

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 299
50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO CHILD SUPPORT; AMENDING A SECTION OF THE NMSA 1978
TO PROVIDE THAT RETROACTIVE CHILD SUPPORT IN MOST CASES NOT
EXCEED SIX YEARS FROM THE DATE OF FILING FOR SUPPORT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 40-11A-636 NMSA 1978 (being Laws 2009, Chapter 215, Section 6-636) is amended to read:

"40-11A-636. ORDER ADJUDICATING PARENTAGE.--

- A. The district court shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.
- B. An order adjudicating parentage shall identify the child by name and date of birth.
- C. Except as otherwise provided in Subsection D of this section, the district court may assess filing fees, reasonable fees of counsel, experts and the child's guardian ad litem, fees for genetic testing, other costs, necessary travel and

other reasonable expenses incurred in a proceeding pursuant to this article. The district court may award attorney fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name. The district court may order these fees, costs and expenses to be paid by any party in proportions and at times as determined by the court, but not exceeding [twelve] six years from the date on which the action for support was filed unless there is a showing that paternity could not have been established and an action for child support could not have been brought within [twelve] six years of the child's birth. The court may order the proportion of any indigent party to be paid from court funds.

D. The district court shall not assess fees, costs or expenses against the support-enforcement agency of this state or another state, except as provided by other law.

E. On request of a party and for good cause shown, the district court may order that the name of the child be changed.

F. If the order of the district court is at variance with the child's birth certificate, the district court shall order the bureau to issue an amended birth certificate.

G. The judgment or order may contain any other provision directed against or on behalf of the appropriate party to the proceeding concerning the duty of past and future support, the custody and guardianship of the child, visitation with the child, the furnishing of bond or other security for the payment of the judgment or any other matter within the jurisdiction of the court. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy, birth

and confinement. The court shall order child support retroactive to the date of the child's birth, but not to exceed [twelve] six years from the date on which the action for support was filed unless there is a showing that paternity could not have been established and an action for child support could not have been brought within [twelve] six years of the child's birth pursuant to the provisions of Sections 40-4-11 through 40-4-11.3 NMSA 1978; provided that, in deciding whether or how long to order retroactive support, the court shall consider:

- (1) whether the [alleged or presumed father] parent ordered to pay support has absconded or could not be located; and
- (2) whether equitable defenses are applicable.

H. The six-year limitation on retroactive child support shall not limit a claim under Section 40-11A-607 NMSA 1978 brought by a child who has reached the age of majority.

[H.] I. Support judgments or orders ordinarily shall be for periodic payments, which may vary in amount. In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support; provided, however, nothing in this section shall deprive a state agency of its right to reimbursement from an appropriate party should the child be a past or future recipient of public assistance.

[I.] J. In determining the amount to be paid by a parent for support of the child, a court, child support hearing officer or master shall make such determination in accordance with the provisions of the child support guidelines pursuant to Section 40-4-11.1 NMSA 1978."