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HOUSE MEMORIAL 61

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Gail Chasey

A MEMORIAL

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

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

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

WHEREAS, according to a 2007 study by the AARP public

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1 policy institute entitled, "Guarding the Guardians: Promising  
2 Practices for Court Monitoring", the population of elderly  
3 people over the age of eighty-five is growing rapidly, with  
4 Alzheimer's disease and related dementias becoming more  
5 prevalent; and

6 WHEREAS, responses to a 2010 survey conducted for the  
7 joint task force on elders and the courts convened by the  
8 conference of chief justices and conference of state court  
9 administrators indicate that guardianship filings and caseloads  
10 are increasing; and

11 WHEREAS, the increasing longevity of dependent adults  
12 means that guardianship cases stay open for longer periods of  
13 time; and

14 WHEREAS, it is the responsibility of the court to oversee  
15 and monitor guardianship cases to ensure the welfare of wards,  
16 to discourage and identify neglect, abuse or exploitation by  
17 guardians and to sanction guardians who demonstrate  
18 malfeasance; and

19 WHEREAS, New Mexico law requires guardians and  
20 conservators to report annually to the court; and

21 WHEREAS, a guardianship task force was convened pursuant  
22 to House Joint Memorial 34, passed in the first session of the  
23 forty-eighth legislature, and reported its conclusions and  
24 recommendations to the interim legislative health and human  
25 services committee in October 2008; and

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

5           WHEREAS, the guardianship task force report found that  
6 courts rarely impose penalties for failure to file reports and  
7 that courts rarely follow up with onsite monitoring of  
8 individual guardians, or of those persons under their care, due  
9 to lack of resources and funding; and

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

13           WHEREAS, the guardianship task force also reported that  
14 there is no criminal background check for prospective guardians  
15 and that convicted felons are not barred from serving as  
16 guardians; and

17           WHEREAS, according to the guardianship task force, the  
18 number of guardianship orders and active guardianship cases in  
19 New Mexico was unknown as of late 2008; and

20           WHEREAS, the 2010 report of the joint task force on elders  
21 and the courts similarly found that most state court systems  
22 are not currently able to determine the number of guardianship,  
23 conservatorship and elder abuse cases that are filed, pending  
24 and closed each year; and

25           WHEREAS, timely, accurate and complete data on the number  
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1 of guardianship, conservatorship and elder abuse cases is  
2 essential in determining the policies, procedures, approaches  
3 and resources needed to address these cases effectively and  
4 measure the performance of the court; and

5 WHEREAS, states without a comprehensive system of  
6 guardianship monitoring and accountability afford ample  
7 opportunity for undetected abuse, neglect and exploitation; and

8 WHEREAS, while there are many individual judges who are  
9 creative and diligent in providing oversight of guardians and  
10 conservators, the need for an ongoing program to monitor  
11 guardians must be addressed at a programmatic and budgetary  
12 level;

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

24 BE IT FURTHER RESOLVED that the administrative office of  
25 the courts identify resources necessary to ensure that any

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1 guardianship and conservator case census include the civil  
2 action number; the case caption; the original file date; the  
3 date of the order appointing the guardian or conservator; the  
4 date on which the first annual report required by Section  
5 45-5-314 or 45-5-409 NMSA 1978 was or is due; the date filed  
6 for all reports, including the annual reports required by  
7 Sections 45-5-314 and 45-5-409 NMSA 1978, made by the  
8 respective guardian or conservator; and the name and address of  
9 the guardian or conservator; and

10 BE IT FURTHER RESOLVED that the administrative office of  
11 the courts be requested to make provisions for each case  
12 management system in each district to identify and track cases  
13 of elder abuse to enable the administrative office of the  
14 courts to provide the civil action number; case caption;  
15 original file date; and status or disposition in an annual  
16 report to the legislative health and human services committee;  
17 and

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

23 BE IT FURTHER RESOLVED that the administrative office of  
24 the courts identify resources or action needed to implement  
25 mandatory pre-appointment criminal background and credit checks

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1 of all guardians and conservators of adults with limited  
2 capacity; and

3 BE IT FURTHER RESOLVED that the administrative office of  
4 the courts be requested to identify existing training programs  
5 and additional resources needed to develop and offer a basic  
6 training program for guardians and conservators to educate them  
7 about their duties and reporting requirements; and

8 BE IT FURTHER RESOLVED that the administrative office of  
9 the courts be requested to identify rules necessary to require  
10 currently serving guardians or conservators who receive  
11 financial compensation for their service and who have failed to  
12 timely file any annual report with the court as required by law  
13 to attend basic training as a condition precedent to receiving  
14 future compensation for serving as a guardian or conservator;  
15 and

16 BE IT FURTHER RESOLVED that the administrative office of  
17 the courts identify rules necessary to require guardians and  
18 conservators appointed after January 1, 2013 to complete basic  
19 training before appointment; and

20 BE IT FURTHER RESOLVED that the administrative office of  
21 the courts identify rules and procedures necessary to ensure  
22 that all courts appointing guardians or conservators for adults  
23 with limited capacity require and track annual reporting by  
24 guardians and conservators to the court; and

25 BE IT FURTHER RESOLVED that the administrative office of

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1 the courts be requested to report its findings about resources,  
2 rules and procedures needed to implement these requests to the  
3 legislative health and human services committee by November 1,  
4 2012; and

5 BE IT FURTHER RESOLVED that copies of this memorial be  
6 transmitted to the New Mexico supreme court, the administrative  
7 office of the courts, the interim legislative health and human  
8 services committee and the New Mexico guardianship association.

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