

The Legislature
of the
State of New Mexico

50th Legislature, 2nd Session

LAWS 2012

CHAPTER _____

HOUSE MEMORIAL 61, as amended

Introduced by
REPRESENTATIVE GAIL CHASEY



1 A MEMORIAL

2 REQUESTING THE NEW MEXICO SUPREME COURT AND ADMINISTRATIVE
3 OFFICE OF THE COURTS TO PROVIDE BASIC INFORMATION REGARDING
4 GUARDIANSHIP, CONSERVATOR AND ELDER ABUSE CASES; REQUESTING
5 THE ADMINISTRATIVE OFFICE OF THE COURTS TO REQUIRE CRIMINAL
6 BACKGROUND AND CREDIT CHECKS OF GUARDIANS AND CONSERVATORS AND
7 TO PROMULGATE PROCEDURES TO TRACK ANNUAL REPORTING BY
8 GUARDIANS AND CONSERVATORS.

9
10 WHEREAS, court-appointed guardians step into the shoes
11 of at-risk elders and dependent adults, making judgments about
12 medical care, property, living arrangements, lifestyle and
13 potentially all personal and financial decisions; and

14 WHEREAS, the need for guardianship monitoring increases
15 as the nation's population ages; and

16 WHEREAS, according to a 2007 study by the AARP public
17 policy institute entitled, "Guarding the Guardians: Promising
18 Practices for Court Monitoring", the population of elderly
19 people over the age of eighty-five is growing rapidly, with
20 Alzheimer's disease and related dementias becoming more
21 prevalent; and

22 WHEREAS, responses to a 2010 survey conducted for the
23 joint task force on elders and the courts convened by the
24 conference of chief justices and conference of state court
25 administrators indicate that guardianship filings and

1 caseloads are increasing; and

2 WHEREAS, the increasing longevity of dependent adults
3 means that guardianship cases stay open for longer periods of
4 time; and

5 WHEREAS, it is the responsibility of the court to
6 oversee and monitor guardianship cases to ensure the welfare
7 of protected persons, to discourage and identify neglect,
8 abuse or exploitation by guardians and to sanction guardians
9 who demonstrate malfeasance; and

10 WHEREAS, New Mexico law requires guardians and
11 conservators to report annually to the court; and

12 WHEREAS, a guardianship task force was convened pursuant
13 to House Joint Memorial 34, passed in the first session of the
14 forty-eighth legislature, and reported its conclusions and
15 recommendations to the interim legislative health and human
16 services committee in October 2008; and

17 WHEREAS, one of the guardianship task force's findings
18 revealed that the vast majority of guardians are not filing
19 the required annual report, often because the guardian is
20 unaware of the requirement to do so; and

21 WHEREAS, the guardianship task force report found that
22 courts rarely impose penalties for failure to file reports and
23 that courts rarely follow up with onsite monitoring of
24 individual guardians, or of those persons under their care,
25 due to lack of resources and funding; and

1 WHEREAS, New Mexico law does not, under any
2 circumstance, allow a court to waive the requirement that each
3 guardian and conservator file an annual report; and

4 WHEREAS, the guardianship task force also reported that
5 there is no criminal background check for prospective
6 guardians and that convicted felons are not barred from
7 serving as guardians; and

8 WHEREAS, according to the guardianship task force, the
9 number of guardianship orders and active guardianship cases in
10 New Mexico was unknown as of late 2008; and

11 WHEREAS, the 2010 report of the joint task force on
12 elders and the courts similarly found that most state court
13 systems are not currently able to determine the number of
14 guardianship, conservatorship and elder abuse cases that are
15 filed, pending and closed each year; and

16 WHEREAS, timely, accurate and complete data on the
17 number of guardianship, conservatorship and elder abuse cases
18 is essential in determining the policies, procedures,
19 approaches and resources needed to address these cases
20 effectively and measure the performance of the court; and

21 WHEREAS, states without a comprehensive system of
22 guardianship monitoring and accountability afford ample
23 opportunity for undetected abuse, neglect and exploitation;
24 and

25 WHEREAS, while there are many individual judges who are

1 creative and diligent in providing oversight of guardians and
2 conservators, the need for an ongoing program to monitor
3 guardians must be addressed at a programmatic and budgetary
4 level;

5 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF
6 REPRESENTATIVES OF THE STATE OF NEW MEXICO that the
7 administrative office of the courts be requested to study this
8 matter and identify actions, to include resources needed, to
9 support a request that the New Mexico supreme court appoint a
10 special auditor to conduct a census of open guardianship and
11 conservator proceedings, by district, throughout the state and
12 grant the special auditor access to the probate court case
13 management system, or to case files if required information is
14 not available through an automated or electronic system, in
15 each district; and

16 BE IT FURTHER RESOLVED that the administrative office of
17 the courts identify resources necessary to ensure that any
18 guardianship and conservator case census include the civil
19 action number; the case caption; the original file date; the
20 date of the order appointing the guardian or conservator; the
21 date on which the first annual report required by Section
22 45-5-314 or 45-5-409 NMSA 1978 was or is due; the date filed
23 for all reports, including the annual reports required by
24 Sections 45-5-314 and 45-5-409 NMSA 1978, made by the
25 respective guardian or conservator; and the name and address

1 of the guardian or conservator; and

2 BE IT FURTHER RESOLVED that the administrative office of
3 the courts be requested to make provisions for each case
4 management system in each district to identify and track cases
5 of elder abuse to enable the administrative office of the
6 courts to provide the civil action number; case caption;
7 original file date; and status or disposition in an annual
8 report to the legislative health and human services committee;
9 and

10 BE IT FURTHER RESOLVED that the administrative office of
11 the courts be requested to make its first annual report on
12 elder abuse cases pending at any time during calendar year
13 2011 through July 1, 2012 to the legislative health and human
14 services committee by November 1, 2012; and

15 BE IT FURTHER RESOLVED that the administrative office of
16 the courts identify resources or action needed to implement
17 mandatory pre-appointment criminal background and credit
18 checks of all guardians and conservators of adults with
19 limited capacity; and

20 BE IT FURTHER RESOLVED that the administrative office of
21 the courts be requested to identify existing training programs
22 and additional resources needed to develop and offer a basic
23 training program for guardians and conservators to educate
24 them about their duties and reporting requirements; and

25 BE IT FURTHER RESOLVED that the administrative office of

1 the courts be requested to identify rules necessary to require
2 currently serving guardians or conservators who receive
3 financial compensation for their service and who have failed
4 to timely file any annual report with the court as required by
5 law to attend basic training as a condition precedent to
6 receiving future compensation for serving as a guardian or
7 conservator; and

8 BE IT FURTHER RESOLVED that the administrative office of
9 the courts identify rules necessary to require guardians and
10 conservators appointed after January 1, 2013 to complete basic
11 training before appointment; and

12 BE IT FURTHER RESOLVED that the administrative office of
13 the courts identify rules and procedures necessary to ensure
14 that all courts appointing guardians or conservators for
15 adults with limited capacity require and track annual
16 reporting by guardians and conservators to the court; and

17 BE IT FURTHER RESOLVED that the administrative office of
18 the courts be requested to report its findings about
19 resources, rules and procedures needed to implement these
20 requests to the legislative health and human services
21 committee by November 1, 2012; and

22 BE IT FURTHER RESOLVED that copies of this memorial be
23 transmitted to the New Mexico supreme court, the
24 administrative office of the courts, the interim legislative
25 health and human services committee and the New Mexico

1 guardianship association.

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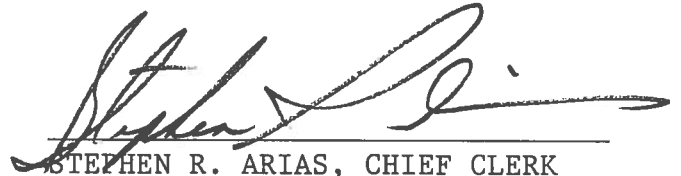
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BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES