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FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/13
LAST UPDATED 01/31/13 **HB** 173/aHJC

SPONSOR Stewart

SHORT TITLE Uniform Child Abduction Prevention Act **SB** _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General’s Office (AGO)
 Public Defender Department (PDD)
 Children, Youth & Families Department (CYFD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 173 strikes the phrase “PROVIDING PENALTIES;” from the title of the bill.

Synopsis of Original Bill

House Bill 173 enacts the Uniform Child Abduction Prevention Act (USAPA). The bill authorizes a New Mexico court in a child custody proceeding, or on the motion of a party to or an individual who could seek a child custody determination or a prosecutor acting under the authority of existing child custody statutes, to order abduction prevention measures upon a finding that there exists credible risk of abduction.

In Section 7, the bill identifies a broad-ranging list of factors to determine the existence of a risk of abduction, including previous abduction of the child, threats to abduct the child, acts of domestic violence, stalking or child abuse or neglect, along with recent activity such as abandonment of employment, sale of a residence, closure of bank accounts and obtaining passports. Subsection 7(C), requires the court to also take into consideration several other

factors, including that abduction can occur at any time regardless of when an order is entered, and that some of the risk factors identified earlier may in fact be undertaken by a person seeking to escape domestic violence and that a court's order of travel restrictions may pose safety issues.

Sections 8 and 9 authorize the court to issue a warrant to take physical custody of the child, or authorize law enforcement to take reasonably necessary action to locate and return the child to prevent imminent abduction. In addition, the court may impose travel restrictions, may prohibit removal of the child from the state, and may impose conditions on the exercise of custody including limiting visitation or requiring supervised visitation.

Section 10 provides that an abduction prevention order remains in effect until the occurrence of the earliest of these factors: the time stated in the order, the child's emancipation or becoming 18, or until it is modified, revoked, vacated or superseded by a court with jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, NMSA 1978, sections 40-10A-101 through 405 ("UCCJEA").

The effective date of this bill is January 1, 2014.

FISCAL IMPLICATIONS

Because the proposed Act would supplement existing law as to child custody matters, additional resources or funding is not anticipated.

SIGNIFICANT ISSUES

Child abduction is a serious problem: the National Conference of Commissioners on Uniform Acts (National Conference), in the prefatory note to the 2006 draft of its Uniform Act, reported that an estimated 262,100 children were abducted in 1999. Seventy-eight percent of those children were abducted by a family member. There are 1773 family abductions for every stranger abduction. Approximately 1000 of the abductions are international.

The National Conference advises that many abductions occur before the court has entered an order or decree concerning the custody of the child. Families going through custody disputes and divorce proceedings are the highest risk group for potential abductions. Many existing custody determinations do not contain sufficient provisions to prevent an abduction because the orders are too vague or contain no restrictions. Judges need information about abduction risk factors so that they can put in place appropriate restrictions to prevent abductions either pre or post decree. Dealing appropriately with the risk factors at the time of a custody dispute or family law proceedings may be the best way to protect children from abduction.

The uniform act is designed to supplement and expand a court's authority under the UCCJEA. It provides additional authority, procedures and enforcement measures to prevent child abductions in the context of divorce, custody, visitation, separation, neglect, abuse, dependency and paternity proceedings and to provide protection in domestic violence cases.

The AOC reports that although HB 173 contains no criminal penalties, existing statutes already contain criminal penalties for kidnapping and custodial interference. See NMSA 1978 section 30-4-1 through 4. Additionally, the AOC points out that HB 173 differs from the Uniform Act by adding Section 7 (C). HB 173 also includes, as Section 8 (G), a new provision prohibiting a

court from requiring, in an order made pursuant to the UCAPA, the disclosure of a confidential communication that is protected by the Victim Counselor Confidentiality Act, the physician-patient privilege or the psychotherapist-patient privilege.

The AGO comments that HB 173 contains numerous protections for parties who would be subject to the law's provisions, and that courts would not be vested with new powers so much as they would be equipped with a legal framework for preventing parental abduction.

TECHNICAL ISSUES

The AGO points out that the bill's title states that it provides penalties, yet none are contained in the text.

OTHER SUBSTANTIVE ISSUES

HB 173 appears to address the special problems involved with international child abduction by including several risk factors specifically related to international abduction. In particular, the act requires courts to consider whether the party in question is likely to take a child to a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction, or to a country that places the child at risk, has laws that would restrict access to the child, that is on the current list of state sponsors of terrorism or is engaged in an active military action or war. In addition, a court is to consider issues related to citizenship, such as a recent change in citizenship status or a denial of United States citizenship.

The CYFD reports that to date, this uniform act has been enacted in the District of Columbia and eleven states: Alabama, Colorado, Florida, Kansas, Louisiana (with some modifications), Mississippi, Nebraska, Nevada, South Dakota, Tennessee, and Utah.

MD/svb:bm