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SENATE BILL 174

**44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

INTRODUCED BY

Linda M Lopez

AN ACT

RELATING TO FAMILY LAW; EXPANDING THE CONSIDERATIONS FOR THE COURT WHEN A GRANDPARENT PETITIONS FOR VISITATION WITH A CHILD; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 40-9-2 NMSA 1978 (being Laws 1993, Chapter 93, Section 3) is amended to read:

"40-9-2. CHILDREN--VISITATION BY GRANDPARENT--PETITION--MEDIATION. --

A. In rendering a judgment of dissolution of marriage, legal separation or the existence of the parent and child relationship pursuant to the provisions of the Uniform Parentage Act, or at any time after the entry of the judgment,

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1 the district court may grant reasonable visitation privileges  
2 to a grandparent of a minor child, not in conflict with the  
3 child's education or prior established visitation or time-  
4 sharing privileges.

5 B. If one or both parents of a minor child are  
6 deceased, any grandparent of the minor child may petition the  
7 district court for visitation privileges with respect to the  
8 minor. The district court may order temporary visitation  
9 privileges until a final order regarding visitation privileges  
10 is issued by the court.

11 C. If a minor child resided with a grandparent for  
12 a period of at least three months and the child was less than  
13 six years of age at the beginning of the three-month period  
14 and the child was subsequently removed from the grandparent's  
15 home by the child's parent or any other person, the  
16 grandparent may petition the district court for visitation  
17 privileges with respect to the child, if the child's home  
18 state is New Mexico, as provided in the Child Custody  
19 Jurisdiction Act.

20 D. If a minor child resided with a grandparent for  
21 a period of at least six months and the child was six years of  
22 age or older at the beginning of the six-month period and the  
23 child was subsequently removed from the grandparent's home by  
24 the child's parent or any other person, the grandparent may  
25 petition the district court for visitation privileges with

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1 respect to the child, if the child's home state is New Mexico,  
2 as provided in the Child Custody Jurisdiction Act.

3 E. A biological grandparent may petition the  
4 district court for visitation privileges with respect to a  
5 grandchild when the grandchild has been adopted or adoption is  
6 sought, pursuant to the provisions of the Adoption Act, by:

- 7 (1) a stepparent;
- 8 (2) a relative of the grandchild;
- 9 (3) a person designated to care for the  
10 grandchild in the provisions of a deceased parent's will; or
- 11 (4) a person who sponsored the grandchild at  
12 a baptism or confirmation conducted by a recognized religious  
13 organization.

14 F. When a minor child is adopted by a stepparent  
15 and the parental rights of the natural parent terminate or are  
16 relinquished, the biological grandparents are not precluded  
17 from attempting to establish visitation privileges. When a  
18 petition filed pursuant to the provisions of the Grandparent's  
19 Visitation Privileges Act is filed during the pendency of an  
20 adoption proceeding, the petition shall be filed as part of  
21 the adoption proceedings. The provisions of the Grandparent's  
22 Visitation Privileges Act shall have no application in the  
23 event of a relinquishment or termination of parental rights in  
24 cases of other statutory adoption proceedings.

25 G. When considering a grandparent's petition for

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1 visitation privileges with a child, the district court shall  
2 assess:

- 3 (1) the best interests of the child;
- 4 (2) the prior interaction between the  
5 grandparent and the child;
- 6 (3) the prior interaction of the grandparent  
7 and each parent of the child;
- 8 (4) the present relationship between the  
9 grandparent and each parent of the child; [~~and~~]
- 10 (5) time-sharing or visitation arrangements  
11 that were in place prior to filing of the petition;
- 12 (6) the amount of time that may have elapsed  
13 since the child last had contact with the grandparent;
- 14 (7) the effect the visitation with the  
15 grandparent will have on the relationship between the child  
16 and the child's parent or the person with whom the child  
17 resides;
- 18 (8) any history of physical, emotional or  
19 sexual abuse or neglect by the grandparent;
- 20 (9) the good faith of the grandparent in  
21 filing the application; and
- 22 (10) other factors relevant to the best  
23 interests of the child.

24 H. It shall be prima facie evidence that  
25 visitation is in the child's best interest if in the past the

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[bracketed material] = del ete

1 grandparent had been a full-time caretaker for the child.

2           ~~[H.]~~ I. The district court may order mediation and  
3 evaluation in any matter when a grandparent's visitation  
4 privileges with respect to a minor child are at issue. When a  
5 judicial district has established a domestic relations  
6 mediation program pursuant to the provisions of the Domestic  
7 Relations Mediation Act, the mediation shall conform with the  
8 provisions of that act. Upon motion and hearing, the district  
9 court shall act promptly on the recommendations set forth in a  
10 mediation report and consider assessment of mediation and  
11 evaluation to the parties. The district court may order  
12 temporary visitation privileges until a final order regarding  
13 visitation privileges is issued by the court.

14           ~~[I.]~~ J. When the district court decides that  
15 visitation is not in the best interest of the child, the court  
16 may issue an order requiring other reasonable contact between  
17 the grandparent and the child, including regular communication  
18 by telephone, mail or any other reasonable means.

19           ~~[J.]~~ K. The provisions of the Child Custody  
20 Jurisdiction Act and Section 30-4-4 NMSA 1978, regarding  
21 custodial interference, are applicable to the provisions of  
22 the Grandparent's Visitation Privileges Act. "

23           Section 2. EFFECTIVE DATE. --The effective date of the  
24 provisions of this act is July 1, 1999.

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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4  
5 February 8, 1999

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7 Mr. President:

8  
9 Your JUDICIARY COMMITTEE, to whom has been referred

10  
11 SENATE BILL 174

12  
13 has had it under consideration and reports same with  
14 recommendation that it DO NOT PASS, but that

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17 SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR

18 SENATE BILL 174

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20 DO PASS.

21 Respectfully submitted,

\_\_\_\_\_  
Michael S. Sanchez, Chairman

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Aragon, Tsosie

Absent: None

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SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 174

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

RELATING TO FAMILY LAW; EXPANDING THE CONSIDERATIONS FOR THE  
COURT WHEN A GRANDPARENT PETITIONS FOR VISITATION WITH A  
CHILD; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 40-9-2 NMSA 1978 (being Laws 1993,  
Chapter 93, Section 3) is amended to read:

"40-9-2. CHILDREN--VISITATION BY GRANDPARENT--PETITION--  
MEDIATION.--

A. In rendering a judgment of dissolution of  
marriage, legal separation or the existence of the parent and  
child relationship pursuant to the provisions of the Uniform  
Parentage Act, or at any time after the entry of the judgment,  
the district court may grant reasonable visitation privileges  
to a grandparent of a minor child, not in conflict with the



child's education or prior established visitation or time-sharing privileges.

1 B. If one or both parents of a minor child are  
2 deceased, any grandparent of the minor child may petition the  
3 district court for visitation privileges with respect to the  
4 minor. The district court may order temporary visitation  
5 privileges until a final order regarding visitation privileges  
6 is issued by the court.

7 C. If a minor child resided with a grandparent for a  
8 period of at least three months and the child was less than  
9 six years of age at the beginning of the three-month period  
10 and the child was subsequently removed from the grandparent's  
11 home by the child's parent or any other person, the  
12 grandparent may petition the district court for visitation  
13 privileges with respect to the child, if the child's home  
14 state is New Mexico, as provided in the Child Custody  
15 Jurisdiction Act.

16 D. If a minor child resided with a grandparent for a  
17 period of at least six months and the child was six years of  
18 age or older at the beginning of the six-month period and the  
19 child was subsequently removed from the grandparent's home by  
20 the child's parent or any other person, the grandparent may  
21 petition the district court for visitation privileges with  
22 respect to the child, if the child's home state is New Mexico,  
23 as provided in the Child Custody Jurisdiction Act.

24 E. A biological grandparent may petition the  
25 district court for visitation privileges with respect to a  
grandchild when the grandchild has been adopted or adoption is

1 sought, pursuant to the provisions of the Adoption Act, by:

- 2 (1) a stepparent;
- 3 (2) a relative of the grandchild;
- 4 (3) a person designated to care for the grandchild
- 5 in the provisions of a deceased parent's will; or
- 6 (4) a person who sponsored the grandchild at a
- 7 baptism or confirmation conducted by a recognized religious
- 8 organization.

9 F. When a minor child is adopted by a stepparent and

10 the parental rights of the natural parent terminate or are

11 relinquished, the biological grandparents are not precluded from

12 attempting to establish visitation privileges. When a petition

13 filed pursuant to the provisions of the Grandparent's Visitation

14 Privileges Act is filed during the pendency of an adoption

15 proceeding, the petition shall be filed as part of the adoption

16 proceedings. The provisions of the Grandparent's Visitation

17 Privileges Act shall have no application in the event of a

18 relinquishment or termination of parental rights in cases of

19 other statutory adoption proceedings.

20 G. When considering a grandparent's petition for

21 visitation privileges with a child, the district court shall

22 assess:

- 23 (1) any factors relevant to the best interests of
- 24 the child;
- 25 (2) the prior interaction between the grandparent

1 and the child;

2 (3) the prior interaction [~~of~~] between the  
3 grandparent and each parent of the child;

4 (4) the present relationship between the  
5 grandparent and each parent of the child; [~~and~~]

6 (5) time-sharing or visitation arrangements that  
7 were in place prior to filing of the petition;

8 (6) the effect the visitation with the grandparent  
9 will have on the child;

10 (7) if the grandparent has any prior convictions  
11 for physical, emotional or sexual abuse or neglect; and

12 (8) if the grandparent has previously been a full-  
13 time caretaker for the child for a significant period.

14 H. The district court may order mediation and  
15 evaluation in any matter when a grandparent's visitation  
16 privileges with respect to a minor child are at issue. When a  
17 judicial district has established a domestic relations mediation  
18 program pursuant to the provisions of the Domestic Relations  
19 Mediation Act, the mediation shall conform with the provisions of  
20 that act. Upon motion and hearing, the district court shall act  
21 promptly on the recommendations set forth in a mediation report  
22 and consider assessment of mediation and evaluation to the  
23 parties. The district court may order temporary visitation  
24 privileges until a final order regarding visitation privileges is  
25 issued by the court.

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SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 174

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

RELATING TO FAMILY LAW; EXPANDING THE CONSIDERATIONS FOR THE  
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to a grandparent of a minor child, not in conflict with the

1 child's education or prior established visitation or time-  
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3 B. If one or both parents of a minor child are  
4 deceased, any grandparent of the minor child may petition the  
5 district court for visitation privileges with respect to the  
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7 privileges until a final order regarding visitation privileges  
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9 C. If a minor child resided with a grandparent for a  
10 period of at least three months and the child was less than  
11 six years of age at the beginning of the three-month period  
12 and the child was subsequently removed from the grandparent's  
13 home by the child's parent or any other person, the  
14 grandparent may petition the district court for visitation  
15 privileges with respect to the child, if the child's home  
16 state is New Mexico, as provided in the Child Custody  
17 Jurisdiction Act.

18 D. If a minor child resided with a grandparent for a  
19 period of at least six months and the child was six years of  
20 age or older at the beginning of the six-month period and the  
21 child was subsequently removed from the grandparent's home by  
22 the child's parent or any other person, the grandparent may  
23 petition the district court for visitation privileges with  
24 respect to the child, if the child's home state is New Mexico,  
25 as provided in the Child Custody Jurisdiction Act.

1           E. A biological grandparent may petition the district  
2 court for visitation privileges with respect to a grandchild when  
3 the grandchild has been adopted or adoption is sought, pursuant  
4 to the provisions of the Adoption Act, by:

- 5                   (1) a stepparent;
- 6                   (2) a relative of the grandchild;
- 7                   (3) a person designated to care for the grandchild  
8 in the provisions of a deceased parent's will; or
- 9                   (4) a person who sponsored the grandchild at a  
10 baptism or confirmation conducted by a recognized religious  
11 organization.

12           F. When a minor child is adopted by a stepparent and  
13 the parental rights of the natural parent terminate or are  
14 relinquished, the biological grandparents are not precluded from  
15 attempting to establish visitation privileges. When a petition  
16 filed pursuant to the provisions of the Grandparent's Visitation  
17 Privileges Act is filed during the pendency of an adoption  
18 proceeding, the petition shall be filed as part of the adoption  
19 proceedings. The provisions of the Grandparent's Visitation  
20 Privileges Act shall have no application in the event of a  
21 relinquishment or termination of parental rights in cases of  
22 other statutory adoption proceedings.

23           G. When considering a grandparent's petition for  
24 visitation privileges with a child, the district court shall  
25 assess:

1 (1) any factors relevant to the best interests of  
2 the child;

3 (2) the prior interaction between the grandparent  
4 and the child;

5 (3) the prior interaction [~~of~~] between the  
6 grandparent and each parent of the child;

7 (4) the present relationship between the  
8 grandparent and each parent of the child; [~~and~~]

9 (5) time-sharing or visitation arrangements that  
10 were in place prior to filing of the petition;

11 (6) the effect the visitation with the grandparent  
12 will have on the child;

13 (7) if the grandparent has any prior convictions  
14 for physical, emotional or sexual abuse or neglect; and

15 (8) if the grandparent has previously been a full-  
16 time caretaker for the child for a significant period.

17 H. The district court may order mediation and  
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20 judicial district has established a domestic relations mediation  
21 program pursuant to the provisions of the Domestic Relations  
22 Mediation Act, the mediation shall conform with the provisions of  
23 that act. Upon motion and hearing, the district court shall act  
24 promptly on the recommendations set forth in a mediation report  
25 and consider assessment of mediation and evaluation to the



1 parties. The district court may order temporary visitation  
2 privileges until a final order regarding visitation privileges is  
3 issued by the court.

4 I. When the district court decides that visitation is  
5 not in the best interest of the child, the court may issue an  
6 order requiring other reasonable contact between the grandparent  
7 and the child, including regular communication by telephone, mail  
8 or any other reasonable means.

9 J. The provisions of the Child Custody Jurisdiction Act  
10 and Section 30-4-4 NMSA 1978, regarding custodial interference,  
11 are applicable to the provisions of the Grandparent's Visitation  
12 Privileges Act. "

13 Section 2. EFFECTIVE DATE. --The effective date of the  
14 provisions of this act is July 1, 1999.

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SJC/SB 174

**FORTY- FOURTH LEGISLATURE  
FIRST SESSION, 1999**

**March 10, 1999**

**Mr. Speaker:**

**Your JUDICIARY COMMITTEE, to whom has been referred**

**SENATE JUDICIARY COMMITTEE SUBSTITUTE  
FOR SENATE BILL 174**

**has had it under consideration and reports same with  
recommendation that it DO PASS.**

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[bracketed material] = delete

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

HJC/CSSB 174

Page 19

Respectfully submitted,

\_\_\_\_\_  
R. David Pederson, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Luna, Sanchez

Absent: None

J: \99BillSWP\S0174

underscored material = new  
[bracketed material] = delete