

DRAFT
FOR DISCUSSION ONLY

UNIFORM GUARDIANSHIP INTERSTATE JURISDICTION AND ENFORCEMENT ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For Drafting Committee Meeting February 3-5, 2006

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**UNIFORM GUARDIANSHIP INTERSTATE JURISDICTION
AND ENFORCEMENT ACT**

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1 **UNIFORM GUARDIANSHIP INTERSTATE JURISDICTION**
2 **AND ENFORCEMENT ACT**

3
4 **[ARTICLE] 1**

5 **GENERAL PROVISIONS**

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

8 **SECTION 102. SCOPE.** This [act] applies to guardianship proceedings for adults, and
9 to protective proceedings for both minors and 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
15 of a minor or adult individual as provided in [here insert reference to enacting state’s
16 conservatorship or protective proceedings statute].

17 (4) “Emergency guardian” means a person appointed as guardian on account of
18 an emergency as provided in [here insert reference to enacting state’s emergency guardianship
19 statute];

20 (5) “Guardian” means a person appointed by the court to make decisions
21 regarding the person of an adult individual as provided in [here insert reference to enacting
22 state’s guardian statute].

1 (6) “Home state” means the State in which an individual lived for at least six
2 consecutive months immediately before the commencement of a guardianship or protective
3 proceeding, or if none, the state in which the individual most recently lived for a period of at
4 least six consecutive months;

5 (7) “Incapacitated person” means an individual for whom a guardian has been
6 appointed;

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

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

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

15 (11) “Protective proceeding” means a judicial proceeding in which the entry of a
16 protective order is sought.

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

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

21 (14) “State” means a State of the United States, the District of Columbia, Puerto
22 Rico, the United States Virgin Islands, or any territory or insular possession subject to the

jurisdiction of the United States.

SECTION 104. APPLICATION TO INDIAN TRIBES.

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

(b) A court of this State shall treat a tribe as if it were a State of the United States for the purpose of applying this [act].

SECTION 105. 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 this [act].

(b) A court of this State need not apply this [act] to the extent a guardianship or protective proceedings law of a foreign country violates fundamental principles of human rights.

SECTION 106. 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) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

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

(d) 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

1 and granted access to the record.

2 **SECTION 107. COOPERATION BETWEEN COURTS; PRESERVATION OF**
3 **RECORDS.**

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

5 (1) hold an evidentiary hearing;

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

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

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

13 (5) order a party to a guardianship or protective proceeding or any person
14 having physical custody of the individual who is the subject of the proceeding to appear in court
15 with or without the individual.

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

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

20 (d) A court of this State shall preserve all records of the guardianship or
21 protective proceeding, including pleadings, orders, decrees, records of hearings, evaluations,
22 email records, and memos of conversations.

1 **SECTION 108. WHO MAY RAISE ISSUES.** Except to the extent the [act] more
2 specifically provides, the obligation to join a party and the right to intervene in a guardianship or
3 protective proceeding under this [act] are governed by the law of this State as in guardianship and
4 protective proceedings between residents of this State.

5 **SECTION 109. TAKING TESTIMONY IN ANOTHER STATE.**

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

11 (b) A court in this State may permit an individual residing in another State to be
12 deposed or to testify by telephone or audiovisual or other electronic means before a designated
13 court or at another location in that State. A court of this State shall cooperate with courts of other
14 States in designating an appropriate location for the deposition or testimony.

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

1 [ARTICLE] 2

2 INITIAL JURISDICTION

3
4 SECTION 201. INITIAL JURISDICTION.

5 (a) A court in the respondent's home state may appoint a guardian or enter a
6 protective order for a respondent.

7 (b) A court other than a court in the respondent's home state may appoint a
8 guardian or enter a protective order for the respondent only if one of the following applies:

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

11 (2) the petition is for a protective order, the respondent has property
12 located in this State, and the requested protective order is limited to that property;

13 (3) the proceeding was transferred to this State by a court in another State
14 as provided in Section 301;

15 (4) the respondent does not have a home state, or a court of the home state
16 has declined to exercise jurisdiction on the basis that this State is the more appropriate forum
17 under Section 202, and:

18 (A) the respondent has a significant connection with this State
19 other than mere physical presence; and

20 (B) substantial evidence concerning the respondent is available in
21 this State; or

22 (5) the court determines as provided in Section 202 that it is a more

1 convenient forum than a court in the home state.

2 **SECTION 202. INCONVENIENT FORUM.**

3 (a) A court having jurisdiction to appoint a guardian or enter a protective order
4 shall decline to exercise its jurisdiction if it at any time determines that it is an inconvenient
5 forum under the circumstances and that a court of another State is a more appropriate forum.

6 (b) If a guardianship or protective proceeding has not been commenced in a court
7 in the respondent's home state, a court in this State may appoint a guardian or enter a protective
8 order for a respondent if it determines that it is a more convenient forum than a court in the
9 respondent's home state.

10 (c) In determining whether it is an inconvenient or more convenient forum, the
11 court shall consider all relevant factors, including:

12 (1) whether abuse, neglect or exploitation has occurred and is likely to
13 continue in the future and which State could best protect the respondent from abuse;

14 (2) the length of time the respondent was physically located in or was a
15 legal resident of another State;

16 (3) the distance the respondent is from the court;

17 (4) the financial circumstances of the respondent's estate;

18 (5) any expressed wishes of the respondent;

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

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

1 (8) the familiarity of the courts of this and other States with the facts and
2 issues in the proceeding, and, should an appointment be made, it's ability to monitor the
3 guardian's or conservator's conduct.

4 (d) If a court of this State determines that it is an inconvenient forum and that a
5 court of another State is a more appropriate forum, it shall either dismiss the proceeding or stay
6 the proceeding upon condition that a guardianship or protective proceeding be promptly
7 commenced in another designated State. The court of this State may impose any other condition
8 the court considers just and proper.

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

10 (a) A court of this State that acquires jurisdiction to appoint a guardian or enter a
11 protective order because a person seeking to invoke its jurisdiction has engaged in unjustifiable
12 conduct shall decline to exercise its jurisdiction unless:

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

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

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

19 (b) If a court of this State declines to exercise its jurisdiction pursuant to
20 subsection (a), it may fashion an appropriate remedy to ensure the safety of the respondent and
21 prevent a repetition of the unjustifiable conduct, including staying the proceeding until a
22 guardianship or protective proceeding is commenced in a court having jurisdiction.

1 (c) If a court dismisses a petition or stays a proceeding because it declines to
2 exercise its jurisdiction pursuant to subsection (a), it shall assess against the party that sought to
3 invoke its jurisdiction necessary and reasonable expenses including costs, communication
4 expenses, attorney's fees, investigative fees, expenses for witnesses, and travel expenses during
5 the course of the proceedings, unless the party from whom fees are sought establishes that the
6 assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses
7 against this State or governmental subdivision, agency, or instrumentality of this State unless
8 authorized by law other than this [act].

9 **SECTION 204. SIMULTANEOUS PROCEEDINGS.**

10 (a) If at the time the proceeding in this State is commenced, a guardianship or
11 protective proceeding has been commenced in the respondent's home state, or if the respondent
12 does not have a home state, in a state having a significant connection with the respondent as
13 provided in Section 201(b)(2), a court in this State may exercise jurisdiction only if:

14 (1) the petition is for the appointment of an emergency guardian or a
15 protective order limited to property located in this State; or

16 (2) the proceeding in the other State has been dismissed or stayed by the
17 court of the other State because that court has determined under Section 202 that the court in this
18 State is a more convenient forum;

19 (b) Except for the appointment of an emergency guardian or a protective order
20 limited to property located in this State, if either before or after the commencement of a
21 guardianship or protective proceeding in this State, a guardianship or protective proceeding was
22 commenced in a court in the respondent's home state, or if the respondent does not have a home

1 state, in a state having a significant connection with the respondent as provided in Section
2 201(b)(2), the court in this State shall stay its proceeding and communicate with the court of the
3 other State. If the court in the other State does not determine that the court in this State is a more
4 appropriate forum, the court of this State shall dismiss the proceeding.

5 (c) If in a proceeding to modify a guardianship or protective order, a court of this
6 State finds that a proceeding to enforce the order has been commenced in another State, the court
7 may:

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

11 (2) enjoin the parties from continuing with the proceeding for
12 enforcement; or

13 (3) proceed with the modification under conditions it considers
14 appropriate.

1 [ARTICLE] 3

2 TRANSFER OF JURISDICTION

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

6 (a) After the appointment of a guardian or entry of a protective order, the court
7 making the appointment shall transfer the guardianship or protective proceeding to a court in
8 another State upon petition of the guardian or conservator if:

9 (1) the incapacitated or protected person has or will move permanently to
10 the other State;

11 (2) the conservator has filed a satisfactory final accounting, and the
12 guardian has filed a final report that contains sufficient information for the court to determine
13 that the plans for the ward in the new State are reasonable and sufficient;

14 (3) no objection to the transfer has been made, or if an objection has been
15 made, the objectants have not established that transfer of the proceeding would be contrary to the
16 incapacitated or protected person's interests; and

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

20 (b) Notice of the petition to transfer a guardianship or protective proceeding must
21 be served personally on the ward, must be filed with the court in the jurisdiction in which the
22 proceeding is to be transferred, and must be mailed to those persons who would be entitled to

1 notice of a petition in the originating state for the appointment of a guardian or entry of a
2 protective order.

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

6 (d) To facilitate the orderly transfer of the guardianship or protective proceeding,
7 the court shall coordinate efforts with the court in the State to which the proceeding will be
8 transferred.

9 **SECTION 302. PETITION TO RECEIVE PROCEEDING TRANSFERRED**
10 **FROM ANOTHER STATE.**

11 (a) Upon entry of an order to transfer a guardianship or protective proceeding to
12 this State as provided in Section 301, the guardian or conservator shall petition the court in this
13 State to receive the guardianship or protective proceeding.

14 (b) Notice of the petition to receive the guardianship or protective proceeding
15 must be served personally on the ward, must be filed with the court that will receive the
16 guardianship or protective proceeding, and must be mailed to those persons who would be
17 entitled to notice were the petition a petition for the appoint of a guardian or entry of a protective
18 order in both the originating State and in this State.

19 (c) On the court's own motion or on request of the incapacitated, protected, or
20 other interested person, the court shall hold a hearing on a petition to receive a guardianship or
21 protective proceeding transferred from another State.

22 (d) The court shall grant the petition to receive the guardianship or protective

1 proceeding from the other State unless an objection has been made and the objectants establish
2 that transfer of the proceeding would be contrary to the incapacitated or protected person's
3 interests. In granting a petition under this section, the court shall give full faith and credit to the
4 guardianship or protective order from the other State, including the determination of the
5 incapacitated or protected person's incapacity and, except to the extent in conflict with the law of
6 this State, the rights, powers and duties of the guardian or conservator specified in the order or
7 otherwise provided under the law of the other State.

8 (e) To facilitate the orderly transfer of the guardianship or protective proceeding,
9 the court shall coordinate efforts with the court in the originating State.

10 (f) The denial of a petition to receive a guardianship or protective proceeding
11 does not affect the ability of a guardian or conservator appointed by a court in another State to
12 file a petition to be appointed guardian of the incapacitated person or conservator of the protected
13 person under [here insert statutory references for the regular appointment of guardian or
14 conservator].

15 (g) Within [90] days after entry of the order confirming the receipt of a
16 guardianship or protective proceeding transferred from another State, the court must hold a
17 hearing to consider modifying the transferred guardianship or conservatorship to conform to the
18 law of this State.

1 **[ARTICLE] 4**

2 **ENFORCEMENT**

3
4 **SECTION 401. DUTY TO ENFORCE.**

5 (a) A court of this State shall recognize and enforce a guardianship or protective
6 order of another State if the latter court exercised jurisdiction in substantial conformity with this
7 [act] or the order was based on factual circumstances meeting the jurisdictional standards of this
8 [act] and the order has not been modified in accordance with this [act].

9 (b) A court of this State may utilize any remedy available under other law of this
10 State to enforce a guardianship or protective order issued by a court of another State. The
11 remedies provided in this [Article] are cumulative and do not affect the availability of other
12 remedies to enforce the order.

13 **SECTION 402. REGISTRATION OF ORDER.**

14 (a) Unless a guardian or conservator appointed in another State knows that a
15 guardianship or protective proceeding is pending in this State, a guardianship or protective order
16 issued by a court of another State may be registered in this State, with or without a simultaneous
17 request for enforcement, by sending to [the clerk of the appropriate court] in this State:

18 (1) a letter or other document requesting registration; and
19 (2) two copies, including one certified copy, of the order sought to be
20 registered, and a statement under penalty of perjury that to the best of the knowledge and belief
21 of the person seeking registration the order has not been modified.

22 (b) On receipt of the documents required by subsection (a), the registering court

1 shall cause the order to be filed as a foreign judgment, together with one copy of any
2 accompanying documents and information, regardless of their form.

3 (c) Upon registration and until revoked or terminated, a guardian or conservator
4 appointed in another state who has registered in this State may:

5 (1) if a full guardian or conservator, exercise all powers of a full guardian
6 or conservator appointed in this State;

7 (2) if a limited guardian or conservator, exercise only those powers the
8 guardian or conservator is authorized to exercise in the state of appointment; and

9 (3) regardless of whether the guardianship or conservatorship is full or
10 limited, exercise the powers specified in the order or appointment except to the extent such
11 powers conflict with the law of this State.

12 (d) A registered order is enforceable as of the date of the registration in the same
13 manner as an order issued by a court of this State.

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

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

18 (2) the order sought to be registered has been vacated, stayed, or modified
19 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 or protective order entered, but such notice was
22 not given.

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

SECTION 403. ENFORCEMENT OF REGISTERED ORDER.

(a) A court of this State may grant any relief normally available under the law of this State to enforce a registered guardianship or protective order issued by a court of another State.

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

(c) A petition for enforcement of a guardianship or protective order must state:

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

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

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

(4) the present physical address of the guardian or conservator or incapacitated or protected person, if known;

(5) the relief requested; and

(6) if the order has been registered under Section 402, the date and place of registration.

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

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

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

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

SECTION 404. SIMULTANEOUS PROCEEDINGS. If a proceeding for enforcement under this [Article] is commenced in a court of this State and the court determines that a proceeding to modify a guardianship or protective order is pending in a court of another State having jurisdiction to modify the order under [Article] 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

SECTION 405. WARRANT TO TAKE PHYSICAL CUSTODY OF INCAPACITATED PERSON.

(a) Upon the filing of a petition seeking enforcement of a guardianship order, the guardian may file a verified application for the issuance of a warrant to take physical custody of the incapacitated person if the incapacitated person is immediately likely to suffer serious

1 physical harm or be removed from this State.

2 (b) If the court, upon the testimony of the guardian or other witness, finds that the
3 incapacitated person is imminently likely to suffer serious physical harm or be removed from this
4 State, it may issue a warrant to take physical custody of the incapacitated person. The petition
5 must be heard on the next judicial day after the warrant is executed unless that date is impossible.
6 In that event, the court shall hold the hearing on the first judicial day possible. The application
7 for the warrant must include the statements required by Section 403(c).

8 (c) A warrant to take physical custody of an incapacitated person must:

9 (1) recite the facts upon which a conclusion of imminent serious physical
10 harm or removal from the jurisdiction is based;

11 (2) direct law enforcement officers to take physical custody of the
12 incapacitated person immediately; and

13 (3) provide for the placement of the incapacitated person pending final
14 relief.

15 (d) The person against whom the warrant is issued must be served with the
16 petition, warrant, and order immediately after the incapacitated person is taken into physical
17 custody.

18 (e) A warrant to take physical custody of an incapacitated person is enforceable
19 throughout this State. If the court finds on the basis of the testimony of the guardian or other
20 witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to
21 enter private property to take physical custody of the incapacitated person. If required by exigent
22 circumstances of the case, the court may authorize law enforcement officers to make a forcible

1 entry at any hour.

2 (f) The court may impose conditions upon placement of an incapacitated person
3 to ensure the appearance of the incapacitated person and the person against whom the warrant
4 was issued.

5 **SECTION 406. COSTS, FEES, AND EXPENSES.** The court may award the
6 prevailing party necessary and reasonable expenses incurred by or on behalf of the party,
7 including costs, communication expenses, attorney's fees, investigative fees, expenses for
8 witnesses, and travel expenses, unless the party from whom fees or expenses are sought
9 establishes that the party was acting in good faith.

10 **SECTION 407. RECOGNITION AND ENFORCEMENT.** Unless the order has been
11 vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2, a court of
12 this State shall accord full faith and credit to an order issued by another State and consistent with
13 this [act] which enforces a guardianship or protective order by a court of another State.

1 [ARTICLE] 5

2 MISCELLANEOUS PROVISIONS

3
4 **SECTION 501. 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 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
8 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
9 Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et. seq.)
10 but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or
11 authorize electronic delivery of any of the notices described in Section 103(b) of that act (15
12 U.S.C. Section 7003(b)).

13 **SECTION 503. SEVERABILITY CLAUSE.** If any provision of this [act] or its
14 application to any person or circumstance is held invalid, the invalidity does not affect other
15 provisions or applications of this [act] which can be given effect without the invalid provision or
16 application, and to this end the provisions of this [act] are severable.

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

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

19 (1)

20 (2)

21 (3)

22 **SECTION 506. TRANSITIONAL PROVISION.** A motion or other request for relief

1 made in a guardianship or protective proceeding or to enforce a guardianship or protective order
2 which was commenced before the effective date of this [act] is governed by the law in effect at
3 the time the motion or other request was made.