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FOR DISCUSSION ONLY

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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

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1 **UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS**

2 **JURISDICTION ACT**

3 **[ARTICLE] 1**

4 **GENERAL PROVISIONS**

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

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

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

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

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

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

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

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

1 (6) “Guardianship proceeding” means a proceeding in which an order for the
2 appointment of a guardian is sought or has been entered, whether that order is for a full, limited,
3 temporary, or emergency guardianship.

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

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

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

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

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

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

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

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

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

1 (16) “Significant connection state” means a State in which a respondent has a significant
2 connection with the State other than mere physical presence, and substantial evidence concerning
3 the respondent is available.

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

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

11 **SECTION 105. COMMUNICATION BETWEEN COURTS.**

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

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

17 (c) Communication between courts on schedules, calendars, court records, and similar
18 matters may occur without informing the parties and without the making of a record.

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

1 **SECTION 106. COOPERATION BETWEEN COURTS.**

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

3 (1) hold an evidentiary hearing;

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

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

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

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

14 (6) issue an order authorizing the release of medical, financial, criminal or other
15 relevant information, including protected health information as described in 42 U.S.C. [insert
16 citation].

17 (b) Upon request of a court of another State, a court of this State has jurisdiction for the
18 limited purpose of granting the relief requested in subsection (a) or otherwise making reasonable
19 efforts to comply with the request.

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

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

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

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

11 (c) Documentary evidence transmitted from another State to a court of this State by
12 technological means that do not produce an original writing may not be excluded from evidence
13 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 on the basis that this State is the more appropriate
12 forum under Section 202;

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 State has declined to
15 exercise jurisdiction on the ground that this State is the more appropriate forum under Section
16 202; 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 as provided in
20 Section 202.

21 (3) this State is neither the home state or a significant connection state but the
22 home state and all significant connection states have declined to exercise jurisdiction on the

1 ground that a court of this State is the more appropriate forum under Section 202, or the
2 respondent has no home state or significant connection state.

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

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

8 (c) This section is the exclusive jurisdictional basis for making a guardianship or
9 protective order in this State.

10 **SECTION 202. APPROPRIATE FORUM.**

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

14 (b) A court in this State may appoint a guardian or enter a protective order for a
15 respondent if it determines that it is a more appropriate forum than a court in another State under
16 the circumstances described in Section 201(a)(2)(C).

17 (c) In determining whether it is or is not an appropriate forum, the court shall consider all
18 relevant factors, including:

- 19 (1) any expressed wishes of the respondent;
- 20 (2) whether abuse, neglect or exploitation has occurred or is likely to occur in the
21 future and which State could best protect the respondent from abuse;
- 22 (3) the length of time the respondent was physically located in or was a legal

1 resident of another State;

2 (4) the distance the respondent is 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,
5 including testimony of the respondent;

6 (7) the ability of the courts in this or other States to decide the issue expeditiously
7 and 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
9 the proceeding; and

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

12 (d) If a court in this State determines that a court of another State is a more appropriate
13 forum, it shall either dismiss the proceeding or stay the proceeding upon condition that a
14 guardianship or protective proceeding be promptly commenced in the other State. The court of
15 this State may impose any other condition the court considers just and proper.

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

17 (a) If at anytime a court of this State determines that it acquired jurisdiction to appoint a
18 guardian or enter a protective order because a person seeking to invoke its jurisdiction engaged in
19 unjustifiable conduct;

20 (1) it may decline to exercise jurisdiction;

21 (2) it may exercise jurisdiction for the limited purpose of fashioning an
22 appropriate remedy to ensure the safety of the respondent or the respondent's assets and prevent a

1 repetition of the unjustifiable conduct, including staying the proceeding until a guardianship or
2 protective proceeding is commenced in a court of another State having jurisdiction; or

3 (3) it may continue to exercise jurisdiction after considering:

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

6 (B) whether this State is a more appropriate forum under Section 202; and

7 (C) whether the court of any other State would have jurisdiction under
8 Section 201.

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

18 **SECTION 204. SIMULTANEOUS PROCEEDINGS.** Except for a petition for the
19 appointment of an emergency guardian or a protective order limited to property located in this
20 State, if the court of this State did not have jurisdiction to appoint a guardian or enter a protective
21 order under Section 201 and a guardianship or protective proceeding has been or is commenced
22 in another State having jurisdiction in substantial conformity with Section 201, the court in this

1 State shall stay its proceeding and communicate with the court in the other State. If the court in
2 the other State does not determine that the court in this State is a more appropriate forum under
3 Section 202, the court in this State shall dismiss the proceeding.

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:

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

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

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

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

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

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

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

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

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

21 (c) On the court's own motion or on request of the incapacitated, protected, or other
22 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 objectants establish 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 conservator
9 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 does not
16 affect the ability of a guardian or conservator appointed by a court in another State to file a
17 petition to be appointed guardian of the incapacitated person or conservator of the protected
18 person under [here insert statutory references for the regular appointment of guardian or
19 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

1 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 registered
5 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 and until expired, revoked or terminated, a guardian or conservator
15 appointed in another state who has registered in this State may:

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

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

21 (3) if a limited, temporary or emergency guardian or conservator, exercise only
22 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 another State
5 if the latter court exercised jurisdiction in substantial conformity with this [act] or the order was
6 based on factual circumstances meeting the jurisdictional standards of this [act].

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

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

14 **[SECTION 403. WARRANT TO TAKE PHYSICAL CUSTODY OF**
15 **INCAPACITATED PERSON.**

16 (a) A guardian may file a verified application for the issuance of a warrant to take
17 physical custody of the incapacitated person.

18 (b) A petition for the issuance of the warrant must state:

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

21 (2) whether the guardianship order has been vacated, stayed, or modified by a
22 court whose order must be enforced under this [act] and, if so, identify the court, the case

1 number, and the nature of the proceeding;

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

5 (4) the present physical address of the guardian and incapacitated person, if
6 known;

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

9 (c) The court may issue the warrant if it finds, upon the testimony of the guardian or other
10 witness, that the incapacitated person is imminently likely to suffer substantial harm to the
11 respondent's health, safety, or welfare or be removed from this State. The petition must be heard
12 on the next judicial day after the warrant is executed unless that date is impossible. In that event,
13 the court shall hold the hearing on the first judicial day possible.

14 (d) A warrant to take physical custody of an incapacitated person must:

15 (1) recite the facts upon which a conclusion of imminent substantial harm to
16 health, safety or welfare or removal from the State is based;

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

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

20 (e) The person against whom the warrant is issued must be served with the petition,
21 warrant, and order immediately after the incapacitated person is taken into physical custody.

22 (f) A warrant to take physical custody of an incapacitated person is enforceable

1 throughout this State. If the court finds on the basis of the testimony of the guardian or other
2 witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to
3 enter private property to take physical custody of the incapacitated person. If required by exigent
4 circumstances of the case, the court may authorize law enforcement officers to make a forcible
5 entry at any hour.

6 (g) The court may impose conditions upon placement of an incapacitated person to ensure
7 the appearance of the incapacitated person and the person against whom the warrant was issued.

8 (h) The court may award the prevailing party necessary and reasonable expenses incurred
9 by or on behalf of the party, including costs, communication expenses, attorney's fees,
10 investigative fees, expenses for witnesses, and travel expenses, unless the party from whom fees
11 or expenses are sought establishes that the party was acting in good faith.]

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(c) of that act (15 U.S.C. Section 7001(c)) 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. SEVERABILITY CLAUSE. If any provision of this [act] or its
13 application to any person or circumstance is held invalid, the invalidity does not affect other
14 provisions or applications of this [act] which can be given effect without the invalid provision or
15 application, and to this end the provisions of this [act] are severable.

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

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

18 (1)

19 (2)

20 (3)

21 SECTION 506. TRANSITIONAL PROVISION. A motion or other request for relief
22 made in a guardianship or protective proceeding or to enforce a guardianship or protective order

- 1 which was commenced before the effective date of this [act] is governed by the law in effect at
- 2 the time the motion or other request was made.