

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 120

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

AN ACT

RELATING TO FAMILIES; CREATING A PRESUMPTION IN FAVOR OF
VISITATION FOR AN INCAPACITATED PERSON OR PROTECTED PERSON
UNDER THE UNIFORM PROBATE CODE; SPECIFYING THAT PETITIONS FOR
VISITATION CAN BE HEARD IN PROCEEDINGS SUBSEQUENT TO THE
APPOINTMENT OF A GUARDIAN; DECLARING AN EMERGENCY.

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

SECTION 1. A new section of the Uniform Probate Code is
enacted to read:

"NEW MATERIAL PRESUMPTION IN FAVOR OF VISITATION.--

A. There shall be a rebuttable presumption that it
is in the best interests of an alleged incapacitated person or
protected person to have visitation from the alleged
incapacitated person's or protected person's:

(1) spouse;

.204093.1

underscored material = new
[bracketed material] = delete

- 1 (2) adult children;
- 2 (3) adult grandchildren;
- 3 (4) parents; or
- 4 (5) adult siblings.

5 B. A spouse, adult child, adult grandchild, adult
6 parent or adult sibling may petition the court where the
7 alleged incapacitated person or protected person resides or in
8 the court that appointed a guardian for the protected person
9 for reasonable visitation with the alleged incapacitated person
10 or protected person.

11 C. The petition for reasonable visitation shall be
12 verified and shall state facts showing:

- 13 (1) that the petitioner is a person listed in
14 Paragraphs (1) through (5) of Subsection A of this section;
- 15 (2) that visitation has been unreasonably
16 interfered with or denied; and
- 17 (3) the identity of the person or persons who
18 have unreasonably interfered with or denied visitation."

19 **SECTION 2.** Section 45-5-313 NMSA 1978 (being Laws 1975,
20 Chapter 257, Section 5-313, as amended) is amended to read:

21 "45-5-313. PROCEEDINGS SUBSEQUENT TO APPOINTMENT

22 [~~VENUE~~].--

23 A. The court where the protected person resides has
24 concurrent jurisdiction with the court that appointed the
25 guardian, or in which acceptance of a testamentary appointment

1 was filed, over resignation, removal, accounting, petitions for
2 visitation by a person listed in Paragraphs (1) through (5) of
3 Subsection A of Section 1 of this 2016 act and other
4 proceedings relating to the guardianship.

5 B. Subject to the transfer provisions of the
6 Uniform Adult Guardianship and Protective Proceedings
7 Jurisdiction Act, if the court located where the protected
8 person resides is not the court in which acceptance of
9 appointment is filed, the court in which proceedings subsequent
10 to appointment are commenced shall in all appropriate cases
11 notify the other court, in this or another state, and after
12 consultation with that court determine whether to retain
13 jurisdiction or transfer the proceedings to the other court,
14 whichever may be in the best interests of the protected person.
15 A copy of any order accepting a resignation or removing a
16 guardian shall be sent to the court in which acceptance of
17 appointment is filed."

18 SECTION 3. EMERGENCY.--It is necessary for the public
19 peace, health and safety that this act take effect immediately.

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