

117TH CONGRESS
1ST SESSION

S. 2881

To assist States in improving guardianship oversight and data collection.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2021

Ms. COLLINS (for herself and Mr. CASEY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To assist States in improving guardianship oversight and data collection.

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 “Guardianship Account-
5 ability Act of 2021”.

6 **SEC. 2. FINDINGS; PURPOSES.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) An estimated 1,300,000 adults and approxi-
9 mately \$50,000,000,000 in assets are under the care
10 of guardians in the United States.

1 (2) Most guardians are selfless, dedicated indi-
2 viduals who play an important role in safeguarding
3 individuals in need of support. However, unscrupu-
4 lous guardians acting with little oversight have used
5 guardianship proceedings to obtain control of indi-
6 viduals in need of support.

7 (3) Once a guardianship is imposed, there are
8 often few safeguards in place to protect against indi-
9 viduals who choose to abuse the system and few
10 States are able to report accurate or detailed guard-
11 ianship data.

12 (4) A full guardianship order may remove more
13 rights than necessary and thus may not be the best
14 means of providing support and protection to an in-
15 dividual. If individuals subject to guardianship re-
16 gain capacity, all or some rights should be quickly
17 and efficiently restored.

18 (5) States should encourage courts to use alter-
19 natives to guardianship through State statutes, in-
20 cluding the adoption of the Uniform Guardianship,
21 Conservatorship, and Other Protective Arrange-
22 ments Act, to ensure better protections and control
23 for individuals being considered for guardianship
24 and those pursuing a restoration of their rights.

1 (6) A national resource center on guardianship
2 is needed to collect and publish information for the
3 benefit of courts, policy makers, individuals subject
4 to guardianship, guardians, community organiza-
5 tions, and other stakeholders.

6 (b) PURPOSES.—The purposes of this Act are to help
7 States improve guardianship oversight and data collection
8 by—

9 (1) designating a National Resource Center on
10 Guardianship;

11 (2) authorizing grants for the purpose of devel-
12 oping State Guardianship Databases; and

13 (3) establishing procedures for sharing back-
14 ground check information related to appointed
15 guardians with other jurisdictions.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) GUARDIANSHIP.—The term “guardianship”
19 means a legal relationship established by a court
20 when a person is determined to lack the ability to
21 meet essential requirements for physical health, safe-
22 ty, or self-care because the person is unable to re-
23 ceive and evaluate information or make or commu-
24 nicate decisions about their person or property, even
25 with appropriate supportive services, technological

1 assistance, supported decision making, or other less
2 restrictive alternatives.

3 (2) INDIVIDUALS SUBJECT TO GUARDIAN-
4 SHIP.—The term “individuals subject to guardian-
5 ship” means any individual 18 years or older placed
6 under a guardianship.

7 (3) SECRETARY.—The term “Secretary” means
8 the Secretary of Health and Human Services.

9 **SEC. 4. NATIONAL RESOURCE CENTER ON GUARDIANSHIP.**

10 (a) DESIGNATION.—The Secretary of Health and
11 Human Services shall establish a National Resource Cen-
12 ter on Guardianship (referred to in this section as the
13 “Center”).

14 (b) THE NATIONAL RESOURCE CENTER ON GUARD-
15 IANSHIP.—The National Resource Center shall—

16 (1) collect and publish information for use by
17 individuals subject to guardianship, guardians,
18 courts, State and local governments, and community
19 organizations;

20 (2) post model standards, best practices, and
21 guidelines for the appointment and regulation of
22 guardianship cases developed under section 505 of
23 the Elder Abuse Prevention and Prosecution Act (34
24 U.S.C. 21752);

1 (3) promote the use of less restrictive alter-
2 natives to guardianship, including supported decision
3 making and the restoration of rights of individuals
4 subject to guardianship;

5 (4) annually compile and publish a summary of
6 recently conducted research on guardianship systems
7 and efforts to expand less restrictive alternatives, in-
8 cluding information from agencies across the govern-
9 ment;

10 (5) collect data from States regarding—

11 (A) the number of individuals subject to
12 guardianship;

13 (B) the duration of guardianships;

14 (C) whether the authority granted to
15 guardians is classified as—

16 (i) full guardianship;

17 (ii) limited guardianship;

18 (iii) emergency or temporary guard-
19 ianship; or

20 (iv) a less restrictive alternative to
21 guardianship;

22 (D) the amount of financial assets under
23 guardianship; and

24 (E) whether an appointed guardian is clas-
25 sified as a—

- 1 (i) family or other nonprofessional
- 2 guardian;
- 3 (ii) private or professional guardian or
- 4 guardianship agencies; or
- 5 (iii) public guardian;
- 6 (6) maintain a public, national database on
- 7 State laws regarding guardianship and less restric-
- 8 tive alternatives to guardianship, including require-
- 9 ments for the—
- 10 (A) use of least restrictive alternative;
- 11 (B) regular filing and documentation by
- 12 appointed guardians;
- 13 (C) oversight of appointed guardians;
- 14 (D) restoration of rights of individuals
- 15 subject to guardianship; and
- 16 (E) oversight of potential conflicts of inter-
- 17 est among individuals and organizations in-
- 18 volved in guardianship applications, appoint-
- 19 ments, and oversight;
- 20 (7) identify issues relating to guardianship and
- 21 provide and publish annual recommendations to
- 22 States and Congress to address identified problems;
- 23 (8) collect and analyze best practices relating to
- 24 guardianship, and publish a report of such best

1 practices, including model guidelines and standards
2 for—

3 (A) ensuring appropriate representation
4 and protection of legal rights for individuals
5 subject to guardianship and guardianship pro-
6 ceedings;

7 (B) conducting background check inves-
8 tigations on prospective and appointed guard-
9 ians;

10 (C) promoting the use of less restrictive al-
11 ternatives to guardianship, including supported
12 decision making;

13 (D) obtaining restoration of all or some
14 rights;

15 (E) implementing oversight programs; and

16 (F) responding to abuse, neglect, and ex-
17 ploitation;

18 (9) compile and publish training materials for
19 court appointed guardians related to duties and obli-
20 gations, as well as ways in which to effectively sup-
21 port individuals subject to guardianship and to use
22 less restrictive alternatives to guardianships;

23 (10) facilitate State collection of guardianship
24 information and the sharing of such information
25 among States and Federal agencies; and

1 (11) carry out other activities, as determined by
2 the Secretary.

3 (c) CONSIDERATION.—In developing the Center, the
4 Secretary shall take into account diverse stakeholder
5 views, including people with disabilities, older adults, self-
6 advocacy organizations, and organizations representing
7 people with disabilities, older adults, family members,
8 court-stakeholder partnerships and others, as well as
9 available literature developed through academic or other
10 research institutions.

11 **SEC. 5. STATE GUARDIANSHIP DATABASES.**

12 Section 2042(c) of the Social Security Act (42 U.S.C.
13 1397m–1(c)) is amended—

14 (1) in paragraph (1), by striking “paragraph
15 (2)(E)” and inserting “subparagraphs (E), (F), (G),
16 and (H) of paragraph (2)”;

17 (2) in paragraph (2)—

18 (A) in the matter preceding subparagraph

19 (A)—

20 (i) by striking “Funds” and inserting
21 “Subject to paragraph (7), funds”; and

22 (ii) by striking “subparagraph (E)”
23 and inserting “subparagraphs (E), (F),
24 (G), and (H)”;

1 (B) in subparagraph (E), by striking “or”
2 at the end;

3 (C) by redesignating subparagraph (F) as
4 subparagraph (I); and

5 (D) by inserting after subparagraph (E)
6 the following new paragraphs:

7 “(F) methods to assess State guardianship
8 statistics such as the creation of State data-
9 bases to collect information about the number
10 and characteristics of guardianship arrange-
11 ments, guardians, individuals subject to guard-
12 ianship, and individuals receiving supported de-
13 cision-making services or other alternatives to
14 guardianship;

15 “(G) the use of trained court visitors to
16 improve court administration of guardianship
17 arrangements, including the appointment and
18 oversight of guardians and adoption of less re-
19 strictive alternatives to guardianship, and to en-
20 compass a broad range of entities that could
21 provide oversight and support to adults subject
22 to guardianship;

23 “(H) methods for collecting, storing, and
24 making available to the appropriate individuals,
25 organizations, and entities information on pro-

1 spective, current, and previously appointed
2 guardians, which may include—

3 “(i) information relating to back-
4 ground check investigations;

5 “(ii) court decisions regarding peti-
6 tions for appointment as a guardian, in-
7 cluding the rationale for such decisions;
8 and

9 “(iii) information relating to the cause
10 for removal of the guardian or termination
11 of the guardianship arrangement; or”;

12 (3) in paragraph (4), by striking “paragraph
13 (2)(E)” and inserting “subparagraphs (E), (F), (G),
14 and (H) of paragraph (2)”;

15 (4) in paragraph (5), by striking “paragraph
16 (2)(E)” each place it appears and inserting “sub-
17 paragraphs (E), (F), (G), and (H) of paragraph
18 (2)”;

19 (5) by adding at the end the following new
20 paragraph:

21 “(7) ENSURING DEMONSTRATION PROGRAM
22 FUNDING FOR THE HIGHEST COURTS OF STATES.—
23 The Secretary shall ensure that at least 5 percent of
24 the total of any funds made available to carry out
25 this subsection in a fiscal year (beginning with fiscal

1 year 2020) is awarded under grants to the highest
2 courts of States for purposes of conducting dem-
3 onstration programs described in subparagraphs
4 (E), (F), (G), and (H) of paragraph (2).”.

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