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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Lujan/Herndon **ORIGINAL DATE** 2/27/25

BILL

SHORT TITLE Domestic Relations Mediation Program **NUMBER** House Bill 503

ANALYST Chavez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Courts	No fiscal impact	At least \$150.0	At least \$150.0	At least \$300.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to House Bill 57.

Sources of Information

LFC Files

Agency Analysis Received From
 Administrative Office of the Courts (AOC)
 New Mexico Attorney General (NMAG)
 Crime Victims Reparation Commission (CVRC)

Agency Analysis was Solicited but Not Received From
 Department of Finance and Administration (DFA)

Agency Declined to Respond
 Law Offices of the Public Defender (LOPD)
 Administrative Office of the District Attorneys (AODA)
 Office of Family Representation and Advocacy (OFRA)

SUMMARY

Synopsis of House Bill 503

House Bill 503 (HB503) would amend Section 40-12-5 NMSA 1978, the statute governing domestic relations mediation programs.

HB503 adds a new subsection that would allow parents, who are participating in domestic relations mediation programs, the right to be represented by council and have council present at advisory consultations, priority consultations, evaluations, or mediation. The bill also makes plural the mention of “evaluation” in the subsection that states that “Parents may request of the court the services of the domestic relations mediation program for consultations, evaluation or

mediation.” This clarifies that parents may request the services from a court’s domestic relations mediation program for multiple evaluations rather than just one as the singular connotation the current statute has suggests.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

HB503 would allow parents the right to be represented by council during mediation, meaning that the courts would have to incur the cost to provide council. While the courts have council on staff, the Administrative Office of the Courts (AOC) points out that, “there is a small number of attorneys who do domestic relations work in New Mexico, and many of them do not live or work in rural areas”. Therefore, the courts would more than likely need to hire at least one more attorney at a cost of at least \$150 thousand. The courts may need more than one attorney to provide an adequate council that the bill stipulates, meaning that the operating costs to courts could be substantial; these costs would be further exasperated if the lack of specialized attorneys increases the rate at which AOC would need to pay them.

SIGNIFICANT ISSUES

AOC provides the following:

1. HB503 amends the Domestic Relations Mediation Program to include that parents in a mediation program through courts shall have a right to counsel. See, proposed section 40-12-5(B). The bill does not provide a method to appoint counsel for parties nor does it have an appropriation to pay for the appointed attorneys.
2. Courts would likely not be able to refer unrepresented parties to mediation if this bill is enacted as there are no funds to pay for attorneys, there is a small number of attorneys who do domestic relations work in New Mexico, and many of them do not live or work in rural areas. Mediation is a valuable tool for parents to come to agreements about the custody and care of their children. This would result in parents having to litigate their case instead of learning through mediation how to come to an agreement. This would also result in significant delay in the resolution of family court cases as all pro se cases (the vast majority of family court cases) would need to be set for trial.
3. HB503 requires parties to be able to have attorneys present during custody evaluations, advisory consultations, and priority consultations. These evaluations are all completed by trained mental health professionals who conduct the evaluations by interviewing parties, observing parent/child interactions, and utilizing other accepted evaluative methods in order to make recommendations as to the care and custody of the children. The focus is the prioritization of children's best interests through observation, sometimes psychological testing, and structured interviews, along with other modalities. When attorneys speak for their clients or interfere in the evaluative process, the process is rendered meaningless and thus unusable by the courts and the parties to the case. Attorneys are part of the process when an evaluation is finished and a hearing is held to determine what the evaluator learned and what that person

recommends. Evaluators can be cross-examined about the methods and the recommendations. However, attorneys cannot interfere with the assessment for it to be a valuable tool. Courts would no longer be able to use evaluations to help determine the best interests of the parties' children.

The New Mexico Attorney General provides the following:

HB503 seems to lack mechanisms necessary for implementation. It is unclear what should happen if a parent doesn't have counsel. It's unclear if the court should appoint counsel and, if so, whether appointment should be automatic or upon request. Consider clarifying the procedure for appointing counsel.

Assuming the court appoints counsel, it is unclear who would qualify. Consider providing guidelines for determining who is eligible for court-appointed counsel.

It is unclear who would bear the cost and which attorney the court would appoint. In criminal matters, the cost of court-appointed counsel is borne by the public defender department. See NMSA § 31-16-3 (providing guidelines for appointment of counsel for a "needy person."); *State v. Brown*, 2006-NMSC-023, 139 N.M. 466, 134 P.3d 753 (interpreting Section 31-16-3 in the context of funding for expert witness fees). But there is no such provision here.

Further, the court in *Brown* says, "The purpose of the Indigent Defense Act is to ensure the protection of a defendant's Sixth Amendment constitutional rights and the Public Defender Act provides the administrative framework for accomplishing that objective." *Id.* at ¶15. Declaring a right to counsel is only half of what is needed. An administrative framework (or at least a signal to it elsewhere) is missing from HB503.

Since HB503 would create a right to counsel for parents, consider whether the court should also appoint an attorney or a guardian ad litem for the child

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The Crime Victims Reparation Commission points out that HB503 relates to House Bill 57 (HB57) because HB57 provides for attorneys in domestic abuse cases.