unless the court determines that such
4 agreement is not in the best ~~[interest]~~ interests of the
5 child.

6 ~~[E-]~~ G. In making an order of joint custody, the
7 court may specify the circumstances, if any, under which the
8 consent of both legal custodians is required to be obtained in
9 order to exercise legal control of the child and the
10 consequences of the failure to obtain mutual consent.

11 ~~[F-]~~ H. When joint custody is awarded, the court
12 shall approve a parenting plan for the implementation of the
13 prospective custody arrangement prior to the award of joint
14 custody. The parenting plan shall include a division of a
15 child's time and care into periods of responsibility for each
16 parent. It may also include:

17 (1) statements regarding the child's
18 religion, education, child care, recreational activities and
19 medical and dental care;

20 (2) designation of specific decision-making
21 responsibilities;

22 (3) methods of communicating information
23 about the child, transporting the child, exchanging care for
24 the child and maintaining telephone and mail contact between
25 parent and child;

 (4) procedures for future decision making,
including procedures for dispute resolution; and

 (5) other statements regarding the welfare of

1 the child or designed to clarify and facilitate parenting
2 under joint custody arrangements.

3 In a case where joint custody is not agreed to or
4 necessary aspects of the parenting plan are contested, the
5 parties shall each submit parenting plans. The court may
6 accept the plan proposed by either party or it may combine or
7 revise these plans as it deems necessary in the child's best
8 ~~[interest]~~ interests. The time of filing of parenting plans
9 shall be set by local rule. A plan adopted by the court shall
be entered as an order of the court.

10 ~~[G.]~~ I. Where custody is contested, the court
11 shall refer that issue to mediation if feasible. The court
12 may also use auxiliary services such as professional
13 evaluation by application of Rule 706 of the New Mexico rules
14 of evidence or Rule 53 of the rules of civil procedure for the
district ~~[court]~~ courts.

15 ~~[H.]~~ J. Notwithstanding any other provisions of
16 law, access to records and information pertaining to a minor
17 child, including ~~[but not limited to]~~ medical, dental and
18 school records, shall not be denied to a parent because that
19 parent is not the child's physical custodial parent or because
that parent is not a joint custodial parent.

20 ~~[I.]~~ K. Whenever a request for joint custody is
21 granted or denied, the court shall state in its decision its
22 basis for granting or denying the request for joint custody.
23 A statement that joint custody is or is not in the best
24 interests of the child is not sufficient to meet the
25 requirements of this subsection.

1 ~~[J-]~~ L. An award of joint custody means that:

2 (1) each parent shall have significant, well-
3 defined periods of responsibility for the child;

4 (2) each parent shall have, and be allowed
5 and expected to carry out, responsibility for the child's
6 financial, physical, emotional and developmental needs during
7 that parent's periods of responsibility;

8 (3) the parents shall consult with each other
9 on major decisions involving the child before implementing
10 those decisions; that is, neither parent shall make a decision
11 or take an action which results in a major change in a child's
12 life until the matter has been discussed with the other parent
13 and the parents agree. If the parents, after discussion,
14 cannot agree and if one parent wishes to effect a major change
15 while the other does not wish the major change to occur, then
16 no change shall occur until the issue has been resolved as
17 provided in this subsection;

18 (4) the following guidelines ~~[shall]~~ apply to
19 major changes in a child's life:

20 (a) if either parent plans to change
21 his home city or state of residence, he shall provide to the
22 other parent thirty days' notice in writing stating the date
23 and destination of move;

24 (b) the religious denomination and
25 religious activities, or lack thereof, which were being
practiced during the marriage should not be changed unless the
parties agree or it has been otherwise resolved as provided in
this subsection;

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1 (c) both parents shall have access to
2 school records, teachers and activities. The type of
3 education, public or private, which was in place during the
4 marriage should continue, whenever possible, and school
5 districts should not be changed unless the parties agree or it
6 has been otherwise resolved as provided in this subsection;

7 (d) both parents shall have access to
8 medical and dental treatment providers and records. Each
9 parent has authority to make emergency medical decisions.
10 Neither parent may contract for major elective medical or
11 dental treatment unless both parents agree or it has been
12 otherwise resolved as provided in this subsection; and

13 (e) both parents may attend the child's
14 public activities and both parents should know the necessary
15 schedules. Whatever recreational activities the child
16 participated in during the marriage should continue with the
17 child's agreement, regardless of which of the parents has
18 physical custody. Also, neither parent may enroll the child
19 in a new recreational activity unless the parties agree or it
20 has been otherwise resolved as provided in this subsection;
21 and

22 (5) decisions regarding major changes in a
23 child's life may be decided by:

24 (a) agreement between the joint
25 custodial parents;

(b) [~~a requirement~~] requiring that the
parents seek family counseling, conciliation or mediation
service to assist in resolving their differences;

1 (c) agreement by the parents to submit
2 the dispute to binding arbitration;

3 (d) allocating ultimate responsibility
4 for a particular major decision area to one legal custodian;

5 (e) terminating joint custody and
6 awarding sole custody to one person;

7 (f) reference to a master pursuant to
8 Rule 53 of the Rules of Civil Procedure for the District
9 Courts; or

10 (g) the district court.

11 ~~[K.]~~ M When any person other than a natural or
12 adoptive parent seeks custody of a child, no such person shall
13 be awarded custody absent a showing of unfitness of the
14 natural or adoptive parent.

15 ~~[L.]~~ N. As used in this section:

16 (1) "child" means a person under the age of
17 ~~[18]~~ eighteen;

18 (2) "custody" means the authority and
19 responsibility to make major decisions in a child's best
20 ~~[interest]~~ interests in the areas of residence, medical and
21 dental treatment, education or child care, religion and
22 recreation;

23 (3) "domestic abuse" means any incident by a
24 household member against another household member resulting
25 in:

(a) physical harm;

(b) severe emotional distress;

(c) a threat causing imminent fear of

1 physical harm by any household member;

2 (d) criminal trespass;

3 (e) criminal damage to property;

4 (f) interference with communications,

5 as provided in Section 30-12-1 NMSA 1978;

6 (g) stalking or aggravated stalking, as
7 provided in Sections 30-3A-3 and 30-3A-3.1 NMSA 1978; or

8 (h) harassment, as provided in Section
9 30-3A-2 NMSA 1978;

10 [~~3~~] (4) "joint custody" means an order of
11 the court awarding custody of a child to two parents. Joint
12 custody does not imply an equal division of the child's time
13 between the parents or an equal division of financial
14 responsibility for the child;

15 [~~4~~] (5) "parent" means a natural parent,
16 adoptive parent or person who is acting as a parent who has or
17 shares legal custody of a child or who claims a right to have
18 or share legal custody;

19 [~~5~~] (6) "parenting plan" means a document
20 submitted for approval of the court setting forth the
21 responsibilities of each parent individually and the parents
22 jointly in a joint custody arrangement;

23 [~~6~~] (7) "period of responsibility" [~~is~~]
24 means a specified period of time during which a parent is
25 responsible for providing for a child's physical,
developmental and emotional needs, including the decision
making required in daily living. Specified periods of
responsibility shall not be changed in an instance or more

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HJC/HB 601

permanently except by the methods of decision making described under ~~[the definition of joint custody]~~ Subsection L of this section;

~~[(7)]~~ (8) "sole custody" means an order of the court awarding custody of a child to one parent; and

~~[(8)]~~ (9) "visitation" ~~[is]~~ means a period of time available to a noncustodial parent, under a sole custody arrangement, during which a child resides with or is under the care and control of the noncustodial parent. "

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1 FORTY- FOURTH LEGI SLATURE

2 FIRST SESSION, 1999

HB 601/a

3
4 March 15, 1999

5
6 Mr. President:

7
8 Your JUDICIARY COMMITTEE, to whom has been referred

9 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
10 HOUSE BILL 601

11
12 has had it under consideration and reports same with
13 recommendation that it DO PASS, amended as follows:

14
15 1. On page 1, lines 22 and 23, strike ", except in cases
16 involving domestic abuse as provided in Subsection C of this
17 section".

18 2. On page 3, line 14, strike "and".

19
20 3. On page 3, line 17, strike the period and insert in
21 lieu
22 thereof "; and".

23
24 4. On page 3, line 18, strike "C. If there is a judicial
25 determination" and insert in lieu thereof "(9) whether a

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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judicial adjudication has been made".

5. On page 3, line 22, after "member" insert a period and strike the remainder of the line.

6. On page 3, strike line 23 in its entirety.

7. On page 3, line 24, strike "D. Upon making a determination" and insert in lieu thereof "If a determination is made".

8. On page 3, line 25, strike the semicolon.

9. On page 4, strike lines 1 through 3 in their entirety.

10. On page 4, line 4, strike "(2)".

11. On page 10, strike lines 3 and 4 in their entirety.

12. Reletter succeeding subparagraphs accordingly.

Respectfully submitted,

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FORTY- FOURTH LEGI SLATURE
FIRST SESSI ON, 1999

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SJC/HB 601

Page 25

Michael S. Sanchez, Chai rman

Adopted _____ Not

Adopted _____

(Chi ef Clerk)

(Chi ef Clerk)

Date _____

The roll call vote was 5 For 1 Against

Yes: 5

No: Sanchez

Excused: Aragon, McSorley

Absent: None

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