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FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/09

SPONSOR Cisneros LAST UPDATED _____ HB _____

SHORT TITLE Expand Grandparent Visitation Privileges SB 298

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1 Substantial	\$0.1 Substantial	\$0.1 Substantial	\$0.1 Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Aging and Long-Term Services Department (ALTSD)
 Children, Youth and Families Department (CYFD)
 Attorney General's Office (AGO)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

Senate Bill 298 amends Section 40-9-2 NMSA 1978 the Grandparent's Visitation Privileges Act to eliminate former requirements of a child's age and time spent residing with a grandparent as threshold requirements to filing a grandparent visitation petition. The new section states that if a minor child has had "some prior contact" with the biological grandparent, the biological grandparent may petition the district court for visitation privileges with that child and the district court may grant the grandparent reasonable visitation rights upon finding that the visitation rights would be in the minor child's best interest. The proposed legislation also eliminates existing language dealing with jurisdictional requirements in order to make such requirements of the Act consistent with the Uniform Child Custody Jurisdiction and Enforcement Act.

FISCAL IMPLICATIONS

AOC reported the proposed legislation would have a substantial financial impact on the courts. The existing threshold requirements of a child's age and minimum amount of time spent residing with a grandparent (for a motion to intervene in a divorce or custody case), or the death of the related parent (to file a grandparent visitation petition), establish reasonably limited grounds of an existing relationship which justify the involvement of the courts in these family relationships.

The vague standard of “some prior contact” basically means that any grandparent can file a petition. Nationwide, and under U.S. Supreme Court case law, grandparents have privileges, not rights, and the courts are not equipped to handle the level of contested cases this type of petition would generate.

AOC stated there will be minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

ALTSD reported that in today’s society many grandchildren and grandparents are separated due to divorce and other reasons. Many grandparents are also helping to raise grandchildren when parents are unable to care for them, only to be separated from the grandchildren when parents resume care. As the older adult population of New Mexico continues to grow rapidly, these issues become more prominent. The support of older adult role models and mentors contributes greatly to the well-being and development of children. It also greatly enhances the quality of life for the grandparents. The proposed legislation will support the ability of New Mexico’s grandparents to maintain these important connections with their grandchildren.

CYFD stated the Grandparent’s Visitation Privileges Act provides a statutory right for grandparents to obtain court-ordered visitation of their grandchildren. In its present form, the Act permits a court to grant reasonable visitation privileges to a grandparent only in very specific circumstances, such as:

- Instances in which one or both parents are deceased;
- The child resided with a grandparent for at least three months and was less than six years old at the beginning of that period, and was subsequently removed from the grandparent’s home;
- The child resided with a grandparent for a period of at least six months and was six years or older, and was subsequently removed from the grandparent’s home; and
- The child has been or is being adopted by certain persons.

CYFD noted the proposed legislation amends the Act to remove the time and age requirements and requires only that “a minor child has had some prior contact” with the minor child’s “biological grandparent” as grounds for a petition for visitation privileges. This excludes adoptive grandparents, who are presently allowed grounds for petition under statute.

CYFD noted the proposed legislation does not provide a specific definition of “prior contact”, or address the effect on biological grandparents or adoptive grandparents whose rights to file a petition for court-ordered visitation may be barred as a result of a parent’s intentional conduct to prohibit a grandparent from having any “prior contact” with a grandchild in order to prevent such a petition.

PERFORMANCE IMPLICATIONS

AOC noted the proposed legislation may have an impact on the following performance measures for the district courts: cases disposed of as a percent of cases filed and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

ALTSD noted it contracts with legal providers who can assist grandparents in filing visitation petitions.

OTHER SUBSTANTIVE ISSUES

AGO reported that the amendment to the Act in the proposed subsection C replacement paragraph states that a “biological grandparent” may petition for visitation privileges. The current subsection C and D do not include the term biological. However, the remainder of 40-9-2 NMSA 1978 references “biological grandparents” on multiple occasions. AGO noted the proposed amendment should likely be read together with the other sections.

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