

LFC Requester:	Klundt, Kelly
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**AGENCY BILL ANALYSIS
2014 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 X **Amendment**
Correction **Substitute**

Date February 3, 2014
Bill No: HB160-305 Feb 3

Sponsor: Rep. Yvette Herrell **Reviewing** Attorney General's Office
Short Kinship Guardian Background **Person Writing** Luis Carrasco, AAG
Title: Checks **Phone:** 827-6040 **Email** LCarrasco@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

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

BILL SUMMARY

Summary Synopsis:

House Bill 160 ("HB160") proposes to add a new subsection to the Kinship Guardianship Act, NMSA 1978, Section 40-10B-1 to – 15 (2001) ("Act") that would require a nationwide criminal history records check on all persons seeking appointment as a guardian under the Act. As amended, the Act would require a prospective guardian to provide a set of his/her fingerprints to the Children, Youth and Families Department ("CYFD"), and authorizes CYFD to use those fingerprints to conduct a background check through the Department of Public Safety ("DPS") and the Federal Bureau of Investigation ("FBI"). Under the Act, as amended, records obtained by CYFD as part of this background check are deemed confidential, may not be used for purposes other than conducting background checks, and may not be released/disclosed to any person or agency except via a court order or the written consent of the person who is the subject of the records. HB160, if passed and signed into law, would make release or disclosure of records obtained through such background checks without proper authorization a misdemeanor subject to sentencing under NMSA 1978, Section 31-19-1.

One additional minor change would be to remove the reference to "[t]his act" in Section 1 of the Act, and substitute "Chapter 40, Article 10B NMSA 1978" which clarifies those sections constituting the Act. The effective date of HB160 would be July 1, 2014, if passed and signed into law.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

It is unclear which individuals/agencies/entities would be responsible for bearing the costs of undertaking such background checks.

SIGNIFICANT LEGAL ISSUES

Requiring fingerprinting and background checks for guardians appointed under the Act would provide added safeguards for child welfare in situations where a child is in the care of an adult other than the child's parent(s) and a guardian has been appointed for that child under the Act. However, it remains unclear whether persons seeking appointment as a guardian under the Act but who oppose submitting to a criminal background check will challenge this requirement under constitutional, public policy or other legal principles.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

None noted.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

Although challenges to the fingerprinting and background check requirement are not likely to succeed, it would likely fall upon the Attorney General's Office to defend such challenges, requiring additional financial and staff resources should any such challenge materialize.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

None noted.

TECHNICAL ISSUES OR DRAFTING ERROR

None noted.

OTHER SUBSTANTIVE LEGAL ISSUES

None noted.

ALTERNATIVES TO ENACTING THIS BILL

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. Persons seeking appointment as guardians to children under the Act will not be required to submit their fingerprints to CYFD for the purpose of conducting background checks through DPS and the FBI.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

The legislature may wish to specify whether a person seeking appointment as a guardian under the Act will be responsible for paying the costs of fingerprinting and conducting a DPS/FBI background check or whether such costs will be borne by CYFD or some other agency/entity.