

Calendar No. 450112TH CONGRESS
2^D SESSION**S. 1744**

To provide funding for State courts to assess and improve the handling of proceedings relating to adult guardianship and conservatorship, to authorize the Attorney General to carry out a pilot program for the conduct of background checks on individuals to be appointed as guardians or conservators, and to promote the widespread adoption of information technology to better monitor, report, and audit conservatorships of protected persons.

IN THE SENATE OF THE UNITED STATES

OCTOBER 20, 2011

Ms. KLOBUCHAR (for herself, Mr. NELSON of Florida, Mr. CORNYN, and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 12, 2012

Reported by Mr. LEAHY, with an amendment and an amendment to the title
[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To provide funding for State courts to assess and improve the handling of proceedings relating to adult guardianship and conservatorship, to authorize the Attorney General to carry out a pilot program for the conduct of background checks on individuals to be appointed as guardians or conservators, and to promote the widespread adoption of information technology to better mon-

itor, report, and audit conservatorships of protected persons.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Guardian Account-
 5 ability and Senior Protection Act”.

6 **TITLE I—STATE COURT**
 7 **IMPROVEMENT**

8 **SEC. 101. FUNDING FOR STATE COURTS TO ASSESS AND IM-**
 9 **PROVE HANDLING OF PROCEEDINGS RELAT-**
 10 **ING TO ADULT GUARDIANSHIP AND CON-**
 11 **SERVATORSHIP.**

12 Part A of title IV of the Older Americans Act of 1964
 13 (42 U.S.C. 3032 et seq.) is amended—

14 (1) in section 411(a)—

15 (A) in the matter preceding paragraph (1),
 16 by inserting “(including the highest court of
 17 each State)” after “with States”;

18 (B) in paragraph (12), by striking “; and”
 19 and inserting a semicolon;

20 (C) by redesignating paragraph (13) as
 21 paragraph (14); and

22 (D) by inserting after paragraph (12) the
 23 following:

1 “(13) assessing the fairness, effectiveness, time-
 2 liness, and accessibility of adult guardianship and
 3 conservatorship proceedings, implementing changes
 4 deemed necessary as a result of the assessments,
 5 and collecting necessary data regarding those pro-
 6 ceedings and the impact of the necessary changes;
 7 and”;

8 (2) by inserting at the end the following:

9 **“SEC. 423. FUNDING FOR STATE COURTS TO ASSESS AND**
 10 **IMPROVE HANDLING OF PROCEEDINGS RE-**
 11 **LATING TO ADULT GUARDIANSHIP AND CON-**
 12 **SERVATORSHIP.**

13 “(a) IN GENERAL.—The Assistant Secretary, in con-
 14 sultation with the Attorney General, shall make grants,
 15 in accordance with this section, to the highest court of
 16 a State for the purpose of enabling such a court, in col-
 17 laboration with the State unit on aging—

18 “(1) to conduct assessments, in accordance with
 19 such requirements as the Secretary shall publish, of
 20 the role, responsibilities, and effectiveness of State
 21 courts in carrying out State laws requiring pro-
 22 ceedings (conducted by or under the supervision of
 23 the courts)—

1 “(A) that determine whether to impose a
2 full, limited, or temporary adult guardianship
3 or conservatorship;

4 “(B) that select a guardian of a person or
5 conservator of an estate;

6 “(C) that review the continued need for a
7 full, limited, or temporary guardianship or con-
8 servatorship of an adult; and

9 “(D) that review the performance of a per-
10 son appointed as guardian or conservator for an
11 adult;

12 “(2) to implement changes deemed necessary as
13 a result of the assessments; and

14 “(3) to collect data regarding those proceedings
15 and the impact of the necessary changes.

16 “(b) APPLICATIONS.—In order to be eligible for a
17 grant under this section, a highest State court shall sub-
18 mit to the Assistant Secretary an application at such time,
19 in such form, and including such information and assur-
20 ances as the Assistant Secretary shall require.

21 “(c) ALLOTMENTS.—Each highest State court which
22 has an application approved under subsection (b), and is
23 conducting assessment activities in accordance with this
24 section, may receive a grant from the Assistant Secretary,
25 for each of fiscal years 2012 through 2015, from amounts

1 appropriated to carry out section 411, in an amount to
 2 be determined appropriate by the Assistant Secretary.

3 “(d) USE OF GRANT FUNDS.—Each highest State
 4 court which receives funds under this section may use such
 5 funds to pay—

6 “(1) any or all costs of activities under this sec-
 7 tion in fiscal year 2012; and

8 “(2) not more than 75 percent of the cost of ac-
 9 tivities under this section in each of fiscal years
 10 2013, 2014, and 2015.”.

11 **TITLE II—BACKGROUND** 12 **CHECKS**

13 **SEC. 201. DEFINITIONS.**

14 In this title:

15 (1) **ADVERSE INFORMATION.**—The term “ad-
 16 verse information” means—

17 (A) information from a criminal history
 18 background check that indicates that the indi-
 19 vidual has been convicted of a relevant crime;

20 (B) information that the individual has
 21 been judicially determined to have committed
 22 abuse, abandonment, neglect, or financial or
 23 sexual exploitation of a child, spouse, or other
 24 adult; and

1 ~~(C)~~ information from an adult or child
 2 abuse registry that indicates that the individual
 3 is included in an adult or child abuse registry.

4 ~~(2)~~ CONSERVATOR.—The term “conservator”
 5 means an individual who is appointed by a court
 6 under applicable State law to manage the estate of
 7 a protected person. Such definition shall not apply
 8 to—

9 ~~(A)~~ a bank with trust powers, bank and
 10 trust company, or trust company organized
 11 under the laws of any State or of the United
 12 States and which is regulated by the commis-
 13 sioner of commerce or a Federal regulator; or

14 ~~(B)~~ a credit union, savings and loan, or
 15 other financial institution.

16 ~~(3)~~ GUARDIAN.—The term “guardian” means
 17 an individual who is appointed by a court to protect
 18 an incapacitated individual’s personal or financial
 19 welfare.

20 ~~(4)~~ PROTECTED PERSON.—The term “protected
 21 person” means an adult whom the court determines
 22 in a guardian or conservatorship proceeding is un-
 23 able to manage property and accounts.

24 ~~(5)~~ RELEVANT CRIME.—The term “Relevant
 25 crime” includes any felony or misdemeanor convic-

1 tion for abuse, neglect, fraud, misappropriation, mis-
 2 representation, theft, conversion, or other financial
 3 crime, or such other types of offenses as a partici-
 4 pating highest court of a State may specify for pur-
 5 poses of conducting the pilot program in such State.

6 **SEC. 202. PILOT PROGRAM FOR NATIONAL AND STATE**
 7 **BACKGROUND CHECKS OF GUARDIANS AND**
 8 **CONSERVATORS.**

9 (a) **AUTHORITY TO CONDUCT PROGRAM.**—The At-
 10 torney General, shall establish a pilot program to identify
 11 efficient, effective, and economical procedures for State
 12 courts to conduct background checks on prospective
 13 guardians and conservators.

14 (b) **REQUIREMENTS.**—

15 (1) **REQUIREMENT TO CONDUCT BACKGROUND**
 16 **CHECKS.**—Under the pilot program under subsection
 17 (a), a State court, prior to appointing a prospective
 18 guardian or conservator on or after the commence-
 19 ment date of the State pilot program, shall conduct
 20 a background check on the guardian or conservator
 21 in accordance with such procedures as the partici-
 22 pating State shall establish pursuant to paragraph
 23 (2).

1 (2) PROCEDURES.—The procedures established
2 by a participating highest State court under para-
3 graph (1) shall be designed to—

4 (A) provide a prospective guardian or con-
5 servator with notice that the appointing court is
6 required to perform background checks with re-
7 spect to prospective guardians or conservators;

8 (B) require, as a condition of appointment,
9 that the prospective guardian or conservator—

10 (i) provide a statement signed by the
11 prospective guardian or conservator au-
12 thorizing the appointing court to request
13 national and State criminal history back-
14 ground checks;

15 (ii) provide the appointing court with
16 a set of the prospective guardian's or con-
17 servator's fingerprints; and

18 (iii) provide information as to whether
19 the individual has been suspended or dis-
20 barred from law, accounting, or other pro-
21 fessional licensing for misconduct involving
22 financial matters that affect the ability of
23 the individual to provide the services of a
24 guardian or conservator safely and com-
25 petently;

1 (C) permit the courts to check any avail-
2 able State and national registries that would be
3 likely to contain adverse information concerning
4 a prospective guardian or conservator; and

5 (D) permit the courts hearing guardian or
6 conservatorship matters to obtain State and na-
7 tional criminal history background checks on
8 the prospective guardian or conservator.

9 (3) ~~CONSIDERATION OF INFORMATION.~~—Prior
10 to appointing an individual with respect to whom ad-
11 verse information is available as a guardian or con-
12 servator under a program under this title, the ap-
13 pointing court shall consider the nature of the infor-
14 mation or offense involved, the date of any offense,
15 and evidence of the proposed guardian's or conserva-
16 tor's rehabilitation and determine whether the indi-
17 vidual's appointment is in the best interest of the
18 protected person.

19 (4) ~~USE OF INFORMATION; IMMUNITY FROM LI-~~
20 ~~ABILITY.~~—A participating highest State court shall
21 ensure that information obtained about the prospec-
22 tive guardian or conservator pursuant to a back-
23 ground check conducted under the State supreme
24 court pilot program is used only for the purpose of

1 determining the suitability of the prospective guard-
2 ian or conservator for appointment.

3 (c) PARTICIPATING STATES.—

4 (1) IN GENERAL.—The Attorney General shall
5 enter into agreements with not more than 5 States
6 to conduct the pilot program under this section in
7 such States.

8 (2) REQUIREMENTS.—An agreement entered
9 into under paragraph (1) shall require that a partici-
10 pating highest State court—

11 (A) be responsible for monitoring compli-
12 ance with the requirements of the pilot pro-
13 gram;

14 (B) have procedures by which a prospective
15 guardian or conservator may appeal or dispute
16 the accuracy of the information obtained in a
17 background check, including consideration of
18 the nature of the information or offense in-
19 volved, the date of offense, and the evidence of
20 the prospective guardian's or conservator's re-
21 habilitation;

22 (C) establish procedures requiring the
23 courts hearing guardian or conservatorship
24 matters to request criminal history background
25 checks of prospective guardians or conservators

1 and review the results of any State or national
 2 criminal history background check regarding a
 3 prospective guardian or conservator to deter-
 4 mine whether the prospective guardian or con-
 5 servator has any conviction for a relevant crime;

6 (D) keep data on the background checks
 7 performed to be readily accessible for the eval-
 8 uation; and

9 (E) agree to obtain from the State, non-
 10 Federal contributions, in cash or in-kind, to-
 11 ward the costs of carrying out the pilot pro-
 12 gram in an amount equal to not less than \$1
 13 for each \$4 of Federal funds provided to the
 14 court under this section.

15 ~~(3) APPLICATION AND SELECTION CRITERIA.—~~

16 (A) APPLICATION.—The highest State
 17 court seeking to participate in the pilot pro-
 18 gram established under this section, shall sub-
 19 mit an application to the Attorney General con-
 20 taining such information and at such time as
 21 the Attorney General may specify.

22 (B) SELECTION CRITERIA.—

23 (i) IN GENERAL.—In selecting highest
 24 State court to participate in the pilot pro-

1 gram under this section, the Attorney Gen-
2 eral shall establish criteria to ensure—

3 (I) geographic diversity;

4 (II) the consideration of a variety
5 of payment mechanisms for covering
6 the costs of conducting the back-
7 ground checks required under the
8 pilot program; and

9 (III) that at least one partici-
10 pating highest State court includes
11 protected person abuse prevention
12 training for prospective guardians or
13 conservators as part of the pilot pro-
14 gram conducted in that State.

15 (ii) INCLUSION OF STATES WITH EX-
16 ISTING PROGRAMS.—Nothing in this sec-
17 tion shall be construed as prohibiting any
18 State which, as of the date of the enact-
19 ment of this Act, has procedures for con-
20 ducting background checks with respect to
21 the appointment of guardians or conserva-
22 tors from being selected to participate in
23 the pilot program conducted under this
24 section.

1 (d) PAYMENTS.—Of the amounts made available
2 under subsection (f) to conduct the pilot program under
3 this section, the Attorney General shall—

4 (1) make payments to participating highest
5 State courts for the costs of conducting the pilot
6 program in such States which may include the ad-
7 ministration of the pilot program, staffing, the cost
8 of background checks, and other purposes as deter-
9 mined by the Attorney General; and

10 (2) reserve up to 4 percent of such amounts to
11 conduct the evaluation required under subsection
12 (e).

13 (e) EVALUATION.—The Attorney General shall,
14 through grant, contract, or interagency agreement, con-
15 duct an evaluation of the pilot program conducted under
16 this section. Such evaluation should—

17 (1) review the various procedures implemented
18 by participating highest State courts for the conduct
19 of background checks of prospective guardians or
20 conservators and identify the most efficient, effec-
21 tive, and economical procedures for conducting such
22 background checks;

23 (2) assess the costs of conducting such back-
24 ground checks (including start-up and administra-
25 tive costs);

1 (2) CONSERVATOR.—The term “conservator”
2 means an individual who is appointed by a court
3 under applicable State law to manage the estate of
4 a protected person.

5 (3) EXPLOITATION.—The term “exploitation”
6 means the fraudulent or otherwise illegal, unauthor-
7 ized, or improper act or process of a conservator
8 that uses the resources of a protected person for the
9 conservator’s monetary or personal benefit, profit, or
10 gain, or that results in depriving a protected person
11 of rightful access to, or use of, benefits, resources,
12 belongings, services or assets.

13 (4) GUARDIAN.—The term “guardian” means
14 an individual who is appointed by a court to protect
15 an incapacitated individual’s personal or financial
16 welfare.

17 (5) HIGHEST STATE COURT.—The term “high-
18 est State court” means the highest appellate court
19 within a State.

20 (6) PROTECTED PERSON.—The term “protected
21 person” means an adult whom the court determines
22 in a guardian or conservatorship proceeding is un-
23 able to manage property and accounts.

24 **SEC. 302. CONSERVATOR MONITORING GRANT PROGRAM.**

25 (a) GRANTS.—

1 (1) IN GENERAL.—The State Justice Institute,
2 pursuant to the authority provided in the State Jus-
3 tice Institute Act of 1984 (42 U.S.C. 10701 et seq.),
4 may award grants to eligible highest State courts to
5 assist in improving conservator monitoring efforts
6 through electronic filing.

7 (2) DURATION.—Grants awarded under para-
8 graph (1) shall be for a period of not to exceed 3
9 years.

10 (b) USE OF FUNDS.—

11 (1) IN GENERAL.—Amounts received under a
12 grant awarded under subsection (a) shall be used to
13 implement and evaluate the impact of systems ena-
14 bling the annual accountings and other required con-
15 servatorship filings to be completed, filed, reviewed,
16 and analyzed electronically in order to simplify the
17 filing process for conservators and better enable the
18 courts to identify discrepancies and detect fraud and
19 exploitation of protected persons.

20 (2) ALLOCATION.—A highest State court that
21 receives a grant under this section shall prioritize
22 the use of the grant funds so as to assist the great-
23 est number of conservators and protect the greatest
24 number of protected persons.

1 (e) APPLICATION.—A highest State court desiring a
 2 grant under subsection (a)(1) shall submit an application
 3 to the State Justice Institute at such time, in such man-
 4 ner, and accompanied by such information as the State
 5 Justice Institute may require.

6 **SEC. 303. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated to the State
 8 Justice Institute to carry out the activities under this title,
 9 such sums as may be necessary for the period of fiscal
 10 years 2012 through 2015.

11 **SECTION 1. SHORT TITLE.**

12 *This Act may be cited as the “Guardian Account-*
 13 *ability and Senior Protection Act”.*

14 **SEC. 2. ASSESSMENT AND IMPROVEMENT OF RULES AND**
 15 **PROCEDURES RELATING TO ADULT**
 16 **GUARDIANSHIPS AND CONSERVATORSHIPS.**

17 *Section 411 of the Older Americans Act of 1964 (42*
 18 *U.S.C. 3032) is amended—*

19 (1) *in subsection (a)—*

20 (A) *in the matter preceding paragraph (1),*
 21 *by inserting “(including the highest court of each*
 22 *State)” after “with States”;*

23 (B) *in paragraph (12), by striking “; and”*
 24 *and inserting a semicolon;*

1 (C) by redesignating paragraph (13) as
2 paragraph (14); and

3 (D) by inserting after paragraph (12) the
4 following:

5 “(13) in accordance with subsection (c), assess-
6 ing the fairness, effectiveness, timeliness, safety, integ-
7 rity, and accessibility of adult guardianship and con-
8 servatorship proceedings, including the appointment
9 and the monitoring of the performance of guardians
10 and conservators, and implementing changes deemed
11 necessary as a result of the assessments; and”;

12 (2) by inserting at the end the following:

13 “(c) ADULT GUARDIANSHIPS AND
14 CONSERVATORSHIPS.—

15 “(1) GRANTS.—

16 “(A) IN GENERAL.—In awarding grants or
17 contracts under subsection (a)(13), the Assistant
18 Secretary shall obtain feedback from the State
19 Justice Institute in accordance with subpara-
20 graph (B) and may consult with the Attorney
21 General, and such grants or contracts shall oth-
22 erwise comply with this subsection.

23 “(B) STATE JUSTICE INSTITUTE.—The As-
24 sistant Secretary shall submit to the State Jus-
25 tice Institute recommendations for the awarding

1 *of grants or contracts under subsection (a)(13).*
2 *The Institute shall have 60 days in which to sub-*
3 *mit to the Assistant Secretary the response of the*
4 *Institute to such recommendations. The Assistant*
5 *Secretary shall consider such response prior to*
6 *awarding such grants or contracts.*

7 “(2) *GRANTEES AND ACTIVITIES.—Grants may*
8 *be awarded under subsection (a)(13) to the highest*
9 *court of each State for the purpose of enabling such*
10 *court, in collaboration with the State unit on aging*
11 *and State adult protective service agency—*

12 “(A) *to conduct assessments of the practices*
13 *and procedures used to—*

14 “(i) *determine whether to impose a*
15 *full, limited, or temporary adult guardian-*
16 *ship or conservatorship;*

17 “(ii) *select a guardian of a person or*
18 *conservator of an estate;*

19 “(iii) *review the continued need for a*
20 *full, limited, or temporary guardianship or*
21 *conservatorship of an adult; and*

22 “(iv) *review the performance of guard-*
23 *ians or conservators;*

24 “(B) *to implement changes deemed nec-*
25 *essary as a result of the assessments; and*

1 “(C) to collect data regarding those prac-
2 tices and procedures and the impact of the nec-
3 essary changes.

4 “(3) ALLOTMENTS.—The amount of a grant
5 under subsection (a)(13) shall be determined by the
6 Assistant Secretary, in consultation with the State
7 Justice Institute and the Attorney General (if the As-
8 sistance Secretary determines appropriate).

9 “(4) BACKGROUND CHECKS.—The Assistant Sec-
10 retary shall set aside 25 percent of amounts made
11 available for grants under this subsection in each fis-
12 cal year to enable courts to implement or improve
13 systems to conduct background checks on prospective
14 guardians and conservators. Such systems shall com-
15 ply with the following requirements:

16 “(A) At minimum, the background checks
17 shall include national and State criminal back-
18 ground checks, a search of child abuse and adult
19 abuse registries, and a search as to whether the
20 individual has been suspended or disbarred from
21 law, accounting, or other professional licensing
22 for misconduct.

23 “(B) The court shall consider all of the in-
24 formation obtained from the background check to
25 determine whether such an individual is suffi-

1 *ciently trustworthy to be a guardian or conser-*
2 *vator and that the appointment of such indi-*
3 *vidual is in the best interest of the protected per-*
4 *son.*

5 “(C) *The information obtained from the*
6 *background check shall only be used for the pur-*
7 *pose of determining the suitability of the pro-*
8 *spective guardian or conservator for appoint-*
9 *ment.*

10 “(5) *ELECTRONIC FILING.—Funds received pur-*
11 *suant to subsection (a)(13) may be used to implement*
12 *systems enabling the annual accountings and other*
13 *required conservatorship and guardianship filings to*
14 *be completed, filed, and reviewed electronically in*
15 *order to simplify the filing process for conservators*
16 *and guardians, and better enable the courts to iden-*
17 *tify discrepancies and detect fraud and the exploi-*
18 *tation of protected persons.*

19 “(6) *EVALUATION AND REPORT.—The Assistant*
20 *Secretary, in consultation with the Attorney General*
21 *and the State Justice Institute, shall conduct an eval-*
22 *uation of the improvements made by courts to which*
23 *this subsection applies, and prepare and submit a re-*
24 *port concerning such evaluation to Congress within*
25 *18 months of the date on which the first grant is*

1 *awarded under subsection (a)(13), and a second re-*
2 *port 18 months later, and shall use and distribute the*
3 *reports and evaluations as the Assistant Secretary, in*
4 *consultation with the Attorney General and the State*
5 *Justice Institute, determines appropriate in order to*
6 *improve guardianships and conservatorships nation-*
7 *wide.”.*

Amend the title so as to read: “A bill to enable State courts to assess and improve the rules and procedures relating to adult guardianships and conservatorships.”.

Calendar No. 450

112TH CONGRESS
2^D SESSION
S. 1744

A BILL

To provide funding for State courts to assess and improve the handling of proceedings relating to adult guardianship and conservatorship, to authorize the Attorney General to carry out a pilot program for the conduct of background checks on individuals to be appointed as guardians or conservators, and to promote the widespread adoption of information technology to better monitor, report, and audit conservatorships of protected persons.

JULY 12, 2012

Reported with an amendment and an amendment to the title