

LFC Requester:

Rachel Mercer-Garcia

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 1/27/25

Check all that apply:

Bill Number: HB 124

Original Correction
Amendment Substitute

Sponsor: Rep. Joanne Ferrary

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing Analysis: Assistant Solicitor General Taylor Bui

Short Title: Death of Protected Person or Guardian

Phone: 505-537-7676

Email: legisfir@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

HB 124 makes numerous amendments and adds new language to the Uniform Probate Code, Chapter 45, related to protected persons and guardianships. Substantive changes are outlined below:

Section 1 amends Section 45-5-306 by repealing the current language and replacing it with procedures and limitations upon the death of a guardian or protected person. Upon the death of the guardian, the “authority and responsibility” of the guardian terminates, while the guardianship of the protected person continues until a new guardian has been appointed, under the provisions of Sections 45-5-303 and 45-5-307.

Upon the death of the protected person, the guardian is required to notify the court within three days of learning of the death and is given the authority to obtain the protected person’s death certificate and to request a hearing to coordinate and pay for reasonable funeral services. Additionally, upon the death of the protected person, the guardian is required to deliver to the court any last will and retain their estate to be delivered to a duly appointed personal representative. Absent such a personal representative, the guardian is empowered to administer and distribute the protected person’s estate, with the authority as personal representative. In the event of both the guardian and conservator seeking appointment as the protected person’s personal representative, HB 124 gives priority to the conservator. If the guardian is found to be incapacitated, the court shall follow the procedures in Sections 45-5-303 and 45-5-307. Lastly, the guardian will be required to file a final report forty-five days following the protected person’s death for the court to hold a hearing to determine whether the protected person’s estate has been duly delivered to the appropriate personal representative and whether to terminate the guardianship. Termination does not affect the guardian’s obligations and liability for any prior acts.

Section 2 makes global amendments to 45-5-307, amending instances of “incapacitated” to “protected.”

Section 3 adds a new section to the uniform probate code concerning the death of a protected person or conservator or the incapacity of the conservator. In this section, upon the death of the conservator, the authority and responsibility of the conservator

terminates, while the conservatorship continues until a successor conservator has been properly appointed pursuant to Section 45-5-407 and Section 45-5-415. Upon the death of a protected person, the conservator shall notify the court within three days, is given the authority to obtain the protected person's death certificate and may request a hearing to arrange funeral services. Additionally, the conservator is required to deliver to the court any last will and retain their estate to be delivered to a duly appointed personal representative. Absent such a personal representative, the conservator is empowered to administer and distribute the protected person's estate, with the authority as personal representative. This section mirrors Section 1, granting priority to the conservator in the event both the conservator and guardian seek appointment as personal representative. If the conservator is found to be incapacitated, the court shall follow the procedures in Sections 45-5-407 and 45-5-415. Lastly, the conservator will be required to file a final report forty-five days following the protected person's death for the court to hold a hearing to determine whether the protected person's estate has been duly delivered to the appropriate personal representative and whether to terminate the conservatorship. Termination does not affect the conservator's obligations and liability for any prior acts.

Section 4 makes global amendments to Section 45-5-415, amending instances of "incapacitated" to "protected."

Section 5 makes additional technical and global amendments to Section 45-5-425 to refer directly to "the protected person" and other technical changes, and repeals subsection E, which currently pertains to outlining the process for the death of the protected person, that has been largely captured in Section 3.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

Currently Section 45-5-415 is cross referenced in Section 45-5-101 "Definitions and use of terms" wherein a "limited conservatorship" means that an incapacitated person is subject to a conservator's exercise of some but not all of the powers enumerated in Sections 45-5-424 and 45-5-425 NMSA 1978[.] If those duties that were moved from section 45-5-425(E) are intended to remain with a limited conservatorship, then the new section created by Section 3 may need to be added to the definition in Section 45-5-101.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 125 relates to the ability of conservators to seek a waiver or release of liability.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

In both section 1 and 3, upon the death of the protected person, HB 124 imposes a duty to the guardian or conservator to notify the court of the death within three days of “learning of the death.” In contrast, those sections impose a duty on the guardian or conservator to file a final report within forty-five days of the protected person’s death. For consistency, similar language from the notification of death may be considered for the final report timeline, either “forty-five days after learning of the protected person’s death” or “forty-five days after notifying the court of the protected person’s death.”