AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Calendar No. 450

112TH CONGRESS
2D 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~SECTION 1. SHORT TITLE.~~

~~This Act may be cited as the "Guardian Accountability and Senior Protection Act".~~

~~TITLE I—STATE COURT IMPROVEMENT~~

~~SEC. 101. FUNDING FOR STATE COURTS TO ASSESS AND IMPROVE HANDLING OF PROCEEDINGS RELATING TO ADULT GUARDIANSHIP AND CONSERVATORSHIP.~~

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

~~(1) in section 411(a)—~~

~~(A) in the matter preceding paragraph (1), by inserting "(including the highest court of each State)" after "with States";~~

~~(B) in paragraph (12), by striking "; and" and inserting a semicolon;~~

~~(C) by redesignating paragraph (13) as paragraph (14); and~~

~~(D) by inserting after paragraph (12) the 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"; 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)—~~

~~"(A) that determine whether to impose a full, limited, or temporary adult guardianship or conservatorship;~~

~~"(B) that select a guardian of a person or conservator of an estate;~~

~~"(C) that review the continued need for a full, limited, or temporary guardianship or conservatorship of an adult; and~~

~~"(D) that review the performance of a person appointed as guardian or conservator for an adult;~~

~~"(2) to implement changes deemed necessary as a result of the assessments; and~~

~~"(3) to collect data regarding those proceedings and the impact of the necessary changes.~~

~~"(b) APPLICATIONS.—In order to be eligible for a grant under this section, a highest State court shall submit to the Assistant Secretary an application at such time, in such form, and including such information and assurances as the Assistant Secretary shall require.~~

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

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

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

"(1) any or all costs of activities under this section in fiscal year 2012; and

"(2) not more than 75 percent of the cost of activities under this section in each of fiscal years 2013, 2014, and 2015.".

TITLE II—BACKGROUND CHECKS

SEC. 201. DEFINITIONS.

In this title:

(1) ADVERSE INFORMATION.—The term "adverse information" means—

(A) information from a criminal history background check that indicates that the individual has been convicted of a relevant crime;

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

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

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

~~(A) a bank with trust powers, bank and trust company, or trust company organized under the laws of any State or of the United States and which is regulated by the commissioner of commerce or a Federal regulator; or~~

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

~~(3) GUARDIAN.—The term "guardian" means an individual who is appointed by a court to protect an incapacitated individual's personal or financial welfare.~~

~~(4) PROTECTED PERSON.—The term "protected person" means an adult whom the court determines in a guardian or conservatorship proceeding is unable to manage property and accounts.~~

~~(5) RELEVANT CRIME.—The term "Relevant crime" includes any felony or misdemeanor convic-~~

~~tion for abuse, neglect, fraud, misappropriation, misrepresentation, theft, conversion, or other financial crime, or such other types of offenses as a participating highest court of a State may specify for purposes of conducting the pilot program in such State.~~

~~SEC. 202. PILOT PROGRAM FOR NATIONAL AND STATE BACKGROUND CHECKS OF GUARDIANS AND CONSERVATORS.~~

~~(a) AUTHORITY TO CONDUCT PROGRAM.—The Attorney General, shall establish a pilot program to identify efficient, effective, and economical procedures for State courts to conduct background checks on prospective guardians and conservators.~~

~~(b) REQUIREMENTS.—~~

~~(1) REQUIREMENT TO CONDUCT BACKGROUND CHECKS.—Under the pilot program under subsection (a), a State court, prior to appointing a prospective guardian or conservator on or after the commencement date of the State pilot program, shall conduct a background check on the guardian or conservator in accordance with such procedures as the participating State shall establish pursuant to paragraph (2).~~

~~(2) PROCEDURES.—The procedures established by a participating highest State court under paragraph (1) shall be designed to—~~

~~(A) provide a prospective guardian or conservator with notice that the appointing court is required to perform background checks with respect to prospective guardians or conservators;~~

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

~~(i) provide a statement signed by the prospective guardian or conservator authorizing the appointing court to request national and State criminal history background checks;~~

~~(ii) provide the appointing court with a set of the prospective guardian's or conservator's fingerprints; and~~

~~(iii) provide information as to whether the individual has been suspended or disbarred from law, accounting, or other professional licensing for misconduct involving financial matters that affect the ability of the individual to provide the services of a guardian or conservator safely and competently;~~

~~(C) permit the courts to check any available State and national registries that would be likely to contain adverse information concerning a prospective guardian or conservator; and~~

~~(D) permit the courts hearing guardian or conservatorship matters to obtain State and national criminal history background checks on the prospective guardian or conservator.~~

~~(3) CONSIDERATION OF INFORMATION.—Prior to appointing an individual with respect to whom adverse information is available as a guardian or conservator under a program under this title, the appointing court shall consider the nature of the information or offense involved, the date of any offense, and evidence of the proposed guardian's or conservator's rehabilitation and determine whether the individual's appointment is in the best interest of the protected person.~~

~~(4) USE OF INFORMATION; IMMUNITY FROM LIABILITY.—A participating highest State court shall ensure that information obtained about the prospective guardian or conservator pursuant to a background check conducted under the State supreme court pilot program is used only for the purpose of~~

~~determining the suitability of the prospective guardian or conservator for appointment.~~

~~(c) PARTICIPATING STATES.—~~

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

~~(2) REQUIREMENTS.—An agreement entered into under paragraph (1) shall require that a participating highest State court—~~

~~(A) be responsible for monitoring compliance with the requirements of the pilot program;~~

~~(B) have procedures by which a prospective guardian or conservator may appeal or dispute the accuracy of the information obtained in a background check, including consideration of the nature of the information or offense involved, the date of offense, and the evidence of the prospective guardian's or conservator's rehabilitation;~~

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

~~and review the results of any State or national criminal history background check regarding a prospective guardian or conservator to determine whether the prospective guardian or conservator has any conviction for a relevant crime;~~

~~(D) keep data on the background checks performed to be readily accessible for the evaluation; and~~

~~(E) agree to obtain from the State, non-Federal contributions, in cash or in-kind, toward the costs of carrying out the pilot program in an amount equal to not less than $1 for each $4 of Federal funds provided to the court under this section.~~

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

~~(A) APPLICATION.—The highest State court seeking to participate in the pilot program established under this section, shall submit an application to the Attorney General containing such information and at such time as the Attorney General may specify.~~

~~(B) SELECTION CRITERIA.—~~

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

~~gram under this section, the Attorney General shall establish criteria to ensure—~~

~~(I) geographic diversity;~~

~~(II) the consideration of a variety of payment mechanisms for covering the costs of conducting the background checks required under the pilot program; and~~

~~(III) that at least one participating highest State court includes protected person abuse prevention training for prospective guardians or conservators as part of the pilot program conducted in that State.~~

~~(ii) INCLUSION OF STATES WITH EXISTING PROGRAMS.—Nothing in this section shall be construed as prohibiting any State which, as of the date of the enactment of this Act, has procedures for conducting background checks with respect to the appointment of guardians or conservators from being selected to participate in the pilot program conducted under this section.~~

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

~~(1) make payments to participating highest State courts for the costs of conducting the pilot program in such States which may include the administration of the pilot program, staffing, the cost of background checks, and other purposes as determined by the Attorney General; and~~

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

~~(e) EVALUATION.—The Attorney General shall, through grant, contract, or interagency agreement, conduct an evaluation of the pilot program conducted under this section. Such evaluation should—~~

~~(1) review the various procedures implemented by participating highest State courts for the conduct of background checks of prospective guardians or conservators and identify the most efficient, effective, and economical procedures for conducting such background checks;~~

~~(2) assess the costs of conducting such background checks (including start-up and administrative costs);~~

~~(3) consider the benefits and disadvantages associated with requiring prospective guardians or conservators to pay the costs of conducting such background checks;~~

~~(4) determine the extent to which conducting such background checks leads to any unintended consequences, including a reduction in the available guardians or conservators or delay and backlogs in processing appointments;~~

~~(5) to the extent feasible, seek to determine the efficacy of the pilot program in reducing abuse of protected persons and their estate by guardians or conservators; and~~

~~(6) include other elements that would bear on the usefulness and effectiveness of the program.~~

~~(f) FUNDING.—There are authorized to be appropriated to the Attorney General to carry out the pilot program under this section, such sums as may be necessary for the period of fiscal years 2012 through 2015.~~

~~TITLE III—E-FILE~~

~~SEC. 301. DEFINITIONS.~~

~~In this title:~~

~~(1) ADULT.—The term "adult" means an individual who is 18 years of age or older.~~

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

~~(3) EXPLOITATION.—The term "exploitation" means the fraudulent or otherwise illegal, unauthorized, or improper act or process of a conservator that uses the resources of a protected person for the conservator's monetary or personal benefit, profit, or gain, or that results in depriving a protected person of rightful access to, or use of, benefits, resources, belongings, services or assets.~~

~~(4) GUARDIAN.—The term "guardian" means an individual who is appointed by a court to protect an incapacitated individual's personal or financial welfare.~~

~~(5) HIGHEST STATE COURT.—The term "highest State court" means the highest appellate court within a State.~~

~~(6) PROTECTED PERSON.—The term "protected person" means an adult whom the court determines in a guardian or conservatorship proceeding is unable to manage property and accounts.~~

~~SEC. 302. CONSERVATOR MONITORING GRANT PROGRAM.~~

~~(a) GRANTS.—~~

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

~~(2) DURATION.—Grants awarded under paragraph (1) shall be for a period of not to exceed 3 years.~~

~~(b) USE OF FUNDS.—~~

~~(1) IN GENERAL.—Amounts received under a grant awarded under subsection (a) shall be used to implement and evaluate the impact of systems enabling the annual accountings and other required conservatorship filings to be completed, filed, reviewed, and analyzed electronically in order to simplify the filing process for conservators and better enable the courts to identify discrepancies and detect fraud and exploitation of protected persons.~~

~~(2) ALLOCATION.—A highest State court that receives a grant under this section shall prioritize the use of the grant funds so as to assist the greatest number of conservators and protect the greatest number of protected persons.~~

~~(c) APPLICATION.—A highest State court desiring a grant under subsection (a)(1) shall submit an application to the State Justice Institute at such time, in such manner, and accompanied by such information as the State Justice Institute may require.~~

~~SEC. 303. AUTHORIZATION OF APPROPRIATIONS.~~

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Guardian Accountability and Senior Protection Act".

SEC. 2. ASSESSMENT AND IMPROVEMENT OF RULES AND PROCEDURES RELATING TO ADULT GUARDIANSHIPS AND CONSERVATORSHIPS.

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

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by inserting "(including the highest court of each State)" after "with States";

(B) in paragraph (12), by striking "; and" and inserting a semicolon;

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

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

"(13) in accordance with subsection (c), assessing the fairness, effectiveness, timeliness, safety, integrity, and accessibility of adult guardianship and conservatorship proceedings, including the appointment and the monitoring of the performance of guardians and conservators, and implementing changes deemed necessary as a result of the assessments; and"; and

(2) by inserting at the end the following:

"(c) ADULT GUARDIANSHIPS AND CONSERVATORSHIPS.—

"(1) GRANTS.—

"(A) IN GENERAL.—In awarding grants or contracts under subsection (a)(13), the Assistant Secretary shall obtain feedback from the State Justice Institute in accordance with subparagraph (B) and may consult with the Attorney General, and such grants or contracts shall otherwise comply with this subsection.

"(B) STATE JUSTICE INSTITUTE.—The Assistant Secretary shall submit to the State Justice Institute recommendations for the awarding

of grants or contracts under subsection (a)(13). The Institute shall have 60 days in which to submit to the Assistant Secretary the response of the Institute to such recommendations. The Assistant Secretary shall consider such response prior to awarding such grants or contracts.

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

"(A) to conduct assessments of the practices and procedures used to—

"(i) determine whether to impose a full, limited, or temporary adult guardianship or conservatorship;

"(ii) select a guardian of a person or conservator of an estate;

"(iii) review the continued need for a full, limited, or temporary guardianship or conservatorship of an adult; and

"(iv) review the performance of guardians or conservators;

"(B) to implement changes deemed necessary as a result of the assessments; and

"(C) to collect data regarding those practices and procedures and the impact of the necessary changes.

"(3) ALLOTMENTS.—The amount of a grant under subsection (a)(13) shall be determined by the Assistant Secretary, in consultation with the State Justice Institute and the Attorney General (if the Assistance Secretary determines appropriate).

"(4) BACKGROUND CHECKS.—The Assistant Secretary shall set aside 25 percent of amounts made available for grants under this subsection in each fiscal year to enable courts to implement or improve systems to conduct background checks on prospective guardians and conservators. Such systems shall comply with the following requirements:

"(A) At minimum, the background checks shall include national and State criminal background checks, a search of child abuse and adult abuse registries, and a search as to whether the individual has been suspended or disbarred from law, accounting, or other professional licensing for misconduct.

"(B) The court shall consider all of the information obtained from the background check to determine whether such an individual is suffi-

ciently trustworthy to be a guardian or conservator and that the appointment of such individual is in the best interest of the protected person.

"(C) The information obtained from the background check shall only be used for the purpose of determining the suitability of the prospective guardian or conservator for appointment.

"(5) ELECTRONIC FILING.—Funds received pursuant to subsection (a)(13) may be used to implement systems enabling the annual accountings and other required conservatorship and guardianship filings to be completed, filed, and reviewed electronically in order to simplify the filing process for conservators and guardians, and better enable the courts to identify discrepancies and detect fraud and the exploitation of protected persons.

"(6) EVALUATION AND REPORT.—The Assistant Secretary, in consultation with the Attorney General and the State Justice Institute, shall conduct an evaluation of the improvements made by courts to which this subsection applies, and prepare and submit a report concerning such evaluation to Congress within 18 months of the date on which the first grant is

awarded under subsection (a)(13), and a second report 18 months later, and shall use and distribute the reports and evaluations as the Assistant Secretary, in consultation with the Attorney General and the State Justice Institute, determines appropriate in order to improve guardianships and conservatorships nationwide.''.

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.''.

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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