

116TH CONGRESS
1ST SESSION

S. 591

To assist States in improving guardianship oversight and data collection.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2019

Ms. COLLINS (for herself and Mr. CASEY) introduced the following bill; which
was read twice and referred to the Committee on the Judiciary

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 2019”.

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 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 Online Resource
10 Center on Guardianship;

11 (2) authorize 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) ELDER JUSTICE COORDINATING COUNCIL.—
19 The term “Elder Justice Coordinating Council”
20 means the Council established under section 2021 of
21 the Social Security Act (42 U.S.C. 1397k).

22 (2) GUARDIANSHIP.—The term “guardianship”
23 means a legal relationship established by a court
24 when a person is determined to lack the ability to
25 meet essential requirements for physical health, safe-

1 guardianship cases developed under section 505 of
2 the Elder Abuse Prevention and Prosecution Act (34
3 U.S.C. 21752);

4 (3) promote the use of less restrictive alter-
5 natives to guardianship and the restoration of rights
6 of individuals subject to guardianship;

7 (4) annually compile and publish a summary of
8 recently conducted research on guardianship sys-
9 tems, including information from agencies across the
10 government;

11 (5) collect data from States regarding—

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

14 (B) the duration of guardianships;

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

17 (i) full guardianship;

18 (ii) limited guardianship;

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

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

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

1 (E) whether an appointed guardian is clas-
2 sified as a—

3 (i) family or other nonprofessional
4 guardian;

5 (ii) private or professional guardian or
6 guardianship agencies; or

7 (iii) public guardian;

8 (6) maintain a public, national database on
9 State laws regarding guardianship and less restric-
10 tive alternatives to guardianship, including require-
11 ments for the—

12 (A) use of least restrictive alternative;

13 (B) regular filing and documentation by
14 appointed guardians;

15 (C) oversight of appointed guardians;

16 (D) restoration of rights of individuals
17 subject to guardianship; and

18 (E) oversight of potential conflicts of inter-
19 est among individuals and organizations in-
20 volved in guardianship applications, appoint-
21 ments, and oversight;

22 (7) identify issues relating to guardianship and
23 provide and publish annual recommendations to
24 States and Congress to address identified problems;

1 (8) collect and analyze best practices relating to
2 guardianship, and publish a report of such best
3 practices, including model guidelines and standards
4 for—

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

9 (B) conducting background check inves-
10 tigation on prospective and appointed guard-
11 ians;

12 (C) promoting the use of less restrictive al-
13 ternatives to guardianship;

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

16 (E) implementing oversight programs; and

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

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

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

1 (11) carry out other activities, as determined by
2 the Elder Justice Coordinating Council.

3 (c) CONSIDERATION.—In developing the Center, the
4 Elder Justice Coordinating Council shall take into account
5 diverse stakeholder views, including those of individuals
6 and organizations representing people with disabilities,
7 older adults, family members, court-stakeholder partner-
8 ships and others, as well as available literature developed
9 through academic or other research institutions.

10 **SEC. 5. STATE GUARDIANSHIP DATABASES.**

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

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

16 (2) in paragraph (2)—

17 (A) in the matter preceding subparagraph
18 (A)—

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

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

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

1 (C) by redesignating subparagraph (F) as
2 subparagraph (I); and

3 (D) by inserting after subparagraph (E)
4 the following new paragraphs:

5 “(F) methods to assess State guardianship
6 statistics such as the creation of State data-
7 bases to collect information about the number
8 and characteristics of guardianship arrange-
9 ments, guardians, and individuals subject to
10 guardianship;

11 “(G) the use of trained court visitors to
12 improve court administration of guardianship
13 arrangements, including the appointment and
14 oversight of guardians;

15 “(H) methods for collecting, storing, and
16 making available to the appropriate individuals,
17 organizations, and entities information on pro-
18 spective, current, and previously appointed
19 guardians, which may include—

20 “(i) contact and identifying informa-
21 tion;

22 “(ii) information relating to back-
23 ground check investigations;

24 “(iii) court decisions regarding peti-
25 tions for appointment as a guardian, in-

1 cluding the rationale for such decisions;
2 and

3 “(iv) information relating to the cause
4 for removal of the guardian or termination
5 of the guardianship arrangement; or”;

6 (3) in paragraph (4), by striking “paragraph
7 (2)(E)” and inserting “subparagraphs (E), (F), (G),
8 and (H) of paragraph (2)”;

9 (4) in paragraph (5), by striking “paragraph
10 (2)(E)” each place it appears and inserting “sub-
11 paragraphs (E), (F), (G), and (H) of paragraph
12 (2)”;

13 (5) by adding at the end the following new
14 paragraph:

15 “(7) ENSURING DEMONSTRATION PROGRAM
16 FUNDING FOR THE HIGHEST COURTS OF STATES.—
17 The Secretary shall ensure that at least 5 percent of
18 the total of any funds made available to carry out
19 this subsection in a fiscal year (beginning with fiscal
20 year 2020) is awarded under grants to the highest
21 courts of States for purposes of conducting dem-
22 onstration programs described in subparagraphs
23 (E), (F), (G), and (H) of paragraph (2).”.

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