

LFC Requester:	Kelly Klundt
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**AGENCY BILL ANALYSIS
2016 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:
Original **Amendment**
Correction **Substitute**

Date January 19, 2016
Bill No: HB120-305

Sponsor: Representative Conrad James **Agency Code:** 305
Short Adult Child Petitions **Person Writing** Jennifer Salazar, AAG
Title: For Visitation **Phone:** 827-6990 **Email** jsalazar@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(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						

(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

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

Synopsis:

Sections 1 through 6 of House Bill 120 creates a new act, the Adult Child Visitation Privileges Act (“Act”). Section 1 sets forth the Act’s title and Section 2 sets forth the definitions that apply to the Act. Under Section 3 of HB 120, an adult child may petition a district court to compel visitation with the adult child’s parent. The petition must include certain information, including information about the efforts the petitioner has made to obtain visitation with the parent as well as the parent’s condition.

Section 4 requires a court to appoint an independent investigator to conduct an investigation to determine whether the petitioner’s parent has sufficient capacity to make a decision as to the adult child’s request for visitation. The investigator is required to interview several persons, including the petitioner, the parent who is the subject of the petition, the parent’s spouse, as well as other family members. The investigator is required to complete the investigation and file a written report within twenty-one days following the appointment of the investigator. Section 4 also makes the report confidential and not subject to disclosure.

Section 5 requires the court to set a hearing no sooner than fourteen calendar days following the filing of the investigator’s report. Under Section 6, the court must determine whether the petitioner’s parent has sufficient capacity to communicate a decision as to visitation; however, any determination by the court regarding the parent’s capacity is not admissible in any other proceeding. The court must grant “reasonable visitation” if the petitioner’s parent desires such visitation or, in the case where a parent lacks capacity to communicate a decision about visitation, when the court finds visitation is in the best interest of the parent. In addition, the court may appoint an attorney to represent the petitioner’s parent.

Under Section 6, a petitioner must pay the reasonable fees and expenses of both the independent investigator and the attorney appointed to represent the petitioner’s parent.

Section 7 of HB 120 adds a new section to Chapter 45, Article 4, NMSA 1978. Under this provision, a guardian – which is defined as “a person who has qualifies to provide for the care, custody, or control of the person of a minor or incapacitated person pursuant to parental

or court appointment,” see NMSA 1978, § 45-5-101(D) – must notify certain persons in the event of death, hospitalization, or hospice care of a “protected person.” See NMSA 1978, § 45-5-101(T) (defining protected person as “a minor or other person for who a guardian or conservator has been appointed or other protective order has been made”). However, if a protected person has made a specific directive to exclude certain persons from his/her funeral proceedings, the guardian is not required to inform such persons of funeral arrangements. In addition, a guardian must comply with an order entered by a district court regarding visitation of a protected person in a proceeding conducted pursuant to the Adult Child Visitation Privileges Act. Section 8 amends NMSA 1978, § 45-5-313, to give the court in the venue where the protected person resides, concurrent jurisdiction with the court where a petition for visitation by interested persons is filed.

Section 9 requires immediate implementation of HB 120.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

There is currently no guidance, in either New Mexico statutory or case law, to address the means by which an adult child may petition a court for visitation of a parent, especially in cases where a parent lacks the mental capacity to make, and communicate, a decision as to visitation. HB 120 would allow for a legal process for adult children to petition a court to obtain visitation rights to their parents.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A