

117TH CONGRESS  
1ST SESSION

# H. R. 5600

To assist States in improving guardianship oversight and data collection.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 15, 2021

Mr. SOTO (for himself, Mr. BILIRAKIS, Mr. CRIST, Mr. FITZPATRICK, and Mrs. DINGELL) introduced the following bill; which was referred to the Committee on the Judiciary

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## 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 is awarded under

1 grants to the highest courts of States for purposes  
2 of conducting demonstration programs described in  
3 subparagraphs (E), (F), (G), and (H) of paragraph  
4 (2).”.

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