

CONFERENCE OF CHIEF JUSTICES

CONFERENCE OF STATE COURT ADMINISTRATORS

Resolution 6

In Support of The Court-Appointed Guardian Accountability and Senior Protection Act

WHEREAS, the number of elderly persons will increase over the next 20 years and this trend is likely to result in a substantial increase in court cases regarding the protection of vulnerable elderly persons, including guardianship, conservatorship, and elder abuse proceedings; and

WHEREAS, state court systems and individual courts have recognized the need to improve the process for considering petitions for guardianship and/or conservatorship of adults and the monitoring of guardianship and/or conservatorship orders; and

WHEREAS, research by the National Center for State Courts has identified problems and promising practices regarding the monitoring of guardianship and conservatorship cases; and

WHEREAS, the Report of the Conference of Chief Justices and Conference of State Court Administrators Joint Task Force on Elders and the Courts recommended that each state court system: (1) collect and report the number of guardianship and conservatorship cases that are filed, pending, and concluded each year; (2) implement improved procedures for monitoring the performance of guardians and conservators and the well-being of incapacitated persons; and (3) explore ways in which technology can assist in documenting, tracking, and monitoring guardianships; and

WHEREAS, the 2010 Conference of State Court Administrators White Paper entitled *The Demographic Imperative: Guardianships and Conservatorships* recommends for the establishment of a Guardianship Court Improvement Program to assist courts throughout the nation to improve consideration of petitions for guardianship and/or conservatorship of adults and monitoring the performance of guardians and conservators and the well-being of incapacitated and vulnerable persons; and

WHEREAS, the delegates from ten national organizations participating in the Third National Guardianship Summit adopted a far-reaching set of standards for performance and decision-making for guardians and conservators, including recommendations for action by courts; and

WHEREAS, the Senate Special Committee on Aging has requested a series of reports from the Government Accountability Office over the past seven years and held a series of hearings regarding problems in the monitoring of guardianship and conservatorship orders, the lack of cooperation and coordination by the Social Security Administration and Department of Veterans Affairs with state courts regarding conservatorships, financial exploitation, and abuse and neglect of seniors by their guardians and conservators; and

WHEREAS, these Government Accountability Office reports have recognized a substantial federal interest in guardianship, conservatorship, and elder abuse issues and the need for federal financial assistance to states to collect comparable data regarding guardianships and test and evaluate innovative procedures and practices to prevent, detect, and address abuse and exploitation; and

WHEREAS, there are currently no grant programs within the federal government to assist state courts to meet the above referenced responsibilities or test innovative methods for conducting background checks, or utilize technology for simplified reporting procedures and to facilitate the review of fiduciary performance; and

WHEREAS, the proposed Court-Appointed Guardian Accountability and Senior Protection Act (S. 975) would amend the Elder Justice Act demonstration grant program to allow the highest court of states to apply to the Secretary of the United States Department of Health and Human Services for demonstration project funds for “programs to assess the fairness, effectiveness, timeliness, safety, integrity, and accessibility of adult guardianship and conservatorship proceedings, including the appointment and the monitoring of the performance of court-appointed guardians and conservators, and to implement changes deemed necessary as a result of the assessments such as mandating background checks for all potential guardians and conservators, and implementing systems to enable 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 courts to identify discrepancies and detect fraud and the exploitation of protected persons”; and

WHEREAS, the Court Improvement Program, established in 1993 for improving the consideration and outcomes of child protection cases, has been effective in reducing judicial delay in those cases; enhancing the ability of judges and attorneys to handle the complexity of these cases; and strengthening the review and monitoring of these cases, while respecting the independence of the state judiciaries; and

WHEREAS, it is anticipated that similar benefits would accrue from assessments conducted under the Elder Justice Act demonstration grant program;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators urge the Congress to enact the Court-Appointed Guardian Accountability and Senior Protection Act and appropriate sufficient funds to fully implement the provisions of that Act.

Adopted as proposed by the CCJ/COSCA Elders and the Courts Committee at the 2013 Annual Meeting on July 31, 2013.