F I S C A L I M P A C T R E P O R T

SPONSOR Hochman-Vigil **ORIGINAL DATE** 02/09/21 **LAST UPDATED** **HB** 216

SHORT TITLE Willful Custody or Timesharing Interference **SB**

ANALYST Dinces

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	**FY22**	**FY23**		
	Indeterminant, likely minimal	Indeterminant, likely minimal	Recurring	Other state funds collected through court sanctions

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		$16.8	$16.8	$33.6	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Administrative Office of the Courts (AOC)
Office of the Attorney General (NMAG)
Human Services Department (HSD)
Children, Youth, and Families Department (CYFD)
Public Defender Department (PDD)
Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

House Bill 216 amends NMSA 1978 Section 40-4-9.1, governing joint custody and parenting plans, to include a requirement that a district court shall impose sanctions if a party has "willfully and unjustifiably interfered with the other party's visitation or timesharing[.]" The amendment

also includes the requirement that any court-appointed person who issues timesharing recommendations attend yearly training on "the effect of timesharing arrangements on children[,]" and "child interview techniques."

FISCAL IMPLICATIONS

HB216 states sanctions could be imposed on a party if that party willfully or unjustifiably interfered with the other parent's timesharing. These sanctions, if monetary in nature would generate some revenue to the courts. However, the amount of this revenue is indeterminant without knowing the amount of the sanction nor how many parents would likely face this sanction.

Furthermore, HB216 requires two 2-hour trainings for court staff that issue timesharing recommendations. This may lead to an opportunity cost for the courts. To estimate cost, if up to 5 individuals per court need to be trained, and court staff have an average hourly salary of $25, then this bill may result in up to an estimated $16.8 thousand impact to court's operating budgets.

SIGNIFICANT ISSUES

Research shows joint custody or timesharing may be beneficial to children, but is not essential. According to the Early Childhood Care and Education Department: "children are more likely to thrive psychologically following divorce when they experience a family context characterized by: (a) low or contained and well-handled conflict between parents; (b) ongoing positive relationships with and effective parenting of at least one, preferably both, parents; and (c) economic stability. Furthermore, most children want to maintain relationships with both parents."

Other states have training for parent coordinators codified in legislation. For instance, in 2014 Michigan required their parent coordinators to be trained in regards to violent and domestic abuse situations.

According to -office of the Attorney General:

> Traditional court sanctions (or enforcement techniques) may be inappropriate in a child custody proceeding for which the best interests of the child is the focus, since sanctioning the punishment of an offending parent may be inappropriate if there will be resulting harm to the child's welfare, including psychological or physical damage to the child, or even harm to the parental relationship. Moreover, traditional sanctions are often inadequate and do not serve as a deterrent to custody or visitation interference. *See, e.g.,* Lawrence A. Goldman, *Tortious Interference with Visitation Rights: A New and Important Remedy for Non-Custodial Parents*, 20 J. Marshall L. Rev. 307 (1986); *Larson v. Dunn*, 460 N.W.2d 39 (Minn. 1990).
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> HB216 also does not specify the nature and extent of the sanctions the court could impose against the offending parent for visitation or timesharing interference, including awarding sole custody to the parent who did not cause or participate in the interference, or in instances where both parents have joint custodial responsibilities, whether the interference caused by one parent alone, or both parents acting separately, could be enough (whether in magnitude or duration, or both) to justify a change in the legal status of the parents or a reevaluation of the best interests of the child given either or both parents' conduct, so as to modify the

existing custodial arrangement. The result would be that the ancillary sanction might itself eclipse, or not obliterate, the precipitating claim or cause of action against the offending parent(s), potentially raising due process claims.

While HB216 ostensibly would place the burden of proof on the parent claiming visitation or timesharing interference, it is unclear whether the court on its own (*sua sponte*) could impose sanctions in a post-divorce custodial proceeding or one to modify the livings arrangements of the child, without giving notice to the other party that the court was entertaining the prospect of imposing sanctions at the hearing, especially if the earlier judicial order required resolution of visitation and timesharing disputes by alternate (non-judicial) methods.

TECHNICAL ISSUES

According to office of Attorney General:

"Proposed Subsection (L) at page 9 of HB 216 reads: "If the court determines by clear and convincing evidence that a *party* has willfully and unjustifiably interfered with the *other parent's* visitation or timesharing, the court shall impose sanctions." (Emphasis supplied.) "Parent" is defined in Section 40-4-9.1(L)(1) as "a natural parent, adoptive parent or person who is acting as a parent *who has or shares legal custody of a child or who claims a right to have or share legal custody*." (Emphasis supplied.) However, as presently drafted HB 216 would compel the court to impose sanctions on a "party," a person not defined in Section 40-4-9.1(L)(1) and who ostensibly has no legal custodial relationship to the child and presumably is not a respondent in the post-divorce custodial proceeding, and therefore not subject to the jurisdiction of the court."

SMD/sb