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FISCAL IMPACT REPORT

SPONSOR Armstrong, D. ORIGINAL DATE 02/13/21
LAST UPDATED _____ HB 204
SHORT TITLE Notice to Court in Certain Domestic Affairs SB _____
ANALYST Dick-Peddie

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMDOH	0	\$42.5	\$42.5	\$85	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)

Administrative Office of the Courts (AOC)

Department of Health (DOH)

Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

House Bill 204 eliminates the requirement to file notice with proof of publication of name change requests for applicants under 14 years old if the court determines that notice to the legal parent(s) may jeopardize the applicant's personal safety.

The bill also mandates courts to not require notice to the minor's legal parent or parents and to seal all records regarding the petition of applicants who are under age 14 if the court determines such notice would similarly jeopardize the applicant's personal safety. The court is required to open such records only if there is a showing of "good cause" or at applicant's request.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

DOH reports the provisions of HB204 would affect administrative duties performed by the Bureau of Vital Records and Statistics and likely necessitate increased funding for additional staff, training, and systems updates. These increased costs would be related to the authorization for courts to seal records in instances when an applicant's safety may be at risk. DOH notes the bureau would have no way of knowing which name changes in the Database for Vital Events (DAVE) were standard name changes with notice and which were sealed. The agency explains the trickledown effect further:

If a court-order name change should be sealed, then original birth records would have to be taken from the records, and that record would be sealed in an envelope in the Bureau of Vital Records and Health Statistics vault. This would ensure that no one could access that record or see any of the information without a Court Order. These sealed records would have to be stored separately from non-sealed records, creating issues on storage for these records and keeping them separate from other records. Currently, Acknowledgment of Paternity (AOP) and Adoption records are the only sealed records with dedicated storage areas in the BVRHS vault.

If BVRHS cannot tell the difference between the regular name change records and those without a publication to seal a record, the bureau could be held liable for having information available to those not privileged to it, such as the Public Health Offices, medical offices, and funeral homes. In order to make the distinction, BVRHS would need to modify DAVE to add drop-down fields for name changes similar to the ones that the bureau has for adoptions and AOP actions.

DOH predicts at least 1 additional FTE would be needed to assist the agency in training staff on new procedures and updating the database. The Estimated Additional Operating Budget Table reflects the cost of 1 administrative FTE at DOH, typically compensated at \$30.8 thousand annually, with the addition of \$11.7 thousand for benefits for a total of \$42.5 thousand per fiscal year.

Marginal savings may be realized at the local level if county clerks published significantly fewer notices as a result of the bill.

SIGNIFICANT ISSUES

The bill appears to change notice requirements as a way of protecting minors who are not formally emancipated but would be put in danger if their parents were made aware of their whereabouts. However, the provisions of the bill do not clearly define what evidence a person under age 14 would need to present to a district court judge establishing this danger, which may lead to inconsistent rulings throughout the state. Similarly, the court may open sealed records only if there is a showing of good cause, which is not defined.

The Attorney General (NMAG) cites federal case law from *Santosky v. Kramer* 455 U.S. 745 (1982) establishing a parent's right to a "fundamental liberty interest" in the "care, custody and management of their child" under the Fourteenth Amendment. NMAG notes the provision in House Bill 204 allowing district court judges the discretion to not notify the parents of applicants under age 14 seeking a name change may violate this right and be subject to constitutional

challenges under the Fourteenth Amendment. However, NMAG also notes New Mexico case law has long established that “parents do not have absolute rights in their children, rather, parental rights are secondary to the best interests and welfare of the children.”

TECHNICAL ISSUES

NMAG notes a potential language issue in how the bill lists an applicant’s age:

HB204 allows petitioners “over the age of fourteen years” to directly petition for a name change. Applicants “under the age of fourteen years” may bring such an action via a parent or guardian. If an applicant is fourteen years old, this language may cause confusion. This language could be clarified by indicating which category a fourteen year old would fall within. For example, the language may be clarified to provide that petitioners “fourteen years of age or older” may directly petition for a name change.

ADP/sb/al