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FISCAL IMPACT REPORT

ORIGINAL DATE 03/10/17

SPONSOR Maestas Barnes LAST UPDATED _____ HB 479

SHORT TITLE Emergency Child Custody Orders SB _____

ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$398.4	\$398.4	\$796.8	Recurring	General, Courts

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Children, Youth and Families Department (CYFD)

SUMMARY

House Bill 479 (HB 479) creates a new section in Chapter 40 to allow for the issuance of Ex Parte Emergency Orders of Temporary Custody. District courts may issue the temporary orders based upon a verified petition of a parent. The petition requires specific information to include an affirmative statement that the petitioner will file a parentage or dissolution of marriage action within three days of filing for the petition for emergency order of temporary custody.

If an order is granted pursuant to HB 479, the court must hold a hearing within ten days. If the order is not served on a respondent within 72 hours prior to the hearing, the order is extended for an additional 10 days. If the court does not grant an order pursuant to the petition, the court shall hold a hearing within 10 days.

HB 479 also mandates that a district judge be available to hear the petitions for emergency orders of temporary custody.

FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) believes this bill may have a significant impact on the court operating budgets. If HB 479 results in substantial additional filings and hearings, an

additional judge and court staff time may be required. The Second Judicial District Court, for example, estimates that an additional judgeship, trial court administrative assistant, bailiff, court monitor, and court clerk II would be required to comply with the mandates in HB 479. The total cost for the additional 5 FTEs is \$398,403 in recurring funds. No appropriation for additional operating costs is contained in this bill and the AOC does not believe it has sufficient resources to absorb these costs.

SIGNIFICANT ISSUES

The AOC reported the following:

The mandates in HB 479 place a tremendous burden upon the courts to schedule and hold hearings within a very short timeframe. In the Second Judicial District Court (SJDC), there are four judges specifically assigned to family law cases. Each judge has a full docket of hearings for the various family type cases. The requirement to have a district court judge available to hear the petitions within the expedited timeframes cannot be handled without additional staff.

In comparison, Orders of Protection issued pursuant to the Family Violence Protection Act require hearings within 10 days. SJDC opened 2,272 new and approximately 810 reopened domestic violence cases in calendar year 2016. The Domestic Violence Division is staffed with up to 6 Court Clerk II positions, one Court Clerk Supervisor, three Domestic Violence Commissioners, and one judge. SJDC would need additional FTE to handle cases in an expedited manner as required in HB 479.

The proposed legislation in HB 479 provides for extraordinary relief, which is already available. A parent may file a parentage or dissolution of marriage action and request *ex parte* relief. A temporary domestic order is automatically issued in dissolution of marriage cases and may be issued in parentage cases. Parents should still be required to file a parentage or dissolution case prior to requesting injunctive relief.

The proposed legislation completely excludes one parent from his or her rights to spend time with his or her child(ren). Currently, a parent may contact the Children, Youth, and Families Department if there are allegations of abuse or neglect committed by the other parent. Additionally, a parent may file a petition for an Order of Protection on behalf of a minor child if there are allegations of domestic abuse. These processes should not be circumvented with a new process that allows a person to have exclusive temporary custody on a promise to file an additional cause of action with the court.

The only consequence for the petitioner is that the temporary order will automatically expire if he or she does not file a parentage or dissolution action within three days. The petitioner would be allowed to make allegations to obtain temporary exclusive custody without even having to make all allegations relating to parentage as required in a parentage or dissolution of marriage cause of action. Custody of a child is a right and should not be determined on an *ex parte* basis other than the mechanisms already in place. HB 479 may encourage abuse of process by excluding a parent completely from having contact with his or her child without having to file a parentage, dissolution of marriage, or domestic violence cause of action.

PERFORMANCE IMPLICATIONS

The courts are also participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percentage change in case filings by case type

RELATIONSHIP

The AOC reported HB 479 relates to SB 322, which requires additional security for child custody hearings. The hearings created from HB 479 would also be subject to additional security.

TECHNICAL ISSUES

The AOC reported the following technical issues:

- Section H does not appear to address how custody of a child would be returned to the respondent if the petitioner does not file a petition to establish paternity within 3 days. Additionally, Section H provides that if a petition for paternity is not filed within 3 days then the emergency order shall expire immediately. It does not address whether failure to file a petition for dissolution of marriage would have the same consequence.
- Section J provides procedures for a law enforcement officer who receives an emergency temporary custody order from the court. They must serve a signed copy to the respondent and retrieve the children from the respondent and return to the petitioner. However, in the case of expiration or a decision that the emergency custody order is not warranted, there is no process outlined for retrieving and returning the child from the petitioner to the respondent.
- Section F provides appeal procedures for a respondent, but does not provide the same for the petitioner.
- HB 479 may conflict with the Uniform Child Custody Jurisdiction and Enforcement Act, which provides for some emergency custody procedures, as both parentage and dissolution of marriage are encompassed within the UCCJEA which has been codified by New Mexico in Section 40-10A-1 NMSA 1978. A possible addition to the bill that the parent with physical custody of the child is located in New Mexico may clarify some confusion between the two.

KK/jle