

112TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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

---

\_\_\_\_\_ introduced the following bill; which was read twice  
and referred to the Committee on \_\_\_\_\_

---

## **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.

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

1 **SECTION 1. SHORT TITLE.**

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

4 **TITLE I—STATE COURT**  
5 **IMPROVEMENT**

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

10 Part A of title IV of the Older Americans Act of 1964  
11 (42 U.S.C. 3032 et seq.) is amended—

12 (1) in section 411(a)—

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

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

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

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

22 “(13) assessing the fairness, effectiveness, time-  
23 liness, and accessibility of adult guardianship and  
24 conservatorship proceedings, implementing changes  
25 deemed necessary as a result of the assessments,  
26 and collecting necessary data regarding those pro-

1       ceedings and the impact of the necessary changes;  
2       and”); and

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

4       **“SEC. 423. FUNDING FOR STATE COURTS TO ASSESS AND**  
5               **IMPROVE HANDLING OF PROCEEDINGS RE-**  
6               **LATING TO ADULT GUARDIANSHIP AND CON-**  
7               **SERVATORSHIP.**

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

13               “(1) to conduct assessments, in accordance with  
14      such requirements as the Secretary shall publish, of  
15      the role, responsibilities, and effectiveness of State  
16      courts in carrying out State laws requiring pro-  
17      ceedings (conducted by or under the supervision of  
18      the courts)—

19               “(A) that determine whether to impose a  
20      full, limited, or temporary adult guardianship  
21      or conservatorship;

22               “(B) that select a guardian of a person or  
23      conservator of an estate;

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

4           “(D) that review the performance of a per-  
5           son appointed as guardian or conservator for an  
6           adult; and

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

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

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

16          “(c) ALLOTMENTS.—Each highest State court which  
17          has an application approved under subsection (b), and is  
18          conducting assessment activities in accordance with this  
19          section, may receive a grant from the Assistant Secretary,  
20          for each of fiscal years 2012 through 2015, from amounts  
21          appropriated to carry out section 411, in an amount to  
22          be determined appropriate by the Assistant Secretary.

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

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

3           “(2) not more than 75 percent of the cost of ac-  
4           tivities under this section in each of fiscal years  
5           2013, 2014, and 2015.”.

6           **TITLE II—BACKGROUND**  
7           **CHECKS**

8           **SEC. 201. DEFINITIONS.**

9           In this title:

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

12                   (A) information from a criminal history  
13                   background check that indicates that the indi-  
14                   vidual has been convicted of a relevant crime;

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

20                   (C) information from an adult or child  
21                   abuse registry that indicates that the individual  
22                   is included in an adult or child abuse registry

23           (2) **CONSERVATORS.**—The term “conservator”  
24           means an individual who is appointed by a court

1 under applicable State law to manage the estate of  
2 a protected person.

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

7 (4) RELEVANT CRIME.—The term “Relevant  
8 crime” includes any felony or misdemeanor convic-  
9 tion for abuse, neglect, fraud, misappropriation, mis-  
10 representation, theft, conversion, or other financial  
11 crime, or such other types of offenses as a partici-  
12 pating highest appellate court of a State may specify  
13 for purposes of conducting the pilot program in such  
14 State.

15 **SEC. 202. PILOT PROGRAM FOR NATIONAL AND STATE**  
16 **BACKGROUND CHECKS OF GUARDIANS AND**  
17 **CONSERVATORS.**

18 (a) AUTHORITY TO CONDUCT PROGRAM.—The Attor-  
19 ney General, shall establish a pilot program to identify ef-  
20 ficient, effective, and economical procedures for State  
21 counts to conduct background checks on prospective  
22 guardians and conservators.

23 (b) REQUIREMENTS.—

24 (1) REQUIREMENT TO CONDUCT BACKGROUND  
25 CHECKS.—Under the pilot program under subsection

1 (a), a State court, prior to appointing a prospective  
2 guardian or conservator on or after the commence-  
3 ment date of the State pilot program, shall conduct  
4 a background check on the guardian or conservator  
5 in accordance with such procedures as the partici-  
6 pating State shall establish pursuant to paragraph  
7 (2).

8 (2) PROCEDURES.—The procedures established  
9 by a participating State supreme court under para-  
10 graph (1) shall be designed to—

11 (A) provide a prospective guardian or con-  
12 servator with notice that the appointing court is  
13 required to perform background checks with re-  
14 spect to prospective guardians or conservators;

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

17 (i) provide a statement signed by the  
18 prospective guardian or conservator au-  
19 thORIZING the appointing court to request  
20 national and State criminal history back-  
21 ground checks;

22 (ii) provide the appointing court with  
23 a set of the prospective guardian's or con-  
24 servator's fingerprints; and

1 (iii) provide information that the indi-  
2 vidual has been suspended or disbarred  
3 from law, accounting, or other professional  
4 licensing for misconduct involving financial  
5 matters that affect the ability of the indi-  
6 vidual to provide the services of a guardian  
7 or conservator safely and competently;

8 (C) permit the court to check any available  
9 State and national registries that would be like-  
10 ly to contain adverse information concerning a  
11 prospective guardian or conservator; and

12 (D) permit the courts hearing guardian or  
13 conservatorship matters to obtain State and na-  
14 tional criminal history background checks on  
15 the prospective guardian or conservator.

16 (3) CONSIDERATION OF INFORMATION.—Prior  
17 to appointing an individual with respect to whom ad-  
18 verse information is available as a guardian or con-  
19 servator under a program under this title, the ap-  
20 pointing court shall consider the nature of the of-  
21 fense involved, the date of offense, and the evidence  
22 of the proposed guardian's or conservator's rehabili-  
23 tation and determine whether the individual's ap-  
24 pointment is in the best interest of the protected  
25 person.



1           (4) USE OF INFORMATION; IMMUNITY FROM LI-  
2 ABILITY.—A participating State supreme court shall  
3 ensure that information obtained about the prospec-  
4 tive guardian or conservator pursuant to a back-  
5 ground check conducted under the State supreme  
6 court pilot program is used only for the purpose of  
7 determining the suitability of the prospective guard-  
8 ian or conservator for appointment.

9           (c) PARTICIPATING STATES.—

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

14           (2) REQUIREMENTS.—An agreement entered  
15 into under paragraph (1) shall require that a partici-  
16 pating State supreme court—

17                   (A) be responsible for monitoring compli-  
18 ance with the requirements of the pilot pro-  
19 gram;

20                   (B) have procedures by which a prospective  
21 guardian or conservator may appeal or dispute  
22 the accuracy of the information obtained in a  
23 background check, including consideration of  
24 the nature of the offense involved, the date of

1 offense, and the evidence of the prospective  
2 guardian's or conservator's rehabilitation;

3 (C) establish procedures requiring the  
4 courts hearing guardian or conservatorship  
5 matters to request criminal history background  
6 checks of prospective guardians or conservators  
7 and review the results of any State or national  
8 criminal history background check regarding a  
9 prospective guardian or conservator to deter-  
10 mine whether the prospective guardian or con-  
11 servator has any conviction for a relevant crime;

12 (D) keep data on the background checks  
13 performed to be readily accessible for the eval-  
14 uation; and

15 (E) agree to obtain from the State, non-  
16 Federal contributions, in cash or in-kind, to-  
17 ward the costs of carrying out the pilot pro-  
18 gram in an amount equal to not less than \$1  
19 for each \$4 of Federal funds provided to the  
20 court under this section.

21 (3) APPLICATION AND SELECTION CRITERIA.—

22 (A) APPLICATION.—A State supreme court  
23 seeking to participate in the pilot program es-  
24 tablished under this section, shall submit an ap-  
25 plication to the Attorney General containing

1 such information and at such time as the Attor-  
2 ney General may specify.

3 (B) SELECTION CRITERIA.—

4 (i) IN GENERAL.—In selecting State  
5 supreme courts to participate in the pilot  
6 program under this section, the Attorney  
7 General shall establish criteria to ensure—

8 (I) geographic diversity;

9 (II) the consideration of a variety  
10 of payment mechanisms for covering  
11 the costs of conducting the back-  
12 ground checks required under the  
13 pilot program; and

14 (III) that at least one partici-  
15 pating State supreme court includes  
16 protected person abuse prevention  
17 training for prospective guardians or  
18 conservators as part of the pilot pro-  
19 gram conducted in that State.

20 (ii) INCLUSION OF STATES WITH EX-  
21 ISTING PROGRAMS.—Nothing in this sec-  
22 tion shall be construed as prohibiting any  
23 State which, as of the date of the enact-  
24 ment of this Act, has procedures for con-  
25 ducting background checks with respect to

1           the appointment of guardians or conserva-  
2           tors from being selected to participate in  
3           the pilot program conducted under this  
4           section.

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

8           (1) make payments to participating State su-  
9           preme courts for the costs of conducting the pilot  
10          program in such States which may include the ad-  
11          ministration of the pilot program, staffing, the cost  
12          of background checks, and other purposes as deter-  
13          mined by the Attorney General; and

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

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

21          (1) review the various procedures implemented  
22          by participating State supreme courts for the con-  
23          duct of background checks of prospective guardians  
24          or conservators and identify the most efficient, effec-

1       tive, and economical procedures for conducting such  
2       background checks;

3           (2) assess the costs of conducting such back-  
4       ground checks (including start-up and administra-  
5       tive costs);

6           (3) consider the benefits and disadvantages as-  
7       sociated with requiring prospective guardians or con-  
8       servators to pay the costs of conducting such back-  
9       ground checks;

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

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

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

21       (f) FUNDING.—There are authorized to be appro-  
22       priated to the Attorney General to carry out the pilot pro-  
23       gram under this section, such sums as may be necessary  
24       for the period of fiscal years 2012 through 2015.

**TITLE III—E-FILE**

1

2 **SEC. 301. DEFINITIONS.**

3 In this title:

4 (1) **ADULT.**—The term “adult” means an indi-  
5 vidual who is 18 years of age or older.6 (2) **CONSERVATORS.**—The term “conservator”  
7 means an individual who is appointed by a court  
8 under applicable State law to manage the estate of  
9 a protected person. Such definition shall not apply  
10 to—11 (A) a bank with trust powers, bank and  
12 trust company, or trust company organized  
13 under the laws of any State or of the United  
14 States and which is regulated by the commis-  
15 sioner of commerce or a Federal regulator; or16 (B) a credit union, savings and loan, or  
17 other financial institution.18 (3) **EXPLOITATION.**—The term “exploitation”  
19 means the fraudulent or otherwise illegal, unauthor-  
20 ized, or improper act or process of a conservator  
21 that uses the resources of a protected person for the  
22 conservator’s monetary or personal benefit, profit, or  
23 gain, or that results in depriving a protected person  
24 of rightful access to, or use of, benefits, resources,  
25 belongings, services or assets.

1           (4) HIGHEST STATE COURT.—The term “high-  
2           est State court” means the highest appellate court  
3           within a State.

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

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

9           (a) GRANTS.—

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

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

19           (b) USE OF FUNDS.—

20           (1) IN GENERAL.—Amounts received under a  
21           grant awarded under subsection (a) shall be used to  
22           implement and evaluate the impact of systems ena-  
23           bling the annual accountings and other required con-  
24           servatorship filings to be completed, filed, reviewed,  
25           and analyzed electronically in order to simplify the

1 filing process for conservators and better enable the  
2 courts to identify discrepancies and detect fraud and  
3 exploitation of protected persons.

4 (2) ALLOCATION.—A highest State court that  
5 receives a grant under this section shall prioritize  
6 the use of the grant funds so as to assist the great-  
7 est number of conservators and protect the greatest  
8 number of protected persons.

9 (c) APPLICATION.—A highest State court desiring a  
10 grant under subsection (a)(1) shall submit an application  
11 to the State Justice Institute at such time, in such man-  
12 ner, and accompanied by such information as the State  
13 Justice Institute may require.

14 **SEC. 303. AUTHORIZATION OF APPROPRIATIONS.**

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