

DRAFT

FOR DISCUSSION ONLY

UNIFORM GUARDIANSHIP INTERSTATE JURISDICTION AND ENFORCEMENT ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For Drafting Committee Meeting October 28-30, 2005

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**UNIFORM GUARDIANSHIP INTERSTATE JURISDICTION
AND ENFORCEMENT ACT**

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1 partnership, limited liability company, association, joint venture, government; governmental
2 subdivision, agency, or instrumentality; public corporation; or any other legal or commercial
3 entity.

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

6 (8) “Protected person” means an individual for whom a conservator has been
7 appointed or other protective order has been made.

8 (9) “Protective proceeding” means a judicial proceeding in which the entry of a
9 protective order is sought.

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

12 (11) “State” means a State of the United States, the District of Columbia, Puerto
13 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
14 jurisdiction of the United States.

15 **SECTION 103. APPLICATION TO INDIAN TRIBES.**

16 [(a) In this section, “tribe” means an Indian tribe or band, or Alaskan Native
17 village, which is recognized by federal law or formally acknowledged by a State.]

18 [(b) A court of this State shall treat a tribe as if it were a State of the United
19 States for the purpose of applying [Articles] 1 and 2.]

20 [(c) An adult guardianship or protective order made by a tribe under factual
21 circumstances in substantial conformity with the jurisdictional standards of this [act] must be
22 recognized and enforced under [Article] 5.]

1 **SECTION 104. INTERNATIONAL APPLICATION OF [ACT].**

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

4 (b) Except as otherwise provided in subsection (c), an adult guardianship or
5 protective order made in a foreign country under factual circumstances in substantial conformity
6 with the jurisdictional standards of this [act] must be recognized and enforced under [Article] 2
7 or 3, as applicable.

8 (c) A court of this State need not apply this [act] if the adult guardianship or
9 protective proceedings law of a foreign country violates fundamental principles of human rights.

10 **SECTION 105. COMMUNICATION BETWEEN COURTS.**

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

13 (b) The court may allow the parties to participate in the communication. If the
14 parties are not able to participate in the communication, they must be given the opportunity to
15 present facts and legal arguments before a decision on jurisdiction is made.

16 (c) Communication between courts on schedules, calendars, court records, and
17 similar matters may occur without informing the parties. A record need not be made of the
18 communication.

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

22 (e) For the purposes of this section, “record” means information that is inscribed

1 on a tangible medium or that is stored in an electronic or other medium and is retrievable in
2 perceivable form.

3 **SECTION 106. COOPERATION BETWEEN COURTS; PRESERVATION OF**
4 **RECORDS.**

5 (a) A court of this State may request the appropriate court of another State to:

6 (1) hold an evidentiary hearing;

7 (2) order a person to produce or give evidence pursuant to procedures of
8 that State;

9 (3) order that an evaluation be made with respect to the capacity of an
10 adult involved in a pending proceeding;

11 (4) forward to the court of this State a certified copy of the transcript of
12 the record of the hearing, the evidence otherwise presented, and any evaluation prepared in
13 compliance with the request; and

14 (5) order a party to a guardianship or protective proceeding or any person
15 having physical custody of the adult to appear in the proceeding with or without the ward or
16 prospective ward.

17 (b) Upon request of a court of another State, a court of this State may hold a
18 hearing or enter an order described in subsection (a).

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

21 (d) A court of this State shall preserve the pleadings, orders, decrees, records of
22 hearings, evaluations, and other pertinent records with respect to a guardianship or protective

1 proceeding.

2 **SECTION 107. WHO MAY RAISE ISSUES.** Except to the extent the [act] more
3 specifically provides, issues concerning a court's jurisdiction may be raised by the respondent, a
4 person interested in the respondent's welfare, or by the court on its own motion or upon request
5 of a court in another state.

1 [ARTICLE] 2

2 INITIAL GUARDIANSHIP JURISDICTION

3
4 SECTION 201. INITIAL GUARDIANSHIP JURISDICTION.

5 (a) Except as otherwise limited in this [Article], a court has jurisdiction to
6 appoint a guardian for an adult individual who is a resident of, plans to be a resident of, or is
7 physically located in this State.

8 (b) Upon motion of a person described in Section 107, a court other than a court
9 in the respondent's home state shall decline to exercise its jurisdiction to appoint a guardian for
10 an adult individual unless one of the following exceptions applies:

11 (1) the petition is for the appointment of an emergency guardian and the
12 respondent is physically located present in this State;

13 (2) the respondent does not have a home state;

14 (3) the court determines as provided in Section 202 that it is a more
15 convenient forum than a court in the home state.

16 SECTION 202. INCONVENIENT FORUM.

17 (a) Upon motion of a person described in Section 107, a court having jurisdiction
18 to appoint a guardian for an adult individual shall decline to exercise its jurisdiction if it at any
19 time determines that it is an inconvenient forum under the circumstances and that a court of
20 another State is a more appropriate forum.

21 (b) In determining whether it is an inconvenient forum, the court shall consider
22 all relevant factors, including:

1 (1) whether abuse has occurred and is likely to continue in the future and
2 which State could best protect the prospective ward from abuse;

3 (2) the length of time the prospective ward was physically located or was
4 a legal resident of another State;

5 (3) the distance between the court in this State and the court in the State
6 that would assume jurisdiction;

7 (4) the relative financial circumstances of the parties;

8 (5) any agreement of the parties as to which State should assume
9 jurisdiction;

10 (6) the nature and location of the evidence required to resolve the pending
11 litigation, including testimony of the prospective ward;

12 (7) the ability of the court of each State to decide the issue expeditiously
13 and the procedures necessary to present the evidence; and

14 (8) the familiarity of the court of each State with the facts and issues in
15 the pending litigation.

16 (c) If a court of this State determines that it is an inconvenient forum and that a
17 court of another State is a more appropriate forum, it shall stay the proceedings upon condition
18 that an adult guardianship proceeding be promptly commenced in another designated State. The
19 court of this State may impose any other condition the court considers just and proper.

20 **SECTION 203. JURISDICTION DECLINED BY REASON OF CONDUCT.**

21 (a) A court of this State that acquires jurisdiction to appoint a guardian for an
22 adult individual because a person seeking to invoke its jurisdiction has engaged in unjustifiable

1 conduct shall decline to exercise its jurisdiction unless:

2 (1) the respondent and all persons required to be notified of the
3 guardianship proceedings have acquiesced in the exercise of the court's jurisdiction;

4 (2) the court determines that this State is a more appropriate forum under
5 Section 202; or

6 (3) no court of any other State would have jurisdiction under the criteria
7 specified in this [act].

8 (b) If a court of this State declines to exercise its jurisdiction pursuant to
9 subsection (a), it may fashion an appropriate remedy to ensure the safety of the ward and prevent
10 a repetition of the unjustifiable conduct, including staying the proceeding until an adult
11 guardianship or protective proceeding is commenced in a court having jurisdiction.

12 (c) If a court dismisses a petition or stays a proceeding because it declines to
13 exercise its jurisdiction pursuant to subsection (a), it shall assess against the party that sought to
14 invoke its jurisdiction necessary and reasonable expenses including costs, communication
15 expenses, attorney's fees, investigative fees, expenses for witnesses, and travel expenses during
16 the course of the proceedings, unless the party from whom fees are sought establishes that the
17 assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses
18 against this State unless authorized by law other than this [act].

19 **SECTION 204. EXCLUSIVE, CONTINUING JURISDICTION.**

20 (a) Except for the appointment of an emergency guardian in another state in
21 which the ward is physically present, a court of this State which has appointed a guardian
22 consistent with this [act] has exclusive, continuing jurisdiction over the guardianship proceeding

1 until a court of this State determines that neither the adult or guardian have a significant
2 connection with this State and that substantial evidence is no longer available in this State
3 concerning the guardian's actions or ward's condition.

4 (b) A court of this State that has appointed a guardian but which does not have
5 exclusive, continuing jurisdiction under this section may modify the guardianship order only if it
6 has jurisdiction to make an initial determination under Section 201.

7 **SECTION 205. JURISDICTION TO MODIFY ORDER.** Except for the appointment
8 of an emergency guardian, a court of this State may not modify an adult guardianship order
9 entered by a court of another State unless a court of this State has jurisdiction to make an initial
10 guardianship appointment under Section 201 and:

11 (1) the court of the other State determines it no longer has exclusive, continuing
12 jurisdiction under Section 204 or that a court of this State would be a more convenient forum
13 under Section 202; or

14 (2) a court of this State or a court of the other State determines that the ward and
15 the guardian do not presently physically reside in the other State.

16 **SECTION 206. SIMULTANEOUS PROCEEDINGS.**

17 (a) Except for the appointment of an emergency guardian, a court of this State
18 may not exercise its jurisdiction under this [Article] if, at the time of the commencement of the
19 proceeding, a proceeding concerning the guardianship of an adult has been commenced in a court
20 of another State having jurisdiction substantially in conformity with this [act], unless the
21 proceeding has been terminated or stayed by the court of the other State because a court of this
22 State is a more convenient forum under Section 202.

1 (b) Except for the appointment of an emergency guardian, if a court of this State
2 determines that an adult guardianship proceeding has been commenced in a court in another State
3 having jurisdiction substantially in accordance with this [act], the court of this State shall stay its
4 proceeding and communicate with the court of the other State. If the court of the State having
5 jurisdiction substantially in accordance with this [act] does not determine that the court of this
6 State is a more appropriate forum, the court of this State shall dismiss the proceeding.

7 (c) In a proceeding to modify an adult guardianship order, a court of this State
8 shall determine whether a proceeding to enforce the order has been commenced in another State.
9 If in a proceeding to modify an adult guardianship order a court of this State finds that a
10 proceeding to enforce the order has been commenced in another State, the court may:

11 (1) stay the proceeding for modification pending the entry of an order of a
12 court of the other State enforcing, staying, denying, or dismissing the proceeding for
13 enforcement;

14 (2) enjoin the parties from continuing with the proceeding for
15 enforcement; or

16 (3) proceed with the modification under conditions it considers
17 appropriate.

1
2
3
4
5

[ARTICLE] 3

CONSERVATORSHIP JURISDICTION

[Insert appropriate text here after drafting committee reaches consensus on guardianship language in Article 2]

1 [ARTICLE] 4

2 TRANSFER OF JURISDICTION

3
4 SECTION 401. TRANSFER OF GUARDIANSHIP JURISDICTION TO
5 ANOTHER STATE.

6 (a) After the appointment of a guardian, the court making the appointment shall
7 transfer the proceeding to a court in another State upon petition of the guardian if:

8 (1) the ward has or will move permanently to the other state;

9 (2) the guardian has filed a satisfactory final report that contains sufficient
10 information for the court to determine that the plans for the ward in the new state are reasonable
11 and sufficient;

12 (3) an objection to the transfer has not been made, or if an objection has
13 been made, the objectants have not established that transfer of the proceeding would be contrary
14 to the ward's interests; and

15 (4) the court is satisfied that the guardianship will be accepted by the
16 court to which the petitioner has indicated the proceeding is to be transferred.

17 (b) Notice of the petition to transfer a guardianship must be served personally on
18 the ward, and must be mailed to the court in the jurisdiction in which the proceeding is to be
19 transferred and to those persons who would be entitled to notice in the originating state were the
20 petition a petition for the original appointment of a guardian.

21 (c) The court shall hold a hearing on a petition to transfer a guardianship on its
22 own motion or on request of the ward or other interested person.

1 (d) To facilitate the orderly transfer of the guardianship, the court shall coordinate
2 efforts with the court to which the proceeding is to be transferred.

3 **SECTION 402. RECEIPT OF GUARDIANSHIP TRANSFERRED FROM**
4 **ANOTHER STATE.**

5 (a) A guardian appointed by a court in another State for an incapacitated person
6 who is residing in this State or intends to move to this State may petition the court to transfer the
7 guardianship to this State.

8 (b) Notice of the petition to transfer the guardianship shall be served personally
9 on the ward, shall be given to the court from which the guardianship is to be transferred, and
10 shall be mailed to those persons entitled to notice of the guardian's annual report.

11 (c) If a petition to transfer the guardianship is filed in two or more courts having
12 jurisdiction, the proceeding shall be heard in the court having jurisdiction over the petition filed
13 on the earliest date if venue is otherwise proper in that court. A court that does not have venue to
14 hear the petition shall transfer the proceeding to the proper court.

15 (d) In reviewing a petition to transfer a guardianship from another state, the court
16 shall determine:

17 (1) that the proposed guardianship is not a collateral attack on an existing
18 or proposed guardianship in another jurisdiction in this or another State; and

19 (2) for a guardianship in which a court in one or more States may have
20 jurisdiction, that the petition has been filed in the court that is best suited to consider the matter.

21 (e) On the court's own motion or on the motion of the ward or any interested
22 person, the court shall hold a hearing to consider the petition to transfer the guardianship

1 proceeding.

2 (f) The court shall grant a petition to transfer a guardianship proceeding from
3 another State unless an objection to the transfer has been made, or if an objection has been made,
4 the objectants have not established that transfer of the proceeding would be contrary to the
5 ward's interests. In granting a petition under this section, the court shall give full faith and credit
6 to the provisions of the guardianship order from the other State concerning the determination of
7 the ward's incapacity and the rights, powers and duties of the guardian.

8 (g) The court shall coordinate efforts with the court from which the guardianship
9 is to be transferred to facilitate the orderly transfer of the guardianship.

10 (h) The denial of a petition to transfer a guardianship under this section does not
11 affect the right of a guardian appointed by a court in another State to file a petition to be
12 appointed guardian of the ward [here insert statutory reference for regular appointment of
13 guardians].

14 (i) Within [90] days after entry of the order transferring a guardianship to this
15 State, the court shall hold a hearing to consider modifying the administrative procedures or
16 requirements of the transferred guardianship to conform to the law of this State.

17
18 **[Consider adding separate provision for conservatorships or modify Sections 401-402 to**
19 **include conservators].**

1 [ARTICLE] 5

2 ENFORCEMENT

3
4 SECTION 501. DEFINITIONS. In this [Article]:

5 (1) "Petitioner" means a person who seeks enforcement of an adult guardianship
6 order.

7 (2) "Respondent" means a person against whom a proceeding has been
8 commenced for enforcement of a adult guardianship order.

9 SECTION 502. DUTY TO ENFORCE.

10 (a) A court of this State shall recognize and enforce an adult guardianship order
11 of a court of another State if the latter court exercised jurisdiction in substantial conformity with
12 this [act] or the determination was made under factual circumstances meeting the jurisdictional
13 standards of this [act] and the determination has not been modified in accordance with this [act].

14 (b) A court of this State may utilize any remedy available under other law of this
15 State to enforce a adult guardianship order made by a court of another State. The remedies
16 provided in this [Article] are cumulative and do not affect the availability of other remedies to
17 enforce a adult guardianship order.

18 SECTION 503. REGISTRATION OF ADULT GUARDIANSHIP ORDER..

19 (a) Unless a guardian appointed in another State knows that a guardianship
20 proceeding is pending in this State, an adult guardianship order issued by a court of another State
21 may be registered in this State, with or without a simultaneous request for enforcement, by
22 sending to [the appropriate court] in this State:

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

2 (2) two copies, including one certified copy, of the determination sought
3 to be registered, and a statement under penalty of perjury that to the best of the knowledge and
4 belief of the person seeking registration the order has not been modified.

5 (b) On receipt of the documents required by subsection (a), the registering court
6 shall cause the determination to be filed as a foreign judgment, together with one copy of any
7 accompanying documents and information, regardless of their form.

8 (c) Upon registration and until revoked or terminated, a guardian appointed in
9 another state who has registered in this State may exercise all powers of a guardian appointed in
10 this State unless the guardian is a limited guardian. A limited guardian appointed in another state
11 may exercise in this state only those powers that the guardian is authorized to exercise in the state
12 of appointment. A registered determination is otherwise enforceable as of the date of the
13 registration in the same manner as a determination issued by a court of this State.

14 (d) A registration terminates when revoked by the registrant, or a person
15 contesting the registration establishes that:

16 (1) the court that entered the guardianship order on which the registration
17 was based did not have jurisdiction under [Article] 2;

18 (2) the adult guardianship order sought to be registered has been vacated,
19 stayed, or modified by a court having jurisdiction to do so under [Article] 2; or

20 (3) the person contesting registration was entitled to notice of the
21 proceeding in which the guardian was appointed, but notice was not given in the proceedings
22 before the court that issued the order for which registration is sought.

1 (e) Confirmation of a registered order by a court in the state of registration
2 precludes further contest of the order with respect to any matter that could have been asserted at
3 the time of registration.

4 **SECTION 504. ENFORCEMENT OF REGISTERED DETERMINATION.**

5 (a) A court of this State may grant any relief normally available under the law of
6 this State to enforce a registered adult guardianship order made by a court of another State.

7 (b) A court of this State shall recognize and enforce, but may not modify except
8 in accordance with [Article] 2, a registered adult guardianship order of a court of another State.

9 **SECTION 505. SIMULTANEOUS PROCEEDINGS.** If a proceeding for
10 enforcement under this [Article] is commenced in a court of this State and the court determines
11 that a proceeding to modify the guardianship order is pending in a court of another State having
12 jurisdiction to modify the order under [Article] 2, the enforcing court shall immediately
13 communicate with the modifying court. The proceeding for enforcement continues unless the
14 enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

15 **SECTION 506. EXPEDITED ENFORCEMENT OF ADULT GUARDIANSHIP**
16 **ORDER.**

17 (a) A petition for enforcement of a adult guardianship order must state:

18 (1) whether the court that entered the guardianship order identified the
19 jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

20 (2) whether the determination for which enforcement is sought has been
21 vacated, stayed, or modified by a court whose decision must be enforced under this [act] and, if
22 so, identify the court, the case number, and the nature of the proceeding;

1 (3) whether any proceeding has been commenced that could affect the
2 current proceeding, including proceedings relating to elder or disability abuse, domestic violence
3 and protective orders and, if so, identify the court, the case number, and the nature of the
4 proceeding;

5 (4) the present physical address of the ward and guardian, if known;

6 (5) the relief requested; and

7 (6) if the adult guardianship order has been registered under Section 503,
8 the date and place of registration.

9 (b) Defenses requiring dismissal of the petition for enforcement include:

10 (1) the issuing court that entered the guardianship order did not have
11 jurisdiction under [Article] 2;

12 (2) the adult guardianship order for which enforcement is sought has been
13 vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2; or

14 (3) the respondent was entitled to notice, but notice was not given in the
15 proceedings before the court that issued the order for which enforcement is sought.

16 **SECTION 507. COSTS, FEES, AND EXPENSES.** The court shall award the
17 prevailing party necessary and reasonable expenses incurred by or on behalf of the party,
18 including costs, communication expenses, attorney's fees, investigative fees, expenses for
19 witnesses, and travel expenses, unless the party from whom fees or expenses are sought
20 establishes that the award would be clearly inappropriate.

21 **SECTION 508. RECOGNITION AND ENFORCEMENT.** A court of this State shall
22 accord full faith and credit to an order issued by another State and consistent with this [act]

1 which enforces a adult guardianship order by a court of another State unless the order has been
2 vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2.

3

4 **[Add appropriate provisions for enforcement of protective orders]**

1 [ARTICLE] 6

2 MISCELLANEOUS PROVISIONS

3
4 SECTION 601. APPLICATION AND CONSTRUCTION. In applying and
5 construing this Uniform Act, consideration must be given to the need to promote uniformity of
6 the law with respect to its subject matter among States that enact it.

7 SECTION 602. SEVERABILITY CLAUSE. If any provision of this [act] or its
8 application to any person or circumstance is held invalid, the invalidity does not affect other
9 provisions or applications of this [act] which can be given effect without the invalid provision or
10 application, and to this end the provisions of this [act] are severable.

11 SECTION 603. EFFECTIVE DATE. This [act] takes effect

12 SECTION 604. REPEALS. The following acts and parts of acts are hereby repealed:

- 13 (1)
14 (2)
15 (3)

16 SECTION 605. TRANSITIONAL PROVISION. A motion or other request for relief
17 made in a child-custody proceeding or to enforce a adult guardianship order which was
18 commenced before the effective date of this [act] is governed by the law in effect at the time the
19 motion or other request was made.