

DRAFT

FOR DISCUSSION ONLY

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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ON UNIFORM STATE LAWS

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March 1, 2007

**UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS
JURISDICTION ACT**

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**UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS
JURISDICTION ACT
[ARTICLE] 1
GENERAL PROVISIONS**

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

SECTION 102. SCOPE. This [act] applies to guardianship and protective proceedings for adults.

SECTION 103. DEFINITIONS. In this [act]:

- (1) AAdult@ means an individual who has attained [18] years of age.
- (2) ACommenced@ means the filing of a first pleading in a guardianship or protective proceeding.
- (3) AConservator@ means a person appointed by the court to administer the property of an adult, including an appointment under [insert reference to enacting state=s conservatorship or protective proceedings statute].
- (4) AEmergency guardian@ means a person appointed as guardian for a limited period because of an emergency, including an appointment under [here insert reference to enacting state=s emergency guardianship statute].
- (5) AGuardian@ means a person appointed by the court to make decisions regarding the person of an adult, including an appointment under [here insert reference to enacting state=s guardianship statute].
- (5A) AGuardianship order@ means an order appointing a guardian.
- (6) AGuardianship proceeding@ means a proceeding in which an order for the appointment of a guardian is sought or has been entered.
- (7) AHome state@ means the state in which an individual was physically present for at least six consecutive months immediately before the guardianship or protective proceeding commenced. A period of temporary absence counts as part of the six-month period.
- (8) AIncapacitated person@ means an adult for whom a guardian has been appointed.
- (9) AParty@ means the respondent, petitioner, guardian or conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.
- (10) APerson@ means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.
- (11) AProtected person@ means an adult for whom a conservator has been appointed or another protective order has been made.

(12) AProtective order@ means the appointment of a conservator or another court order related to management of an adult=s property.

(13) AProtective proceeding@ means a judicial proceeding in which a protective order is sought or has been entered.

(14) ARecord@ means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) ARespondent@ means an individual for whom the appointment of a guardian or conservator or another protective order is sought.

(16) ASignificant connection state@ means a state other than the home state with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(17) AState@ means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 104. INTERNATIONAL APPLICATION OF [ACT].

(a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying [articles] 1, 2, and 3.

(b) Except to the extent such order violates fundamental principles of human rights, a court of this state shall recognize and enforce a guardianship or protective proceedings order of a foreign country made in substantial conformity with this [act] or if the jurisdiction of the foreign court was based on factual circumstances meeting the jurisdictional standards of this [act].

SECTION 105. COMMUNICATION BETWEEN COURTS.

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under this [act].

(b) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(c) The court may allow the parties to participate in a communication under subsection (a). If the parties are not allowed or able to participate in the communication, they must be given the opportunity to present facts and legal arguments before an order is entered under this [act].

(d) Courts may communicate concerning schedules, calendars, court records, and similar matters without informing the parties or making a record.

SECTION 106. COOPERATION BETWEEN COURTS.

(a) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to:

- (1) hold an evidentiary hearing;
- (2) order a person in that state to produce or give evidence pursuant to procedures of that state;
- (3) order that an evaluation or assessment be made of the respondent, or order any other investigation of a person involved in a proceeding;
- (4) forward to the court of this state a certified copy of the transcript or other record of a hearing under paragraph (a)(1) or any other proceedings, any evidence otherwise presented under paragraph (a)(2), and any evaluation or assessment prepared in compliance with the request under paragraph (a)(3);
- (5) issue any other order necessary to assure the appearance of a person necessary to make a determination, including the respondent or the incapacitated or protected person; and
- (6) issue an order authorizing the release of medical, financial, criminal or other relevant information in that state, including protected health information as described in 42 U.S.C. ' 1320d [, as amended].

(b) Upon request for assistance of the kind provided in subsection (a) from a court of another state in which a guardianship or protective proceeding is pending, a court of this state has jurisdiction for the limited purpose of granting the relief requested or otherwise making reasonable efforts to comply with the request.

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) or (b) may be assessed against the parties by a court of this state according to the law of this state.

SECTION 107. TAKING TESTIMONY IN ANOTHER STATE.

(a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of witnesses who are located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) In a guardianship or protective proceeding, a court in this state may permit an individual located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

[ARTICLE] 2
INITIAL JURISDICTION

SECTION 201. INITIAL JURISDICTION.

(a) A court of this state has jurisdiction to appoint a guardian or enter a protective order for a respondent if:

(1) this state is the respondent=s home state on the date the proceeding commenced, or was the home state of the respondent within six months before commencement of the proceeding;

(2) this state is a significant connection state and :

(A) the respondent does not have a home state, or a court of the home state has declined to exercise jurisdiction under Sections 202 or 204 on the basis that this state is the more appropriate forum; or

(B) no proceeding has been commenced in the respondent=s home state or another significant connection state, no objection to the jurisdiction of the court in this state has been filed, and the court in this state concludes that it is an appropriate forum.

(3) this state is neither the home state nor a significant connection state but the home state and all significant connection states have declined to exercise jurisdiction under Sections 202 or 204 , or the respondent has no home state or significant connection state; or

(b) Whether or not a court in another state has jurisdiction, a court in this state has jurisdiction to enter a protective order with respect to property located in this state.

(c) Whether or not a court in another state has jurisdiction, a court in this state has jurisdiction to appoint an emergency guardian for a respondent who is physically present in this state.

(d) A court in this state has jurisdiction to appoint a guardian or conservator for an incapacitated or protected person for whom a proceeding has been transferred as provided in [article] 3.

(e) This section provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or enter protective order for an adult.

SECTION 201B. EXCLUSIVE, CONTINUING JURISDICTION. Except as provided in Section 205, a court that has appointed a guardian or entered a protective order consistent with this [act] has exclusive, continuing jurisdiction over the proceeding until it is terminated by the court or transferred as provided in [article 3].

SECTION 202. DECLINING JURISDICTION IF ANOTHER COURT MORE APPROPRIATE FORUM.

(a) A court having jurisdiction under Section 201 to appoint a guardian or enter a protective order may decline to exercise its jurisdiction if it at any time determines that a court of another state is a more appropriate forum.

(b) If a court of this state declines jurisdiction over a guardianship or protective proceeding under subsection (a), it shall either dismiss the proceeding or stay the proceeding upon condition that a guardianship or protective proceeding be promptly commenced in another state. The court may impose any other condition the court considers just and proper.

SECTION 203. DETERMINING APPROPRIATE FORUM. In determining whether it is or is not an appropriate forum, the court shall consider all relevant factors, including:

- (1) any expressed wishes of the respondent;
- (2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur in the future and which state could best protect the respondent from the abuse, neglect, or exploitation;
- (3) the length of time the respondent was physically located in or was a legal resident of another state;
- (4) the distance of respondent from the court;
- (5) the financial circumstances of the respondent=s estate;
- (6) the nature and location of the evidence required to resolve the proceeding, including testimony of the respondent;
- (7) the ability of the courts in this or other states to decide the issue expeditiously and the procedures necessary to present the evidence;
- (8) the familiarity of the courts of this and other states with the facts and issues in the proceeding; and
- (9) if an appointment is made, the court=s ability to monitor the guardian=s or conservator=s conduct; and
- (10) whether the respondent=s nomination of a guardian or conservator indicated a preference for the jurisdiction to make the appointment.

SECTION 204. JURISDICTION DECLINED BY REASON OF CONDUCT.

(a) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or enter a protective order because a person seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may;

- (1) decline to exercise jurisdiction;

(2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the safety of the respondent or the respondent=s property and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a guardianship or protective proceeding is commenced in a court of another state having jurisdiction; or

(3) continue to exercise jurisdiction after considering:

(A) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court=s jurisdiction;

(B) whether this state is a more appropriate forum than any other state under Section 203; and

(C) whether the court of any other state would have jurisdiction in substantial conformity with Section 201.

(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or enter a protective order because a person seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses including costs, communication expenses, attorney=s fees, investigative fees, expenses for witnesses, and travel expenses during the course of the proceedings, unless the person from whom fees are sought establishes that the assessment would be inappropriate. The court may not assess fees, costs, or expenses against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this [act].

SECTION 204A. NOTICE OF PROCEEDING OTHER THAN IN HOME STATE.

If a petition for the appointment of a guardian or entry of a protective order is brought in a state other than the respondent=s home state, in addition to complying with notice requirements of local law, notice of the proceeding shall be mailed to those persons who would be entitled to notice of the petition were the proceeding brought in the respondent=s home state.

SECTION 205. MULTIPLE PROCEEDINGS.

(a) Except for a petition for the appointment of an emergency guardian or a protective order limited to property located in this state, if a petition to appoint a guardian or enter a protective order is pending in more than one state, the following rules shall apply:

(1) if the court in this state has jurisdiction under Section 201(a), it may proceed with the case unless a court in another state acquires jurisdiction under Section 201(a) prior to the appointment or entry of the order;

(2) if the court in this state does not have jurisdiction under Section 201(a), whether at the time the petition is filed or at anytime prior to the appointment or entry of the order, the court shall stay the proceeding and communicate with the court in the other state, and shall dismiss the proceeding if the court in the other state does not determine that the court in this state is a more appropriate forum.

(b) If a petition for the appointment of an emergency guardian is brought in a state other than the respondent=s home state, the court in which the proceeding was brought shall dismiss the proceeding at the direction of the court in the respondent=s home state, whether dismissal is requested prior to or after the emergency appointment.

[ARTICLE] 3
TRANSFER OF JURISDICTION

SECTION 301. PETITION TO TRANSFER JURISDICTION TO ANOTHER STATE.

(a) Following the appointment of a guardian or entry of a protective order, the guardian or conservator may petition the court to transfer the proceeding to another state on the basis that the incapacitated or protected person will move permanently to the other state.;

(b) Notice of the petition to transfer a guardianship or protective proceeding under subsection (a) must be served personally on the incapacitated or protected person, filed with the court in the jurisdiction to which the proceeding is to be transferred, and mailed to those persons who would be entitled to notice of a petition in the transferring state for the appointment of a guardian or entry of a protective order.

(c) On the court=s own motion or on request of the incapacitated, protected, or other interested person, the court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The court shall enter an order provisionally granting a petition filed pursuant to subsection (a) if the court finds that:

(1) the incapacitated or protected person will move permanently to the other state;
(2) no objection to the transfer has been made, or if an objection has been made, the objector has not established that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person;

(3) the court is satisfied that the plans for the incapacitated person in the new state are reasonable and sufficient or, in the case of a conservatorship, adequate arrangements will be made for management of the protected person=s property; and

(4) the court is satisfied that the guardianship or protective proceeding will be accepted by the court to which the guardian or conservator has indicated the proceeding will be transferred.

(e) To facilitate the orderly transfer of the guardianship or protective proceeding under this section, the court in this state shall coordinate efforts with the court in the state to which the proceeding will be transferred.

(f) Upon receipt from the court of the other state of the order accepting the guardianship or protective proceeding and the filing of the documents required in this state to terminate a guardianship or protective proceeding, the court shall enter an order terminating the guardianship or protective proceeding in this state and confirming the transfer of the proceeding to the other state.

SECTION 302. PETITION TO ACCEPT PROCEEDING TRANSFERRED FROM ANOTHER STATE.

(a) Upon entry of a provisional order in another state to transfer a guardianship or protective proceeding to this state under procedures similar to those in Section 301, the guardian or conservator shall petition the court in this state to accept the guardianship or protective proceeding.

(b) Notice of a petition under subsection (a) to accept a guardianship or protective proceeding from another state must be served personally on the incapacitated or protected person, filed with the court in this state that is being requested to accept transfer of the guardianship or protective proceeding, and mailed to those persons who would be entitled to notice were the petition a petition for the appointment of a guardian or entry of a protective order in the transferring state or in this state.

(c) The court on its own motion may, or on request of the incapacitated, protected, or other interested person, shall, hold a hearing on a petition filed under subsection (a) to accept a guardianship or protective proceeding from another state.

(d) The court shall issue an order provisionally approving a petition filed under subsection (a) to accept a guardianship or protective proceeding from another state unless an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person.

(e) In approving a petition under this section, the court shall give full faith and credit to the guardianship or protective order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator, if eligible to act in this state.

(f) Upon receipt of the order from the transferring state terminating the guardianship or protective proceeding and confirming the transfer of the proceeding to this state, the court shall enter a final order appointing the guardian or conservator as guardian or conservator in this state and issuing appropriate letters of office. Following the appointment, the court has exclusive,

continuing jurisdiction over the proceeding until it is terminated by the court or transferred as provided in this article.

(g) To facilitate the orderly transfer of a guardianship or protective proceeding under this section, the court shall coordinate efforts with the court in the transferring state.

(h) The denial of a petition under this section to accept a guardianship or protective proceeding from another state does not affect the ability of a guardian or conservator appointed by a court in another state to maintain a proceeding to be appointed guardian of the incapacitated person or conservator of the protected person under [insert statutory references for the regular appointment of guardian or conservator].

(i) Within [90] days after entry of a final order accepting a guardianship or protective proceeding transferred from another state, the court must hold a hearing for the limited purpose of determining whether the guardianship or conservatorship must be modified to conform to the law of this state.

[ARTICLE] 4
FILING AND RECOGNITION OF ORDERS FROM OTHER STATES

SECTION 401. REGISTRATION OF GUARDIANSHIP ORDERS. If a guardian has not been appointed in this state and a petition for the appointment of a guardian is not pending in this state, a guardian appointed for the individual in another state may register the guardianship proceeding in this state by filing in a court in any [appropriate county] of this state certified, authenticated, or exemplified copies of the order and letters of appointment. On receipt of these documents, the registering court shall cause the order to be filed as a foreign judgment, together with one copy of any accompanying documents and information.

SECTION 402. REGISTRATION OF CONSERVATORSHIP ORDERS. If a conservator has not been appointed in this state and a petition for a protective order is not pending in this state, a conservator appointed for the individual in another state may register the protective proceeding in this state by filing in a court of this state, in a [county] in which property belonging to the protected person is located, certified, exemplified, or authenticated copies of letters of the order and letters of appointment and of any bond. On receipt of these documents, the registering court shall cause the order to be filed as a foreign judgment, together with one copy of any accompanying documents and information.

SECTION 403. EFFECT OF REGISTRATION. Upon registration of a guardianship or protective proceeding from another state, the guardian or conservator may exercise all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state subject to any conditions otherwise imposed upon nonresident parties.

SECTION 404. RECOGNITION. A court of this state shall recognize a guardianship or protective order issued by a court of another state which has been registered in this state and otherwise grant any relief normally available under the law of this state to enforce the order in the same manner as an order issued in this state.

[ARTICLE] 5
MISCELLANEOUS PROVISIONS

SECTION 501. APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et. seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001 (c) , or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 503. TRANSITIONAL PROVISION. A motion or other request for relief made in a guardianship or protective proceeding or to enforce a guardianship or protective order which was commenced before the effective date of this [act] is governed by the law in effect at the time the motion or other request was made.

SECTION 504. EFFECTIVE DATE. This [act] takes effect

SECTION 505. REPEALS. The following acts and parts of acts are hereby repealed:

- (1)
- (2)
- (3)