

DRAFT
FOR DISCUSSION ONLY

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For Drafting Committee Meeting November 17-19, 2006

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November 7, 2006

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

TABLE OF CONTENTS

**[ARTICLE] 1
GENERAL PROVISIONS**

SECTION 101. SHORT TITLE	1
SECTION 102. SCOPE	1
SECTION 103. DEFINITIONS	1
SECTION 104. INTERNATIONAL APPLICATION OF [ACT]	3
SECTION 105. COMMUNICATION BETWEEN COURTS	3
SECTION 106. COOPERATION BETWEEN COURTS	3
SECTION 107. TAKING TESTIMONY IN ANOTHER STATE	4

**[ARTICLE] 2
INITIAL JURISDICTION**

SECTION 201. INITIAL JURISDICTION	6
SECTION 202. DECLINING JURISDICTION IF ANOTHER COURT MORE APPROPRIATE FORUM	7
SECTION 203. DETERMINING APPROPRIATE FORUM	7
SECTION 204. JURISDICTION DECLINED BY REASON OF CONDUCT	8
SECTION 205. SIMULTANEOUS PROCEEDINGS	9

**[ARTICLE] 3
TRANSFER OF JURISDICTION**

SECTION 301. PETITION TO TRANSFER JURISDICTION TO ANOTHER STATE	10
SECTION 302. PETITION TO ACCEPT PROCEEDING TRANSFERRED FROM ANOTHER STATE	11

**[ARTICLE] 4
RECOGNITION AND ENFORCEMENT**

SECTION 401. REGISTRATION	13
SECTION 402. RECOGNITION	14

**[ARTICLE] 5
MISCELLANEOUS PROVISIONS**

SECTION 501. APPLICATION AND CONSTRUCTION	15
SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT	15
SECTION 503. EFFECTIVE DATE	15
SECTION 504. REPEALS	15
SECTION 505. TRANSITIONAL PROVISION	15

1 **UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS**

2 **JURISDICTION ACT**

3
4 **[ARTICLE] 1**

5 **GENERAL PROVISIONS**

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

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

10 **SECTION 103. DEFINITIONS.** In this [act]:

11 (1) “Adult” means an individual who has attained [18] years of age.

12 (2) “Commencement” or “commenced” means the filing of a first pleading in a
13 guardianship or protective proceeding.

14 (3) “Conservator” means a person appointed by the court to administer the estate of an
15 adult, including an appointment under [here insert reference to enacting state’s conservatorship
16 or protective proceedings statute].

17 (4) “Emergency guardian” means a person appointed as guardian for a limited period on
18 account of an emergency, including an appointment under [here insert reference to enacting
19 state’s emergency guardianship statute].

20 (5) “Guardian” means a person appointed by the court to make decisions regarding the
21 person of an adult, including an appointment under [here insert reference to enacting state’s
22 guardianship statute].

23 (6) “Guardianship proceeding” means a proceeding in which an order for the

1 appointment of a guardian is sought or has been entered, whether that order is for a full, limited,
2 temporary, or emergency guardianship.

3 (7) “Home state” means the state in which an individual lived for at least six consecutive
4 months immediately before the commencement of a guardianship or protective proceeding. A
5 period of temporary absence counts as part of the six-month period.

6 (8) “Incapacitated person” means an individual for whom a guardian has been appointed.

7 (9) “Party” means the respondent, petitioner, guardian or conservator, or any other
8 person allowed by the court to participate in a protective proceeding.

9 (10) “Person” means an individual, corporation, business trust, estate, trust, partnership,
10 limited liability company, association, joint venture, government; governmental subdivision,
11 agency, or instrumentality; public corporation; or any other legal or commercial entity.

12 (11) “Protected person” means an individual for whom a conservator has been appointed
13 or other protective order has been made.

14 (12) “Protective order” means the appointment of a conservator or other court order
15 related to management of an individual’s property.

16 (13) “Protective proceeding” means a judicial proceeding in which a protective order is
17 sought or has been entered.

18 (14) “Record” means information that is inscribed on a tangible medium or that is stored
19 in an electronic or other medium and is retrievable in perceivable form.

20 (15) “Respondent” means an individual for whom the appointment of a guardian or
21 conservator or other protective order is sought.

22 (16) “Significant connection state” means a state with which a respondent has a
23 significant connection other than mere physical presence, and in which substantial evidence

1 concerning the respondent is available.

2 (17) “State” means a state of the United States, the District of Columbia, Puerto Rico,
3 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
4 of the United States.

5 **SECTION 104. INTERNATIONAL APPLICATION OF [ACT].** A court of this
6 state shall recognize and enforce a guardianship or protective proceedings order of a foreign
7 country made under factual circumstances in substantial conformity with this [act] except to the
8 extent such order violates fundamental principles of human rights.

9 **SECTION 105. COMMUNICATION BETWEEN COURTS.**

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

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

15 (c) Courts may communicate on schedules, calendars, court records, and similar matters
16 without informing the parties and without making a record.

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

20 **SECTION 106. COOPERATION BETWEEN COURTS.**

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

23 (1) hold an evidentiary hearing;

1 (2) order a person to produce or give evidence pursuant to procedures of that
2 state;

3 (3) order that an evaluation or assessment be made of the respondent, or order
4 any other investigation of a person involved in a proceeding;

5 (4) forward to the court of this state a certified copy of the transcript of the record
6 of the hearing under subsection (a)(1) or any other proceedings, the evidence otherwise
7 presented under subsection (a)(2), and any evaluation or assessment prepared in compliance with
8 the request under subsection (a)(3);

9 (5) enter any other order necessary to assure the appearance of a person
10 necessary to make a determination, including the respondent or the incapacitated or protected
11 person; and

12 (6) issue an order authorizing the release of medical, financial, criminal or other
13 relevant information, including protected health information as described in 42 U.S.C. §1320d [,
14 as amended].

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

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

22 **SECTION 107. TAKING TESTIMONY IN ANOTHER STATE.**

23 (a) In addition to other procedures that may be available, testimony of witnesses in a

1 guardianship or protective proceeding who are located in another state may be offered by
2 deposition or other means allowable in this state for testimony taken in another state. The court
3 on its own motion may order that the testimony of a person be taken in another state and may
4 prescribe the manner in which and the terms upon which the testimony is taken.

5 (b) A court in this state may permit an individual located in another state to be deposed
6 or to testify by telephone or audiovisual or other electronic means. A court of this state shall
7 cooperate with courts of other states in designating an appropriate location for the deposition or
8 testimony.

9 (c) Documentary evidence transmitted from another state to a court of this state by
10 technological means that do not produce an original writing may not be excluded from evidence
11 on an objection based on the means of transmission.

1 [ARTICLE] 2

2 INITIAL JURISDICTION

3 SECTION 201. INITIAL JURISDICTION.

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

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

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

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

13 (B) a proceeding in another significant connection state was not
14 commenced prior to a proceeding in this state, or the court in the other significant connection
15 state has declined to exercise jurisdiction under Section 202 on the ground that this state is the
16 more appropriate forum; or

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

20 (3) this state is neither the home state nor a significant connection state but the
21 home state and all significant connection states have declined to exercise jurisdiction under
22 Section 202 on the ground that a court of this state is the more appropriate forum, or the
23 respondent has no home state or significant connection state; or

1 (4) the proceeding was transferred to this state by a court in another state as
2 provided in [article] 3.

3 (b) Whether or not a court in another state has jurisdiction, a court in this state has
4 jurisdiction to enter a protective order with respect to property located in this state and, if the
5 respondent is physically present in this state, to appoint an emergency guardian.

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

8 **SECTION 202. DECLINING JURISDICTION IF ANOTHER COURT MORE**
9 **APPROPRIATE FORUM.**

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

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

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

20 (1) any expressed wishes of the respondent;

21 (2) whether abuse, neglect or exploitation of the respondent has occurred or is likely to
22 occur in the future and which state could best protect the respondent from abuse;

23 (3) the length of time the respondent was physically located in or was a legal resident of

1 another state;

2 (4) the distance of respondent from the court;

3 (5) the financial circumstances of the respondent's estate;

4 (6) the nature and location of the evidence required to resolve the proceeding, including
5 testimony of the respondent;

6 (7) the ability of the courts in this or other states to decide the issue expeditiously and
7 the procedures necessary to present the evidence;

8 (8) the familiarity of the courts of this and other states with the facts and issues in the
9 proceeding; and

10 (9) if an appointment is made, the court's ability to monitor the guardian's or
11 conservator's conduct.

12 **SECTION 204. JURISDICTION DECLINED BY REASON OF CONDUCT.**

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

16 (1) decline to exercise jurisdiction;

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

21 (3) continue to exercise jurisdiction after considering:

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

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

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

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

13 **SECTION 205. SIMULTANEOUS PROCEEDINGS.** Except for a petition for the
14 appointment of an emergency guardian or a protective order limited to property located in this
15 state, if the court of this state does not have jurisdiction over a proceeding filed in this state to
16 appoint a guardian or enter a protective order under Section 201 and a guardianship or protective
17 proceeding has been or is commenced in another state having jurisdiction in substantial
18 conformity with Section 201, the court in this state shall stay its proceeding and communicate
19 with the court in the other state. The court in this state shall dismiss the proceeding if the court
20 in the other state does not determine that the court in this state is a more appropriate forum under
21 Section 202.

1 [ARTICLE] 3

2 TRANSFER OF JURISDICTION

3 SECTION 301. PETITION TO TRANSFER JURISDICTION TO ANOTHER
4 STATE.

5 (a) If, following the appointment of a guardian or entry of a protective order, the guardian
6 or conservator petitions the court to transfer the proceeding to another state, the court shall enter
7 an order provisionally approving the transfer if the court finds that:

8 (1) the incapacitated or protected person will move permanently to the other state;
9 and

10 (2) no objection to the transfer has been made, or if an objection has been made,
11 the objector has not established that transfer of the proceeding would be contrary to the
12 incapacitated or protected person's interests;

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

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

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

1 (c) On the court's own motion or on request of the incapacitated, protected, or other
2 interested person, the court shall hold a hearing on a petition to transfer a guardianship or
3 protective proceeding to another state.

4 (d) To facilitate the orderly transfer of the guardianship or protective proceeding, the
5 court in this state shall coordinate efforts with the court in the state to which the proceeding will
6 be transferred.

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

12 **SECTION 302. PETITION TO ACCEPT PROCEEDING TRANSFERRED FROM**
13 **ANOTHER STATE.**

14 (a) Upon entry of a provisional order in another state to transfer a guardianship or
15 protective proceeding to this state as provided in Section 301, the guardian or conservator shall
16 petition the court in this state to accept the guardianship or protective proceeding.

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

22 (c) On the court's own motion or on request of the incapacitated, protected, or other
23 interested person, the court shall hold a hearing on a petition filed under subsection (a) to accept

1 a guardianship or protective proceeding from another state.

2 (d) The court shall enter an order provisionally approving the petition to accept the
3 guardianship or protective proceeding to be transferred from the other state unless an objection
4 has been made and the objector establishes that transfer of the proceeding would be contrary to
5 the incapacitated or protected person's interests.

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

10 (f) Upon receipt of the order from the transferring state terminating the guardianship or
11 protective proceeding and confirming the transfer of the proceeding to this state, the court shall
12 enter a final order accepting the proceeding.

13 (g) To facilitate the orderly transfer of the guardianship or protective proceeding, the
14 court shall coordinate efforts with the court in the transferring state.

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

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

1 [ARTICLE] 4

2 RECOGNITION AND ENFORCEMENT

3 SECTION 401. REGISTRATION.

4 (a) A guardianship or protective order issued by a court of another state may be
5 registered in this state by sending to [the clerk of the appropriate court] in this state:

6 (1) a letter or other document requesting registration;

7 (2) a certified copy of the order sought to be registered and a statement under
8 penalty of perjury that to the best of the knowledge and belief of the person seeking registration
9 the order has not expired or been modified or terminated; and

10 (3) a copy of the letters of office and of any bond.

11 (b) On receipt of the documents required by subsection (a), the registering court shall
12 cause the order to be filed as a foreign judgment, together with one copy of any accompanying
13 documents and information.

14 (c) Upon registration of an order under subsection (a), and until the order expires or is
15 revoked or terminated, a guardian or conservator appointed in another state who has registered in
16 this state may:

17 (1) if a full conservator, exercise all powers of a full conservator appointed in this
18 state;

19 (2) if a full guardian, exercise all powers of a full guardian in the state of
20 appointment except to the extent the exercise of those powers is prohibited under the laws of this
21 state; and

22 (3) if a limited, temporary, or emergency guardian or conservator, exercise only
23 those powers the guardian or conservator is authorized to exercise in the state of appointment.

1 (d) A registered order is effective as of the date of the registration in the same manner as
2 an order issued by a court of this state.

3 **SECTION 402. RECOGNITION.**

4 (a) A court of this state shall recognize a guardianship or protective order of a court of
5 another state if the latter court exercised jurisdiction in substantial conformity with this [act] or
6 its jurisdiction was based on factual circumstances meeting the jurisdictional standards of this
7 [act].

8 (b) A court of this state shall recognize a guardianship or protective order issued by a
9 court of another state which has been registered in this state and otherwise grant any relief
10 normally available under the law of this state to enforce the order.

1 [ARTICLE] 5

2 MISCELLANEOUS PROVISIONS

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

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

12 SECTION 503. EFFECTIVE DATE. This [act] takes effect

13 SECTION 504. REPEALS. The following acts and parts of acts are hereby repealed:

- 14 (1)
- 15 (2)
- 16 (3)

17 SECTION 505. TRANSITIONAL PROVISION. A motion or other request for relief
18 made in a guardianship or protective proceeding or to enforce a guardianship or protective order
19 which was commenced before the effective date of this [act] is governed by the law in effect at
20 the time the motion or other request was made.