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FISCAL IMPACT REPORT

SPONSOR: Martinez DATE TYPED: 03/13/01 HB 110/aHJC
 SHORT TITLE: Uniform Child-Custody Jurisdiction and Enforcement Act SB _____
 ANALYST: Rael

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
 Children, Youth and Families Department (CYFD)
 Department of Public Safety (DPS)
 Office of Indian Affairs (OIA)
 Uniform Laws Annotated, West Group 2000

No Response Received
 Administrative Office DAs (DA)
 Attorney General (AG)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment makes the following changes:

1. The definition of “child-custody proceeding” is amended to exclude separation but includes dissolution of marriage (in lieu of divorce) and a custody proceeding without dissolution of marriage (i.e. post-divorce). The definition also includes a termination of parental rights, whether in the context of an independent proceeding or an adoption.
2. A technical amendment is made to the section on exclusive continuing jurisdiction to clarify that three distinct situations exist that would allow the court to determine that the case no longer has a significant connection to the state.
3. For the section regarding inconvenient forum, the length of time a child resided outside of the state is no longer a relevant factor but it is replaced with the factor of how recently the child’s home state was another state. Additionally, the relative financial circumstances of the parties are now to be considered only to the extent that it has a bearing on travel arrangements. The

familiarity of the court with the facts and issues is placed in the context of a close connection with the state, as factors to be considered. Other technical amendments are made to clarify that the issues and litigation it refers to are the custody proceedings.

4. The duty of New Mexico to enforce a child custody determination of another state is permissive, rather than mandatory, for determinations made based on the initial and modification jurisdiction elements articulated in Sections 201 and 203.

Synopsis of Original Bill

The Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) was designed to update and streamline New Mexico's current Uniform Child-Custody Jurisdiction Act (UCCJA). The new act is designed to conform the law to the federal Parental Kidnaping Prevention Act and the various domestic violence laws that have evolved in the past thirty years since the UCCJA was drafted. The UCCJEA seeks to clarify the circumstances in which a particular state court may have and retain jurisdiction over child custody proceedings in addition to the procedures that courts should follow when multiple states' courts are involved in a single child custody dispute.

The Act generally covers three major issues in child custody determinations.

(1) Exclusive Continuing Jurisdiction. The Act determines initial child custody jurisdiction and provides exclusive, continuing jurisdiction in that court until generally the state no longer has substantial evidence concerning the child's care, protection, training and personal relationship (generally Sections 201 - 203). The vesting of exclusive, continuing jurisdiction in the court which made the initial child custody determination is a substantive change in the UCCJEA from the UCCJA.

(2) Temporary Emergency Jurisdiction. The Act provides for temporary emergency jurisdiction under certain specified circumstances. The jurisdiction of the court acting under these emergency circumstances may continue in some limited circumstances but will more likely yield to the exclusive, continuing jurisdiction of the court that made the initial child custody determination (Section 204).

(3) Enforcement of Orders. Article 3 of the Act addresses uniformity of enforcement, including expedited enforcement, of various child custody orders issued in several states. The Act includes registration and enforcement procedures in a state for a child custody order entered in another state (Sections 305 - 308). Enforcement provisions do not exist under the existing UCCJA. The addition of these provisions is a major substantive difference between the existing UCCJA and the new UCCJEA.

The Act sets forth definitions (Sections 102 and 301), applications in the event a Native American child is affected (Section 104) or a foreign country is involved (Section 105), notices (Sections 108 and 205) and discusses the effect of an appearance by a party in a case under this Act on another proceeding in this state (Section 109).

The Act repeals sections 40-10-1 through 40-10-24 NMSA 1978. The Act contains a severability clause and a transitional provision. The effective date is July 1, 2001.

Significant Issues

Major departures from the UCCJA are as follows: 1) “home state” priority for jurisdiction; 2) clarification that emergency jurisdiction is temporary only and includes domestic violence situations; 3) clarification that the decree-granting state has continuing exclusive jurisdiction for modification of the decree so parties will not be tempted to seek a “second bite at the apple” in another state if they are unhappy with the original court order; also articulates the conditions in which the original court may be deemed to have relinquished exclusive jurisdiction; 4) defines which kinds of proceedings are included in “custody” proceedings; 5) eliminates the term “best interests” to clarify that a child’s welfare cannot overcome jurisdictional obstacles; 6) other changes attempt to harmonize the law with the Uniform Interstate Family Support Act.

FISCAL IMPLICATIONS

This bill makes no appropriation. See Administrative Implications below.

ADMINISTRATIVE IMPLICATIONS

The various agencies and recent literature suggest that, although the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) was designed to update and correct the current Uniform Child-Custody Jurisdiction Act (UCCJA) that is enacted in New Mexico, it also has some drafting problems and ambiguities that could lead to protracted litigation and appeals. It has the potential to both speed up child custody determinations and slow them down.

The Department of Public Safety believes that it may be required to conduct increased warrant services under the act. DPS is also concerned that about the lack of a provision granting immunity to law enforcement officers who act in good faith according to Section 311 (which allows a warrant to take physical custody of a child). Without an immunity clause, DPS may be exposed to liability.

The Administrative Office of the Courts believes that the UCCJEA likely will require changes to existing forms filed in all proceedings involving child custody. Additionally, judges and lawyers will need to be educated about the new changes in the law to both understand what information is required to be disclosed in each child custody case and procedures to be used in the event of multiple state/tribal involvement. However, the law primarily builds on laws already in effect in this state.

TECHNICAL ISSUES

Section 105 should be amended to reflect and remind practitioners that the provisions of the Hague Convention should be enforced where applicable as is reflected in Section 302.

CYFD recommends the following amendments:

Revise definition of “child custody proceeding” to exclude abuse neglect cases filed under the Abuse and Neglect Act.

Section 109 title: Appearance and Limited ~~Immunity~~ Jurisdiction

Section 201(2)(a): a court of another state ~~does~~ would not have jurisdiction under the conditions described in paragraph (1)

Section 202(a)(2); a court of this state or a court of another state determines that the ~~child, the child's parents and any person acting as a parent do not presently reside in this state.~~ person(s) upon whose presence jurisdiction is based, are no longer present in the state.

Section 207(b)(5): any agreement of the parties as to which state, otherwise having jurisdiction, should assume jurisdiction

Section 208(a) should be amended, but need to ascertain intent before suggesting amendment....

Section 208(c): it ~~shall~~ may assess against the party seeking to invoke its jurisdiction.

Section 208(d): ... the court may require ~~another party~~ the party requesting the court to conduct a proceeding which necessitates the travel of another to pay reasonable and necessary travel

Section 307: ..., the enforcing New Mexico court shall immediately communicate with the modifying court. The proceeding for enforcement is stayed unless the enforcing court.....

Section 312(a): The court ~~shall~~ may award....

In general, many of the references to “state” in the bill ought to be changed to “New Mexico” and the bill should be more closely tailored to New Mexico’s system and procedures.

OTHER SUBSTANTIVE ISSUES

CYFD raises the following points:

The New Mexico legislature has previously specifically amended the Child Custody Jurisdiction Act to omit the words "child neglect and dependency proceedings" from the definition of those custody proceedings covered by the Child Custody Jurisdiction Act, § 40-10-3 (C). The CCJA now applies only to "custody proceedings" which are defined as "proceedings in which a custody determination is one of several issues, such as an action for divorce or separation." The New Mexico Supreme Court found in *State ex rel Department of Human Services v. Avinger*, 104 N.M. 225 (1986), that under the previous version of the CCJA, the Children's Court could not take jurisdiction to protect children in a case involving child neglect by a mother who had been previously been awarded custody of the children in a Texas divorce decree. In other words, this law may not allow New Mexico courts to adequately protect endangered children in New Mexico if an order has already been entered in another state.

Although many of the provisions are designed to clarify the powers and procedures of the court, CYFD believes than many of the provisions are redundant of existing New Mexico law or the Supreme Court Rules.

FAR/ar/njw