

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 124 amends Article 5, Protection of Persons Under Disability and Their Property, in the Probate Code. This legislation clarifies the court process upon the death of the protected person, guardian or conservator as follows:

Death of the guardian –

- The guardian’s authority and responsibility for the protected person terminates but the guardianship of the protected person continues, pending appointment of a successor guardian.
- If the guardian has a testamentary document nominating a successor guardian, the court shall consider the nominee for appointment as successor guardian of the protected person.

Death of the protected person –

- Guardian and/or Conservator shall notify the court within three days of learning of the death of the protected person.
- Guardian and/or Conservator shall have the authority to obtain the death certificate of the protected person without a court order.
- Guardian and/or Conservator, or an interested person, may request the court hold a hearing for the following limited purposes:
 - Direct burial, cremation of funeral arrangements for the protected person,
 - Authorize the guardian and/or conservator to use the protected person’s estate to pay for reasonable funeral services.
- The court shall hold a hearing within seven days of the request and may issue an appropriate order resulting from the hearing.
- If after forty (40) days after the death of the protected person, no other person has been appointed as Personal Representative and no application/petition has been filed, the guardian and/or conservator may apply serve as a Personal Representative.
 - After providing notice, the court may issue an order conferring the powers and duties of a Personal Representative to the guardian and/or conservator.
 - If both the guardian and the conservator seek appointment as Personal Representative, the conservator shall have priority for appointment. In the absence of a conservator, the court may appoint a guardian as the Personal Representative.
- The guardian and/or conservator shall file a final report within forty-five (45) days of the protected person’s death and the court shall hold a hearing to review the final report.
 - Court shall determine the distribution of the formerly protected person’s estate and satisfaction that all matters are resolved.
 - Court shall issue an order terminating the guardianship and/or conservatorship.
 - Termination does not affect the guardian and/or conservator’s liability for prior acts or obligation to account for funds and assets of the protected person’s estate.

Death of the conservator –

- Upon the death of a conservator, the court may appoint another conservator or make any

other order that is appropriate. If a successor conservator is appointed, the successor conservator succeeds to the title and powers of the predecessor.

The effective date of this legislation is July 1, 2025.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for the statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the number of hearing held. 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

In 2021 the legislature passed HB 234, directing the Supreme Court to establish the Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) to provide ongoing evaluation of New Mexico laws, services and practices related to adult guardianship and conservatorship. The composition of WINGS members is a partnership of stakeholders including persons under a guardianship, family members, a professional guardian, a professional conservator, and representatives of the executive, legislative and judicial branches of government.

After extensive review of the issues that occur in Adult Guardianship and Conservatorship cases when the protected person, guardian and/or conservator dies, this legislation was unanimously endorsed and supported by WINGS members to address the following issues:

1. Continue the guardianship and/or conservatorship after the death of the protected person to allow for burial, cremation, or funeral arrangements and the payment of those arrangements from the protected person's estate. Authorize the guardian and/or conservator to obtain a death certificate after the death of the protected person.
2. Allow the appointment of a guardian as personal representative of the estate of a deceased protected person similar to how the existing Probate Code allows appointment of a conservator to serve as personal representative. Clarifies the priority of appointment if both a guardian and conservator seek appointment as the Personal Representative of the deceased protected person.
3. Provide a formal process to review a final report filed by a guardian and/or conservator upon the death of the protected person. Require a final hearing prior to termination of the guardianship/conservatorship and the authority of the guardian and/or conservator. Ensure the delivery of the estate of the deceased protected person to a duly appointed personal representative.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed

ADMINISTRATIVE IMPLICATIONS - none identified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP - none identified.

TECHNICAL ISSUES – none.

OTHER SUBSTANTIVE ISSUES - none identified.

ALTERNATIVES - none.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL – none.

AMENDMENTS – none.