

2009 SENATE JUDICIARY

SB 2074

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2074

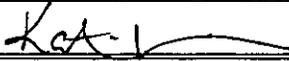
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7893

Committee Clerk Signature



Minutes:

**Senator Nething** opens the hearing on SB 2074, relating to the uniform adult guardianship and protective proceedings jurisdiction.

**Judge Gail Hagerty** introduced the bill (see attached testimony #1).

**Senator Nething** asked if there was a change in the state of the individual.

**Judge Hagerty** replied no, just in jurisdiction.

**Senator Fiebiger** asked how many states have adopted this.

**Judge Hagerty** three or four states have adopted this. There is a lot of support for this bill.

Around here there is not much of a problem, but around the nation there is. Some people have guardianship in multiple states and it is easier in terms of procedures if all the states adopt this act.

**Senator Nelson** asks about the cost to families for guardianship.

**Judge Hagerty** We, as judges, realize the cost to the families of having to move and the cost of the procedures, but there is no place for funding.

**Bob Hanson**, AARP, testified in favor of 2074 (see attached testimony #2).

**Senator Fiebiger** moves a do pass on SB 2074.

**Senator Schneider** seconds the motion.

Roll call was taken 6 yes, 0no motion passed.

*Put in  
for Fiebig  
Send on  
Thurs.*

Date: 1/26/09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES **SB 2074**  
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Sen. Fiebig Seconded By Sen. Schneider

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman	X		Sen. Tom Fiebig	X	
Sen. Curtis Olafson - V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent \_\_\_\_\_

Floor Assignment Sen. Nelson

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2074: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2074 was placed on the  
Eleventh order on the calendar.

2009 HOUSE JUDICIARY

SB 2074

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2074

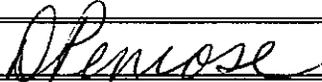
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/3/09

Recorder Job Number: 10003, 10004

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will open the hearing on SB 2074.

**Gail Hagerty, District Judge, South Central District:** Support, explained the bill (attachment). I was on the drafting committee that drafted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

**Chairman DeKrey:** Are you automatically registered in your own state when you have guardianship. I have guardianship of our daughter, my wife and I; we have to fill out that packet every year to tell the court how she's doing, what we're doing, sign and send that in. Is somebody tracking that.

**Gail Hagerty:** That would be the annual report that is required for guardianship and I believe that all we're looking for are red flags in the information, which would trigger a home visit. You don't need to register to do anything further, your guardianship would give you complete authority to act in the state of ND. The problem might be with regard to medical treatment in MN and different guardianship papers. They said we're not bound by that, so then, under this act, we would be able to register guardianship in MN and continue without having to establish a new guardianship.

**Rep. Delmore:** As you look at this information, it doesn't look like all states have adopted this, but it still would not preclude ND from going somewhere and registering because we're protected under this law, is that correct.

**Gail Hagerty:** We're working on adopting this around the country. Actually this would give you the authority to register in another state unless the other state has adopted this and while this targeted, this action is going on in many of the states at this time. It is a relatively new concept, and I believe that it will be widely enacted and it will be very helpful. Both MT and MN are considering it at this time.

**Ch. DeKrey:** I can see from our situation, I hadn't even thought about some of this stuff, that this would really be a good thing.

**Rep. Koppelman:** Where it talks about the appropriate forum, it says that if a court in this state decides to exercise this jurisdiction, but another state refuses to do that, what happens then. A court in this state can stay or dismiss the proceeding; I'm looking on page 6, under appropriate forum, the court determines a time that a court in another state is a more appropriate forum and what happens if that court in another state declines to accept jurisdiction. Is it in limbo, just hanging there.

**Gail Hagerty:** You are looked at as significant connection states and these significant connection states could take jurisdiction if there is no significant connection state and another state could do it. This is particularly designed to allow judges and courts to communicate with each other so that they don't have those kinds of gaps. So Section 28-35-04, which is on page 2 of the bill, deals with communication between the courts. The courts are directed to talk to each other so that there isn't a problem with no one taking jurisdiction or two states taking jurisdiction.

**Rep. Koppelman:** Back in 28-35-11 where it says in subsection 1, a court in this state having jurisdiction may decline to exercise its jurisdiction if the court determines at any time that a court of another state is a more appropriate forum. So a court in ND makes that determination, then subsection 2 says if a court of this state declines to exercise its jurisdiction under subsection 1, the court shall either dismiss or stay the proceeding. So if a court here does that, but in spite of the communication of a court in another case, doesn't pick up the ball so to speak, what happens.

**Gail Hagerty:** The reason it says dismiss or stay is because you could say I'm not sure the other state is going to pick this up, so I'm going to stay things. We're going to put this on hold and see if the other state does take action, if they don't, we will continue with the case.

**Rep. Koppelman:** So there's either an implication or somewhere else here it says that they will pick it back up again and deal with it then.

**Gail Hagerty:** Yes.

**Chairman DeKrey:** It doesn't have anything to do with this bill, when you're reviewing those guardianship annual reports, if something does jump out at you, what's the procedure then, do you refer it to a state's attorney or does the judge do something.

**Gail Hagerty:** Probably I would do in that situation, I would request that the parties appear before the court and give an explanation, kind of an order to show cause or some kind of opportunity to look at that. We don't have a lot of that occurring at this time; we just review the forms but we don't a thorough review or investigation. If we had more money, we could.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Bill Newmann, Executive Director of the State Bar Association:** Support. It makes good sense.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Bob Hanson, Advocacy volunteer for AARP ND:** Support (attachment).

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to SB 2074.

**Rep. Delmore:** I move a Do Pass.

**Rep. Wolf:** Second.

**11 YES 0 NO 2 ABSENT**

**DO PASS**

**CARRIER: Rep. Kretschmar**

Date: 3/3/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2074

**HOUSE JUDICIARY COMMITTEE**

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  DP  DNP  DP AS AMEND  DNP AS AMEND

Motion Made By Rep. Delmore Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl			Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser		
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 11 No 0

Absent 2

Floor Carrier: Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2074: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS**  
(11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2074 was placed on the  
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2074



## Why States Should Adopt the...

### Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) received its final approval at the National Conference of Commissioners for Uniform State Laws' (NCCUSL) 2007 annual meeting. The UAGPPJA deals primarily with jurisdictional, transfer and enforcement issues relating to adult guardianships and protective proceedings. There are a number of reasons why every state should adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

- Provides procedures to resolve interstate jurisdiction controversies. The UAGPPJA creates a process for determining which state will have jurisdiction to appoint a guardian or conservator if there is a conflict by designating that the individual's "home state" has primary jurisdiction, followed by a state in which the individual has a "significant-connection." Under certain prescribed circumstances, another state may be chosen if it is the more appropriate forum.
- Facilitates transfers of guardianship cases among jurisdictions. The UAGPPJA specifies a procedure for transferring a guardianship or conservatorship to another state and for accepting a transfer, helping to reduce expenses and save time while protecting persons and their property from potential abuse.
- Provides for recognition and enforcement of a guardianship or protective proceeding order. The UAGPPJA helps to facilitate enforcement of guardianship and protective orders in other states by authorizing a guardian or conservator to register these orders in other states.
- Facilitates communication and cooperation between Courts of different jurisdictions. Permits communication between courts and parties of other states, records of the communications, and jurisdiction to respond to requests for assistance from courts in other states.
- Addresses emergency situations and other special cases. A court in the state where the individual is physically present can appoint a guardian in the case of an emergency. Also, if the individual has real or tangible property located in a certain state, the court in that jurisdiction can appoint a conservator for the property located there.
- Authorized guardians to exercise the powers authorized in the order and addresses international orders. **UNIFORMITY** This Act will provide uniformity and reduce conflicts among the states.

The UAGPPJA will also help save time for those who are serving as guardians and conservators, allowing them to make important decisions for their loved ones as quickly as possible. Every state should act quickly to adopt the Uniform Adult Guardianship and Protective Proceeding Act.

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## SUMMARY

### Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

The Uniform Guardianship and Protective Proceedings Act (UGPPA), which was last revised in 1997, is a comprehensive act addressing all aspects of guardianships and protective proceedings for both minors and adults. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) has a much narrower scope, dealing only with jurisdiction and related issues. The new UAGPPJA addresses many problems relating to multiple jurisdiction, transfer, and out of state recognition. It has been endorsed by the National Guardianship Foundation and the National College of Probate Judges. Endorsement by the American Bar Association is expected at the ABA's 2008 Mid-Year Meeting.

Due to increasing population mobility, cases involving simultaneous and conflicting jurisdiction over guardianship are increasing. Even when all parties agree, steps such as transferring a guardianship to another state can require that the parties start over from scratch in the second state. Obtaining recognition of a guardian's authority in another state in order to sell property or to arrange for a residential placement is often impossible. The UAGPPJA will, when enacted, help effectively to address these problems.

#### The Problem of Multiple Jurisdiction

Because the U.S. has 50 plus guardianship systems, problems of determining jurisdiction are frequent. Questions of which state has jurisdiction to appoint a guardian or conservator can arise between an American state and another country. But more frequently problems arise because the individual has contacts with more than one American state. In nearly all American states, a guardian may be appointed by a court in a state in which the individual is domiciled or is physically present.

In nearly all American states, a conservator may be appointed by a court in a state in which the individual is domiciled or has property. Contested cases in which courts in more than one state have jurisdiction are becoming more common. Sometimes these cases arise because the adult is physically located in a state other than the adult's domicile. Sometimes the case arises because of uncertainty as to the adult's domicile, particularly if the adult owns a vacation home in another state. There is a need for an effective mechanism for resolving multi-jurisdictional disputes.

#### The Problem of Transfer

Oftentimes, problems arise even absent a dispute. Even if everyone is agreed that a guardianship or conservatorship should be moved to another state, few states have streamlined procedures for transferring a proceeding to another state or for accepting such a transfer. In most states, all of the procedures for an original appointment must be repeated, a time consuming and expensive prospect.

#### The Problem of Out-of-State Recognition

The Full Faith and Credit Clause of the U.S. Constitution requires that court orders in one state be honored in another state. But there are exceptions to the full faith and credit doctrine, of which guardianship and protective proceedings law is one. Sometimes, guardianship or protective proceedings must be initiated in a second state because of the refusal of financial institutions, care facilities, and the courts to recognize a guardianship or protective order issued in another state.

#### The Proposed Uniform Law and the Child Custody Analogy

Similar problems of jurisdiction existed for many years in the U.S. in connection with child custody determinations. If one parent lived in one state and the other parent lived in another state, frequently courts

in more that one state had jurisdiction to enter custody orders. But the Uniform Law Commission has approved two uniform acts that have effectively minimized the problem of multiple court jurisdiction in child custody matters: the Uniform Child Custody Jurisdiction Act (UCCJA), approved in 1968, succeeded by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), approved in 1997. The drafters of the UAGPPJA have elected to model Article 2 and portions of Article 1 of their Act after these child custody analogues. However, the UAGPPJA applies only to adult proceedings. The UAGPPJA is limited to adults in part because most jurisdictional issues involving guardianships for minors are subsumed by the UCCJEA.

### The Objectives and Key Concepts of the Proposed UAGPPJA

The UAGPPJA is organized into five articles. Article 1 contains definitions and provisions designed to facilitate cooperation between courts in different states. Article 2 is the heart of the Act, specifying which court has jurisdiction to appoint a guardian or conservator. Its overall objective is to locate jurisdiction in one and only one state except in cases of emergency or in situations where the individual owns property located in multiple states. Article 3 specifies a procedure for transferring guardianship or conservatorship proceedings from one state to another. Article 4 deals with enforcement of guardianship and protective orders in other states. Article 5 contains boilerplate provisions common to all uniform acts.

### Key Definitions and Terminology (Section 102)

To determine which court has primary jurisdiction under the UAGPPJA, the key factors are to determine the individual's "home state" and "significant-connection state." A "home state" is the state in which the individual was physically present for at least six consecutive months immediately before the commencement of the guardianship or protective proceeding (Section 102(6)). A "significant-connection state," which is a potentially broader concept, means the state in which the individual has a significant connection other than mere physical presence, and where substantial evidence concerning the individual is available (Section 102 (15)). Factors that may be considered in deciding whether a particular respondent has a significant connection include:

- the location of the respondent's family and others required to be notified of the guardianship or protective proceeding;
- the length of time the respondent was at any time physically present in the state and the duration of any absences;
- the location of the respondent's property; and
- the extent to which the respondent has other ties to the state such as voting registration, filing of state or local tax returns, vehicle registration, driver's license, social relationships, and receipt of services.

States differ on terminology for the person appointed by the court to handle the personal and financial affairs of a minor or incapacitated adult. Under the UGPPA and in a majority of American states, a "guardian" is appointed to make decisions regarding the person of an "incapacitated person." A "conservator" is appointed in a "protective proceeding" to manage the property of a "protected person." But in many states, only a "guardian" is appointed, either a guardian of the person or guardian of the estate, and in a few states, the terms guardian and conservator are used but with different meanings. The UAGPPJA adopts the terminology as used in the UGPPA. States employing different terms or the same terms but with different meanings may amend the Act to conform to local usage.

### Jurisdiction (Article 2)

Section 203 is the principal provision governing jurisdiction, creating a three-level priority; the home state, followed by a significant-connection state, followed by other jurisdictions:

- *Home State:* The home state has primary jurisdiction to appoint a guardian or conservator or enter another protective order, a priority that continues for up to six months following a move to another state.
- *Significant-connection State:* A significant-connection state has jurisdiction if: individual has not had a home state within the past six month or the home states is declined jurisdiction. To facilitate appointments in the average case where jurisdiction is not in dispute, a significant-connection state also has jurisdiction if no proceeding has been commenced in the respondent's home state or another significant-connection state, no objection to the court's jurisdiction has been filed, and the court concludes that it is a more appropriate forum than the court in another state.

- *Another State:* A court in another state has jurisdiction if the home state and all significant-connection states have declined jurisdiction or the individual does not have a home state or significant-connection state.

Section 204 addresses special cases. Regardless of whether it has jurisdiction under the general principles stated in Section 203, a court in the state where the individual is currently physically present has jurisdiction to appoint a guardian in an emergency, and a court in a state where an individual's real or tangible personal property is located has jurisdiction to appoint a conservator or issue another protective order with respect to that property. In addition, a court not otherwise having jurisdiction under Section 203 has jurisdiction to consider a petition to accept the transfer of an already existing guardianship or conservatorship from another state.

The remainder of Article 2 elaborates on these core concepts. Section 205 provides that once a court has jurisdiction, this jurisdiction continues until the proceeding is terminated or transferred. Section 206 authorizes a court to decline jurisdiction if it determines that the court of another state is a more appropriate forum, and specifies the factors to be taken into account in making this determination. Section 207 authorizes a court to decline jurisdiction or fashion another appropriate remedy if jurisdiction was acquired because of unjustifiable conduct. Section 208 prescribes special notice requirements if a proceeding is brought in a state other than the respondent's home state. Section 209 specifies a procedure for resolving jurisdictional issues if petitions are pending in more than one state. The UAGPPJA also includes provisions regarding communication between courts in different states and taking testimony in another state (Sections 104-106).

### **Transfer to Another State (Article 3)**

Article 3 specifies a procedure for transferring a guardianship or conservatorship to another state. To make the transfer, court orders are necessary both from the court transferring the case and from the court accepting the case. Generally, to transfer the case, the transferring court must find that the individual will move permanently to another state, that adequate arrangements have been made for the individual or the individual's property in the other state, and that the court is satisfied the case will be accepted by the court in the new state. To assure continuity, the court in the original state cannot dismiss the local proceeding until the order from the other state accepting the case is filed with the original court. To expedite the transfer process, the court in the accepting state must give deference to the transferring court's finding of incapacity and selection of the guardian or conservator. Much of Article 3 is based on the pioneering work of the National Probate Court Standards, a 1993 joint project of the National College of Probate Judges and the National Center for State Courts.

### **Out of State Enforcement (Article 4)**

To facilitate enforcement of guardianship and protective orders in other states, Article 4 authorizes a guardian or conservator to register these orders in other states. Upon registration, the guardian or conservator may exercise all powers authorized in the order except as prohibited by the laws of the registration state. The Act also addresses enforcement of international orders. To the extent the foreign order violates fundamental principles of human rights, Section 104 permits a court of an American state that has enacted the Act to recognize an order entered in another country to the same extent as if it were an order entered in another U.S. state.

### **Conclusion**

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act will help to resolve many guardianship issues such as original jurisdiction, registration, transfer, and out-of-state enforcement. It provides procedures that will help to considerably reduce the cost of guardianship and protective proceeding cases from state to state. It should be enacted as soon as possible in every jurisdiction.

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Attachment  
SB 2074



**January 26, 2009  
Senate Judiciary Committee  
SB 2074**

Chairman Nething and members of the committee. My name is Bob Hanson. I am a volunteer for AARP North Dakota and today I represent our nearly 88,000 North Dakota members.

AARP staff served in an advisory capacity to the Uniform Law Commission in the process of developing the draft of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) which is the basis for SB 2074. We are hopeful that every state will pass this important law, and make questions regarding jurisdiction, transfer, and enforcement consistent across the nation.

The UAGPPJA creates a process for determining which state will have jurisdiction to appoint a guardian or conservator if there is a conflict. It specifies a procedure for transferring a guardianship or conservatorship to another state and for accepting a transfer, helping to reduce expenses and save time while protecting people and their property.

The UAGPPJA helps to facilitate enforcement of guardianship and protective orders in other states by authorizing a guardian or conservator to register orders in other states. A court in the state where the individual is physically present can appoint a guardian in the case of an emergency, or appoint a conservator for property located in a particular state.

And the act permits communication between courts and parties of other states and jurisdictions to respond to requests for assistance from courts in other states.

SB 2074 will provide uniformity and reduce conflicts among the states. Widespread passage of the act should result in significant judicial economy, reduction in litigation, and conservation of the ward's estate. The UAGPPJA will also help save time for those who are serving as guardians and conservators, allowing them to make important decisions as quickly as possible.

We urge your recommendation for passage of SB 2074.

# **Testimony in Support of SB2074 Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act**

**testimony presented by  
District Judge Gail Hagerty**

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) has a narrow scope, dealing only with jurisdiction and related issues. The new UAGPPJA addresses many problems relating to multiple jurisdiction, transfer, and out-of-state recognition. It has been endorsed by the National Guardianship Foundation and the National College of Probate Judges and the American Bar Association.

Due to increasing population mobility, cases involving simultaneous and conflicting jurisdiction over guardianship are increasing. Even when all parties agree, steps such as transferring a guardianship to another state can require that the parties start over from scratch in the second state. Obtaining recognition of a guardian's authority in another state in order to sell property or to arrange for a residential placement is often impossible. The UAGPPJA will, when enacted, help effectively to address these problems.

## **The Problem of Multiple Jurisdiction**

Because the U.S. has 50 plus guardianship systems, problems of determining jurisdiction are frequent. Questions of which state has jurisdiction to appoint a guardian or conservator can arise between an American state and another country. But more frequently problems arise because the individual has contacts with more than one American state. In nearly all American states, a guardian may be appointed by a court in a state in which the individual is domiciled or is physically present.

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## **The Problem of Transfer**

Oftentimes, problems arise even absent a dispute. Even if everyone is agreed that a guardianship or conservatorship should be moved to another state, few states have streamlined procedures for transferring a proceeding to another state or for accepting such a transfer. In most states, all of the procedures for an original appointment must be repeated, a time consuming and expensive prospect.

## **The Problem of Out-of-State Recognition**

The Full Faith and Credit Clause of the U.S. Constitution requires that court orders in one state be honored in another state. But there are exceptions to the full faith and credit doctrine, of which guardianship and protective proceedings law is one. Sometimes, guardianship or protective proceedings must be initiated in a second state because of the refusal of financial institutions, care facilities, and the courts to recognize a guardianship or protective order issued in another state.

## **The Proposed Uniform Law and the Child Custody Analogy**

Similar problems of jurisdiction existed for many years in the U.S. in connection with child custody determinations. If one parent lived in one state and the other parent lived in another state, frequently courts in more than one state had jurisdiction to enter custody orders. But the Uniform Law Commission has approved two uniform acts that have effectively minimized the problem of multiple court jurisdiction in child custody matters: the Uniform Child Custody Jurisdiction Act (UCCJA), approved in 1968, succeeded by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), approved in 1997. The drafters of the UAGPPJA have elected to model Article 2 and portions of Article 1 of their Act after these child custody analogues. However, the UAGPPJA applies only to adult proceedings. The UAGPPJA is limited to adults in part because most jurisdictional issues involving guardianships for minors are subsumed by the UCCJEA.

## **The Objectives and Key Concepts of the Proposed UAGPPJA**

The UAGPPJA is organized into five articles. Sections 28-35-01 through 28-35-05 (Article 1) contain definitions and provisions designed to facilitate cooperation between courts in different states. Sections 28-35-06 through 28-35-14 (Article 2) are the heart of the Act, specifying which court has jurisdiction to appoint a guardian or conservator. Its overall objective is to locate jurisdiction in one, and only one, state except in cases of emergency or in situations where the individual owns property located in multiple states. Sections 28-35-15 and 28-35-16 (Article 3) specify a procedure for transferring guardianship or conservatorship proceedings from one state to another. Sections 28-35-17 through Section 28-35-19 (Article 4) deal with enforcement of guardianship and protective orders in other states. Section 28-35-20 (Article 5) contains boilerplate provisions common to all uniform acts.

### **Key Definitions and Terminology (Section 28-35-01)**

To determine which court has primary jurisdiction under the UAGPPJA, the key factors are to determine the individual's "home state" and "significant-connection state." A "home state" is the state in which the individual was physically present for at least six consecutive months immediately before the commencement of the guardianship or protective proceeding (Section 28-35-07(1)(a)). A "significant-connection state," which is a potentially broader concept, means the state in which the individual has a significant connection other than mere physical presence, and where substantial evidence concerning the individual is available (Section 28-35-07(1)(c)). Factors that may be considered in deciding whether a particular respondent has a significant connection include:

- the location of the respondent's family and others required to be notified of the guardianship or protective proceeding;
- the length of time the respondent was at any time physically present in the state and the

duration of any absences;

- the location of the respondent's property; and
- the extent to which the respondent has other ties to the state such as voting registration, filing of state or local tax returns, vehicle registration, driver's license, social relationships, and receipt of services.

States differ on terminology for the person appointed by the court to handle the personal and financial affairs of a minor or incapacitated adult. Under the UGPPA and in a majority of American states, a "guardian" is appointed to make decisions regarding the person of an "incapacitated person." A "conservator" is appointed in a "protective proceeding" to manage the property of a "protected person." But in many states, only a "guardian" is appointed, either a guardian of the person or guardian of the estate, and in a few states, the terms guardian and conservator are used but with different meanings. The UAGPPJA adopts the terminology as used in the UGPPA. States employing different terms or the same terms but with different meanings may amend the Act to conform to local usage.

### **Jurisdiction (Sections 28-35-06 through 28-35-14)**

Section 28-35-08 is the principal provision governing jurisdiction, creating a three-level priority; the home state, followed by a significant-connection state, followed by other jurisdictions:

- *Home State:* The home state has primary jurisdiction to appoint a guardian or conservator or enter another protective order, a priority that continues for up to six months following a move to another state.
- *Significant-connection State:* A significant-connection state has jurisdiction if: individual has not had a home state within the past six month or the home states is declined jurisdiction. To facilitate appointments in the average case where jurisdiction is not in dispute, a significant-connection state also has jurisdiction if no proceeding has been commenced in the respondent's home state or another significant-connection state, no objection to the court's jurisdiction has been filed, and the court concludes that it is a more appropriate forum than the court in another state.
- *Another State:* A court in another state has jurisdiction if the home state and all significant-connection states have declined jurisdiction or the individual does not have a home state or significant-connection state.

Section 28-35-09 addresses special cases. Regardless of whether it has jurisdiction under the general principles stated in Section 203, a court in the state where the individual is currently physically present has jurisdiction to appoint a guardian in an emergency, and a court in a state where an individual's real or tangible personal property is located has jurisdiction to appoint a conservator or issue another protective order with respect to that property. In addition, a court not otherwise having jurisdiction under Section 203 has jurisdiction to consider a petition to accept the transfer of an already existing guardianship or conservatorship from another state.

Section 28-35-10 provides that once a court has jurisdiction, this jurisdiction continues until the proceeding is terminated or transferred. Section 28-35-11 authorizes a court to decline jurisdiction if it determines that the court of another state is a more appropriate forum, and specifies the factors to be taken into account in making this determination. Section 28-35-12 authorizes a court to decline jurisdiction or fashion another appropriate remedy if jurisdiction was acquired because of unjustifiable conduct. Section 28-35-13 prescribes special notice requirements if a proceeding is brought in a state other than the respondent's home state. Section 28-35-14 specifies a procedure for resolving jurisdictional issues if petitions are pending

in more than one state. The UAGPPJA also includes provisions regarding communication between courts in different states and taking testimony in another state (Sections 28-35-03 through 28-35-05 ).

#### **Transfer to Another State (Sections 28-35-15 and 28-35-16 )**

Sections 28-34-14 and 28-35-16 specify a procedure for transferring a guardianship or conservatorship to another state. To make the transfer, court orders are necessary both from the court transferring the case and from the court accepting the case. Generally, to transfer the case, the transferring court must find that the individual will move permanently to another state, that adequate arrangements have been made for the individual or the individual's property in the other state, and that the court is satisfied the case will be accepted by the court in the new state. To assure continuity, the court in the original state cannot dismiss the local proceeding until the order from the other state accepting the case is filed with the original court. To expedite the transfer process, the court in the accepting state must give deference to the transferring court's finding of incapacity and selection of the guardian or conservator.

#### **Out-of-State Enforcement (Sections 28-35-17 through Section 28-35-19 )**

To facilitate enforcement of guardianship and protective orders in other states, these sections authorize a guardian or conservator to register these orders in other states. Upon registration, the guardian or conservator may exercise all powers authorized in the order except as prohibited by the laws of the registration state. The Act also addresses enforcement of international orders. To the extent the foreign order violates fundamental principles of human rights, Section 28-35-02 permits a court of an American state that has enacted the Act to recognize an order entered in another country to the same extent as if it were an order entered in another U.S. state.

#### **Conclusion**

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act will help to resolve many guardianship issues such as original jurisdiction, registration, transfer, and out-of-state enforcement. It provides procedures that will help to considerably reduce the cost of guardianship and protective proceeding cases from state to state.



# Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

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## Adult Guardianship and Protective Proceedings Jurisdiction Act

### Summary

Addresses the issue of jurisdiction over adult guardianships, conservatorships & other protective proceedings, providing a mechanism for resolving multi-state jurisdictional disputes. The goal is that only one state will have jurisdiction at any one time.

### Final Act

Final Act  
 Final Act, No Comments (Word)  
 Final Act, No Comments (WordPerfect)

### Legislative Information Kit

Conference of Chief Justices Support Letter  
 Alzheimers Association Support Letter  
 Legislative Factsheet  
 NCPJ Endorsement Letter  
 NGA Endorsement Letter  
 NAELA Endorsement Letter  
 Why States Should Adopt UAGPPJA  
 Summary

### Bill Tracking

**District of Columbia** : Introduced as B17-585 in 2008-09 - ENACTED  
**North Dakota** : Introduced as SB 2074 in 2008-09 - Passed Senate  
**Florida** : Introduced as HB 305 in 2008-09 - Pre-Filed  
**Oregon** : Introduced as SB 238 in 2008-09 - Senate Judiciary  
**Maryland** : Introduced as SB 122 in 2008-09 - Senate Judicial Proceedings  
**Washington** : Introduced as HB 1261 in 2008-09 - House Rules  
**Connecticut** : Introduced as SB 576 in 2008-09 - Senate Judiciary  
**Indiana** : Introduced as SB 577 in 2008-09 - Senate Judiciary  
**Minnesota** : Introduced as SF 412 in 2008-09 - Senate Judiciary  
**Arkansas** : Introduced as SB 327 in 2008-09 - Senate Judiciary  
**Illinois** : Introduced as HB 759 in 2008-09 - House Rules  
**Montana** : Introduced as HB 477 in 2008-09 - House Judiciary  
**Tennessee** : Introduced as HB 608 in 2008-09 - Filed

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**March 3, 2009  
House Judiciary Committee  
SB 2074**

Chairman DeKrey and members of the committee. My name is Bob Hanson. I am an advocacy volunteer for AARP North Dakota and today I represent our over 88,000 North Dakota members.

AARP staff served in an advisory capacity to the Uniform Law Commission in the process of developing the draft of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) which is the basis for SB 2074. We are hopeful that every state will pass this important law, and make questions regarding jurisdiction, transfer, and enforcement consistent across the nation.

The UAGPPJA creates a process for determining which state will have jurisdiction to appoint a guardian or conservator if there is a conflict. It specifies a procedure for transferring a guardianship or conservatorship to another state and for accepting a transfer, helping to reduce expenses and save time while protecting people and their property.

The UAGPPJA helps to facilitate enforcement of guardianship and protective orders in other states by authorizing a guardian or conservator to register orders in other states. A court in the state where the individual is physically present can appoint a guardian in the case of an emergency, or appoint a conservator for property located in a particular state.

And the act permits communication between courts and parties of other states and jurisdictions to respond to requests for assistance from courts in other states.

SB 2074 will provide uniformity and reduce conflicts among the states. Widespread passage of the act should result in significant judicial economy, reduction in litigation, and conservation of the ward's estate. The UAGPPJA will also help save time for those who are serving as guardians and conservators, allowing them to make important decisions as quickly as possible.

We urge your recommendation for passage of SB 2074.