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FISCAL IMPACT REPORT

ORIGINAL DATE 01/25/13
LAST UPDATED 01/30/13 **HB** 39/aHCPAC

SPONSOR Baldonado

SHORT TITLE Consent Requirements for Certain Adoptions **SB** _____

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Attorney General’s Office (AGO)
- Administrative Officer of the Courts (AOC)
- Children, Youth and Families (CYFD)
- Administrative Office of the District Attorney (AODA)

SUMMARY

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to House Bill 39 clarifies that the bill applies to convictions from other jurisdictions if the law in the jurisdiction is equivalent to New Mexico law.

Synopsis of Original Bill

House Bill 39 amends language in the existing Adoption Act §32A-5-19 NMSA, clarifying that consent is not required from a biological father of a child conceived as a result of any form of criminal sexual penetration.

Under The Children’s Code as a general rule parents must either relinquish their parental rights, or consent to, an adoption of a minor. Consent is not required of those parents whose rights have been terminated, parents who have relinquished a child to an agency for adoption, a person who fails to respond to a Petition for adoption and an alleged father under certain circumstances. The father of a child conceived from rape or incest is currently also an exception according to the current language in the Adoption Act. This bill changes “rape” to “any form of criminal sexual penetration” (CSP) as defined in the criminal code.

In other words, HB 39 would ensure that an adoption will not require the consent of the biological father of an adoptee conceived by a form of criminal sexual penetration.

FISCAL IMPLICATIONS

AOC states: There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

SIGNIFICANT ISSUES

The word change makes the language across statutes more consistent as “criminal sexual penetration” replaces rape in other sections of both the Children’s and Criminal statutes.

AGO states that “the most likely objection to this bill would be based upon New Mexico’s doctrine of double jeopardy. New Mexico jurisprudence on double jeopardy generally imposes a bar to imposing separate criminal and civil punishments for the same offense. Few exceptions apply. Additionally, the sequence or timing of the different prosecutions is generally of no import to the analysis.”

AGO also states “Another plausible challenge to this bill is that no criminal conviction is required to render the biological father’s consent non-mandatory. Due process generally requires more before depriving a person of parental rights.”

TECHNICAL ISSUES

The language in the current Adoption Act is not consistent with Section 30-9-11 NMSA.

This bill clarifies language in the Adoption Act to be consistent with Section 30-9-11 NMSA 1978 and allows for consistency with Section 30-9-11 NMSA 1978.

ALTERNATIVES

AGO suggests: “Enact specific legislation empowering courts with jurisdiction over adoption matters to render rulings based upon fact finding related to the underlying criminal act, judicial notice of a relevant criminal conviction, or estoppel.”

AMENDMENTS

AGO recommends that the bill include language requiring either a criminal conviction of an applicable form of criminal sexual penetration or a finding by a court with jurisdiction that the act occurred.

It should include language that would also consider a conviction for criminal sexual penetration in other jurisdictions which factually match one of the variants enumerated by statute in New Mexico.

It should also include language creating a remedy for circumstances where a conviction for criminal sexual penetration is later overturned, reversed, or otherwise vacated, except for a conditional discharge.