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FISCAL IMPACT REPORT

ORIGINAL DATE
LAST UPDATED 02/16/16 **HB** CS/120/HJCS

SPONSOR HJC

SHORT TITLE Adult Child Petitions for Visitation **SB** _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal to Moderate	Minimal to Moderate	Minimal to Moderate	Minimal to Moderate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General’s Office (AGO)
 Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of Bill

The House Judiciary Substitute for House Bill 120 enacts a new section of the Uniform Probate Code (UPC) that allows a spouse, adult child, adult grandchild, adult parent or adult sibling (“family member”) to petition a court for reasonable visitation with an alleged incapacitated person or protected person. This bill creates a rebuttable presumption that it is in the best interest of that person to have visitation from these family members. Both a court where the alleged incapacitated person or protected person resides and the court that appointed a guardian for that person have jurisdiction over such a petition.

This substitute also amends an existing section in the UPC governing guardianship of incapacitated persons to include reference to the new provision regarding family member visitation.

This substitute has an emergency clause.

FISCAL IMPLICATIONS

AOC in its analysis of an earlier version of this substitute explained that adult guardianship cases under existing law take up a considerable amount of judicial time because the district courts must review reports submitted by guardians ad litem, court visitors and health care professionals. These cases revolve around family dynamics, with the adult children often feuding over what is best for the adult parent.

SIGNIFICANT ISSUES

AOC reported that the earlier bill duplicated the existing judicial processes already available under Chapter 45, Article 5, *Protection of Persons Under Disability and Their Property*, of the UPC which provides remedies for adult children of an incapacitated adult (parent) to obtain visitation. It warned that HB 120 could complicate an already contentious situation where an adult child is unable to visit with a parent while a petition for appointment of a guardian/conservator is being sought due to incapacity or where the adult parent has been institutionalized.

AOC called attention to an existing provision in Chapter 45 which directs “Guardianship for an incapacitated person shall be used only as is necessary to promote and to protect the well-being of the person, shall be designed to encourage the development of maximum self-reliance and independence of the person and shall be ordered only to the extent necessitated by the person's actual functional mental and physical limitations”. See Section 45-5-305.1, NMSA 1978.

MD/jo