

112TH CONGRESS  
1ST 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.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 20, 2011

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

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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.

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;

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) **CONSERVATOR.**—The term “conservator”  
24           means an individual who is appointed by a court  
25           under applicable State law to manage the estate of

1 a protected person. Such definition shall not apply  
2 to—

3 (A) a bank with trust powers, bank and  
4 trust company, or trust company organized  
5 under the laws of any State or of the United  
6 States and which is regulated by the commis-  
7 sioner of commerce or a Federal regulator; or

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

10 (3) GUARDIAN.—The term “guardian” means  
11 an individual who is appointed by a court to protect  
12 an incapacitated individual’s personal or financial  
13 welfare.

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

18 (5) RELEVANT CRIME.—The term “Relevant  
19 crime” includes any felony or misdemeanor convic-  
20 tion for abuse, neglect, fraud, misappropriation, mis-  
21 representation, theft, conversion, or other financial  
22 crime, or such other types of offenses as a partici-  
23 pating highest court of a State may specify for pur-  
24 poses of conducting the pilot program in such State.

1 **SEC. 202. PILOT PROGRAM FOR NATIONAL AND STATE**  
2 **BACKGROUND CHECKS OF GUARDIANS AND**  
3 **CONSERVATORS.**

4 (a) **AUTHORITY TO CONDUCT PROGRAM.**—The At-  
5 torney General, shall establish a pilot program to identify  
6 efficient, effective, and economical procedures for State  
7 courts to conduct background checks on prospective  
8 guardians and conservators.

9 (b) **REQUIREMENTS.**—

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

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

22 (A) provide a prospective guardian or con-  
23 servator with notice that the appointing court is  
24 required to perform background checks with re-  
25 spect to prospective guardians or conservators;

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

3 (i) provide a statement signed by the  
4 prospective guardian or conservator au-  
5 thorizing the appointing court to request  
6 national and State criminal history back-  
7 ground checks;

8 (ii) provide the appointing court with  
9 a set of the prospective guardian’s or con-  
10 servator’s fingerprints; and

11 (iii) provide information as to whether  
12 the individual has been suspended or dis-  
13 barred from law, accounting, or other pro-  
14 fessional licensing for misconduct involving  
15 financial matters that affect the ability of  
16 the individual to provide the services of a  
17 guardian or conservator safely and com-  
18 petently;

19 (C) permit the courts to check any avail-  
20 able State and national registries that would be  
21 likely to contain adverse information concerning  
22 a prospective guardian or conservator; and

23 (D) permit the courts hearing guardian or  
24 conservatorship matters to obtain State and na-

1            tional criminal history background checks on  
2            the prospective guardian or conservator.

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

13          (4) USE OF INFORMATION; IMMUNITY FROM LI-  
14          ABILITY.—A participating highest State court shall  
15          ensure that information obtained about the prospec-  
16          tive guardian or conservator pursuant to a back-  
17          ground check conducted under the State supreme  
18          court pilot program is used only for the purpose of  
19          determining the suitability of the prospective guard-  
20          ian or conservator for appointment.

21          (c) PARTICIPATING STATES.—

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

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

4           (A) be responsible for monitoring compli-  
5 ance with the requirements of the pilot pro-  
6 gram;

7           (B) have procedures by which a prospective  
8 guardian or conservator may appeal or dispute  
9 the accuracy of the information obtained in a  
10 background check, including consideration of  
11 the nature of the information or offense in-  
12 volved, the date of offense, and the evidence of  
13 the prospective guardian’s or conservator’s re-  
14 habilitation;

15           (C) establish procedures requiring the  
16 courts hearing guardian or conservatorship  
17 matters to request criminal history background  
18 checks of prospective guardians or conservators  
19 and review the results of any State or national  
20 criminal history background check regarding a  
21 prospective guardian or conservator to deter-  
22 mine whether the prospective guardian or con-  
23 servator has any conviction for a relevant crime;

1 (D) keep data on the background checks  
 2 performed to be readily accessible for the eval-  
 3 uation; and

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

10 (3) APPLICATION AND SELECTION CRITERIA.—

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

17 (B) SELECTION CRITERIA.—

18 (i) IN GENERAL.—In selecting highest  
 19 State court to participate in the pilot pro-  
 20 gram under this section, the Attorney Gen-  
 21 eral shall establish criteria to ensure—

22 (I) geographic diversity;

23 (II) the consideration of a variety  
 24 of payment mechanisms for covering  
 25 the costs of conducting the back-

1 ground checks required under the  
2 pilot program; and

3 (III) that at least one partici-  
4 pating highest State court includes  
5 protected person abuse prevention  
6 training for prospective guardians or  
7 conservators as part of the pilot pro-  
8 gram conducted in that State.

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

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

22 (1) make payments to participating highest  
23 State courts for the costs of conducting the pilot  
24 program in such States which may include the ad-  
25 ministration of the pilot program, staffing, the cost

1 of background checks, and other purposes as deter-  
2 mined by the Attorney General; and

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

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

10 (1) review the various procedures implemented  
11 by participating highest State courts for the conduct  
12 of background checks of prospective guardians or  
13 conservators and identify the most efficient, effec-  
14 tive, and economical procedures for conducting such  
15 background checks;

16 (2) assess the costs of conducting such back-  
17 ground checks (including start-up and administra-  
18 tive costs);

19 (3) consider the benefits and disadvantages as-  
20 sociated with requiring prospective guardians or con-  
21 servators to pay the costs of conducting such back-  
22 ground checks;

23 (4) determine the extent to which conducting  
24 such background checks leads to any unintended  
25 consequences, including a reduction in the available

1 guardians or conservators or delay and backlogs in  
 2 processing appointments;

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

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

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

### 13 **TITLE III—E-FILE**

#### 14 **SEC. 301. DEFINITIONS.**

15 In this title:

16 (1) ADULT.—The term “adult” means an indi-  
 17 vidual who is 18 years of age or older.

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

22 (3) EXPLOITATION.—The term “exploitation”  
 23 means the fraudulent or otherwise illegal, unauthor-  
 24 ized, or improper act or process of a conservator  
 25 that uses the resources of a protected person for the

1 conservator’s monetary or personal benefit, profit, or  
2 gain, or that results in depriving a protected person  
3 of rightful access to, or use of, benefits, resources,  
4 belongings, services or assets.

5 (4) GUARDIAN.—The term “guardian” means  
6 an individual who is appointed by a court to protect  
7 an incapacitated individual’s personal or financial  
8 welfare.

9 (5) HIGHEST STATE COURT.—The term “high-  
10 est State court” means the highest appellate court  
11 within a State.

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

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

17 (a) GRANTS.—

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

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

4           (b) USE OF FUNDS.—

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

14          (2) ALLOCATION.—A highest State court that  
15          receives a grant under this section shall prioritize  
16          the use of the grant funds so as to assist the great-  
17          est number of conservators and protect the greatest  
18          number of protected persons.

19          (c) APPLICATION.—A highest State court desiring a  
20          grant under subsection (a)(1) shall submit an application  
21          to the State Justice Institute at such time, in such man-  
22          ner, and accompanied by such information as the State  
23          Justice Institute may require.

1 **SEC. 303. AUTHORIZATION OF APPROPRIATIONS.**

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

○