

LFC Requester:	
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: Date 1-19-16
Original **Amendment** **Bill No:** HB120
Correction **Substitute**

Sponsor: Conrad James **Agency Code:** 264
Short Title: Adult Child Petitions for Visitation **Person Writing:** Gail MacQuesten
Phone: 466-0532 **Email:** gailmacquesten@q.co

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: n/a

Duplicates/Relates to Appropriation in the General Appropriation Act n/a

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB120 creates the “Adult Child Visitation Privileges Act,” which establishes a procedure allowing an adult child of a parent for whom a guardian has not been appointed to petition the district court for an order to compel visitation with the petitioner’s parent. The petition must be served on the parent, the parent’s spouse, adult children, adult grandchildren, parents, siblings and guardian, if any. Upon receipt of a petition, the court shall appoint an independent investigator, who is to make written findings within 21 days to assist the court in determining whether the petitioner’s parent has sufficient capacity to make and communicate a decision as to visitation and desires visitation. Within 14 calendar days of the filing of the report, the court shall conduct a hearing. The court shall grant reasonable visitation if the petitioner’s parent has sufficient capacity to make and communicate a decision regarding visitation and expresses a desire for visitation. The court shall also grant reasonable visitation if the petitioner’s parent lacks capacity to make and communicate a decision regarding visitation, but the court finds that visitation would be in the best interest of the parent, based upon:

- the relationship between petitioner and the parent;
- statements made by the parent expressing a desire for visitation;
- any other evidence probative of the parent’s desire for visitation; and
- the investigator’s report.

The court may appoint counsel to represent the parent, and shall require the petitioner to pay the reasonable fees and expenses of the independent investigator and counsel for the parent. The court may enjoin the change of a parent’s residence to a location outside the jurisdiction of the court for the duration of the proceedings, unless the change is for the propose of receiving heath care treatment or medically necessary services, or for other good cause.

HB120 also adds a new section of the Uniform Probate Code regarding protection of persons under disability and their property, setting out the duties of a guardian when a person in the guardian’s care dies, is hospitalized or enters hospice care. The guardian is to notify the protected person’s spouse, adult children, adult grandchildren, parents and siblings. In cases of death, the guardian is to notify these persons of the funeral arrangements and of the location of the final resting place or intended final resting place (unless the protected person has, prior to a finding of incapacity and the appointment of the guardian, specifically directed otherwise). The guardian is to carry out the wishes of the protected person regarding visitation if the protected person is able to make and communicate a decision regarding visitation, or has giving a directive regarding visitation prior to a finding of incapacity and the appointment of a guardian. The

guardian is to carry out the order entered by the district court in a proceeding pursuant to the Adult Child Visitation Privileges Act.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

There are no fiscal implications for the district attorneys.

SIGNIFICANT ISSUES

HB120 sets out a procedure for deciding issues regarding visitation of persons under guardianship, and a procedure for adult children to petition for visitation with a parent for whom a guardian has not been appointed.

There are no significant issues for the district attorneys.

PERFORMANCE IMPLICATIONS

There are no performance implications for the district attorneys.

ADMINISTRATIVE IMPLICATIONS

There are no administrative implications for the district attorneys.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

Note that the “Adult Child Visitation Privileges Act” applies only to situations in which a guardian has not been appointed. See Section 3, paragraph A. Yet the act provides that notice is to be sent to the parent’s guardian, if any. See Section 3, paragraph B(6)(f). And HB120’s amendments to the Uniform Probate Code direct the guardian to follow any order issued under the “Adult Child Visitation Privileges Act.” This leaves the relationship between the “Adult Child Visitation Privileges Act” and the provisions in the Uniform Probate Code regarding guardianship unclear.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will not have a procedure in place for adjudicating visitation issues for persons under guardianship, or a procedure for adult children to seek visitation with a parent.

AMENDMENTS

None proposed.