

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

This Act:

- establishes procedures for determining where jurisdiction lies in guardianship and conservatorship proceedings when the parties are not all in the same state;
- provides for jurisdiction in states with a significant connection to the incapacitated person;
- defines “significant connection;”
- provides for cooperation between courts of different states;
- allows for special circumstances if an incapacitated person is in a state that does not meet the “significant connection” standard;
- provides procedures for the transfer of jurisdiction to another state; and
- allows for registration of protective orders from other states.

Submitted as:

Utah

[SB122](#)

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short title.*] This Act shall be cited as “The Uniform Adult Guardianship and
2 Protective Proceedings Jurisdiction Act.”

3
4 Part I.
5 General Provisions
6

7 Section 2. [*Definitions.*] In this chapter:

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

9 (2) “Conservator” means a person appointed by the court to administer the property of an
10 adult, including a person appointed under [insert citation].

11 (3) “Emergency” means circumstances that likely will result in substantial harm to a
12 respondent’s health, safety, or welfare, and in which the appointment of a guardian is necessary
13 because no other person has authority to and is willing to act on the respondent’s behalf.

14 (4) “Guardian” means a person appointed by the court to make decisions regarding the
15 person of an adult, including a person appointed under [insert citation].

16 (5) “Guardianship order” means an order appointing a guardian.

17 (6) “Guardianship proceeding” means a proceeding in which an order for the appointment
18 of a guardian is sought or has been issued.

19 (7) “Home state” means the state in which the respondent was physically present for at
20 least six consecutive months immediately before the filing of a petition for the appointment of
21 guardian or protective order. A period of temporary absence counts as part of the six-month
22 period.

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

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

26 (10) “Person,” except in the terms “incapacitated person” or “protected person,” means an
27 individual, corporation, business trust, estate, trust, partnership, limited liability company,
28 association, joint venture, government or governmental subdivision, agency or instrumentality,
29 public corporation, or any other legal or commercial entity.

30 (11) “Protected person” means an adult for whom a protective order has been made.

31 (12) “Protective order” means an order appointing a conservator or another court order
32 related to management of an adult’s property.

33 (13) “Protective proceeding” means a judicial proceeding in which a protective order is
34 sought or has been issued.

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

37 (15) “Respondent” means an adult for whom a protective order or the appointment of a
38 guardian is sought.

39 (16) “Significant-connection state” means a state, other than the home state, with which a
40 respondent has a significant connection other than mere physical presence and in which substantial
41 evidence concerning the respondent is available.

42 (17) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
43 United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular
44 possession subject to the jurisdiction of the United States.

45
46 Section 3. [*International application.*] A court of this state may treat a foreign country as if
47 it were a state for the purpose of applying Parts 1, 2, 3, and 5 of this Chapter.

48
49 Section 4. [*Communication between courts.*]

50 (1) A court of this state may communicate with a court in another state concerning a
51 proceeding arising under this chapter. The court may allow the parties to participate in the
52 communication. Except as otherwise provided in Subsection (2), the court shall make a record of
53 the communication. The record may be limited to the fact that the communication occurred.

54 (2) Courts may communicate concerning schedules, calendars, court records, and other
55 administrative matters without making a record.

56
57 Section 5. [*Cooperation between courts.*]

58 (1) In a guardianship or protective proceeding in this state, a court of this state may request
59 the appropriate court of another state to do any of the following:

60 (a) hold an evidentiary hearing;

61 (b) order a person in that state to produce evidence or give testimony pursuant to
62 procedures of that state;

63 (c) order that an evaluation or assessment be made of the respondent;

64 (d) order any appropriate investigation of a person involved in a proceeding;

65 (e) forward to the court of this state a certified copy of the transcript or other record
66 of a hearing under Subsection (1)(a) or any other proceeding, any evidence otherwise produced
67 under Subsection (1)(b), and any evaluation or assessment prepared in compliance with an order
68 under Subsection (1)(c) or (d);

69 (f) issue any order necessary to assure the appearance in the proceeding of a person
70 whose presence is necessary for the court to make a determination, including the respondent or the
71 incapacitated or protected person; and

72 (g) issue an order authorizing the release of medical, financial, criminal, or other
73 relevant information in that state, including protected health information as defined in 45 Code
74 133 of Federal Regulations Section 164.504.

75 (2) If a court of another state in which a guardianship or protective proceeding is pending
76 requests assistance of the kind provided in Subsection (1), a court of this state has jurisdiction for
77 the limited purpose of granting the request or making reasonable efforts to comply with the
78 request.

79
80 Section 6. [*Taking testimony in another state.*]

81 (1) In a guardianship or protective proceeding, in addition to other procedures that may be
82 available, testimony of a witness who is located in another state may be offered by deposition or
83 other means allowable in this state for testimony taken in another state. The court on its own
84 motion may order that the testimony of a witness be taken in another state and may prescribe the
85 manner in which and the terms upon which the testimony is to be taken.

86 (2) In a guardianship or protective proceeding, a court in this state may permit a witness
87 located in another state to be deposed or to testify by telephone, audiovisual, or other electronic
88 means. A court of this state shall cooperate with courts of other states in designating an
89 appropriate location for the deposition or testimony.

90 (3) Documentary evidence transmitted from another state to a court of this state by
91 technological means that do not produce an original writing may not be excluded from evidence
92 on an objection based on the best evidence rule.

93
94 Part 2.
95 Jurisdiction
96

97 Section 7. [*Exclusive basis -- Significant connection.*]

98 (1) This part provides the exclusive jurisdictional basis for a court of this state to appoint a
99 guardian or issue a protective order for an adult.

100 (2) In determining under Section 9 of this Act and Section 15(5) of this Act whether a
101 respondent has a significant connection with a particular state, the court shall consider:

102 (a) the location of the respondent's family and other people required to be notified
103 of the guardianship or protective proceeding;

104 (b) the length of time the respondent at any time was physically present in the state
105 and the duration of any absence;

106 (c) the location of the respondent's property; and

107 (d) the extent to which the respondent has ties to the state such as voting
108 registration, state or local tax return filing, vehicle registration, driver license, social relationship,
109 and receipt of services.

110
111 Section 8. [*Jurisdiction.*] A court of this state has jurisdiction to appoint a guardian or issue
112 a protective order for a respondent if:

113 (1) this state is the respondent's home state;

114 (2) on the date the petition is filed, this state is a significant-connection state and:

115 (a) the respondent does not have a home state or a court of the respondent's home
116 state has declined to exercise jurisdiction because this state is a more appropriate forum; or

117 (b) the respondent has a home state, a petition for an appointment or order is not
118 pending in a court of that state or another significant-connection state, and, before the court makes
119 the appointment or issues the order:

- 120 (i) a petition for an appointment or order is not filed in the respondent's
121 home state;
- 122 (ii) an objection to the court's jurisdiction is not filed by a person required
123 to be notified of the proceeding; and
- 124 (iii) the court in this state concludes that it is an appropriate forum under the
125 factors set forth in Section 11;
- 126 (3) this state does not have jurisdiction under either Subsection (1) or (2), the respondent's
127 home state and all significant-connection states have declined to exercise jurisdiction because this
128 state is the more appropriate forum, and jurisdiction in this state is consistent with the
129 constitutions of this state and the United States; or
- 130 (4) the requirements for special jurisdiction under Section 10 are met.

131
132 Section 9. [*Special jurisdiction.*]

133 (1) A court of this state lacking jurisdiction under Section 8 has jurisdiction to do any of
134 the following:

135 (a) appoint a guardian in an emergency for a term not exceeding 90 days for a
136 respondent who is physically present in this state;

137 (b) issue a protective order with respect to real or tangible personal property located
138 in this state; and

139 (c) appoint a guardian or conservator for an incapacitated or protected person for
140 whom a provisional order to transfer the proceeding from another state has been issued under
141 procedures similar to Section 15.

142 (2) If a petition for the appointment of a guardian in an emergency is brought in this state
143 and this state was not the respondent's home state on the date the petition was filed, the court shall
144 dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is
145 requested before or after the emergency appointment.

146
147 Section 10. [*Exclusive and continuing jurisdiction.*] Except as otherwise provided in
148 Section 9, a court that has appointed a guardian or issued a protective order consistent with this
149 Chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the
150 court or the appointment or order expires by its own terms.

151
152 Section 11. [*Declining jurisdiction if another court is a more appropriate forum.*]

153 (1) A court of this state having jurisdiction under Section 8 to appoint a guardian or issue a
154 protective order may decline to exercise its jurisdiction if it determines at any time that a court of
155 another state is a more appropriate forum.

156 (2) If a court of this state declines to exercise its jurisdiction under Subsection (1), it shall
157 either dismiss or stay the proceeding. The court may impose any other condition the court
158 considers just and proper, including the condition that a petition for the appointment of a guardian
159 or issuance of a protective order be promptly filed in another state.

160 (3) In determining whether it is an appropriate forum, the court shall consider all relevant
161 factors, including:

162 (a) any expressed preference of the respondent;

163 (b) whether abuse, neglect, or exploitation of the respondent has occurred or is
164 likely to occur and which state could best protect the respondent from the abuse, neglect, or
165 exploitation;

166 (c) the length of time the respondent was physically located in or was a legal
167 resident of this or another state;

168 (d) the distance of the respondent from the court in each state;

- 169 (e) the financial circumstances of the respondent's estate;
170 (f) the nature and location of the evidence;
171 (g) the ability of the court in each state to decide the issue expeditiously and the
172 procedures necessary to present evidence;
173 (h) the familiarity of the court of each state with the facts and issues in the
174 proceeding; and
175 (i) if an appointment were made, the court's ability to monitor the conduct of the
176 guardian or conservator.

177
178 Section 12. [*Jurisdiction declined by reason of conduct.*]

179 (1) If at any time a court of this state determines that it acquired jurisdiction to appoint a
180 guardian or issue a protective order because of unjustifiable conduct, the court may:

- 181 (a) decline to exercise jurisdiction;
182 (b) exercise jurisdiction for the limited purpose of fashioning an appropriate
183 remedy to ensure the health, safety, and welfare of the respondent or the protection of the
184 respondent's property or prevent a repetition of the unjustifiable conduct, including staying the
185 proceeding until a petition for the appointment of a guardian or issuance of a protective order is
186 filed in a court of another state having jurisdiction; or

- 187 (c) continue to exercise jurisdiction after considering:
188 (i) the extent to which the respondent and all people required to be notified
189 of the proceedings have acquiesced in the exercise of the court's jurisdiction;
190 (ii) whether it is a more appropriate forum than the court of any other state
191 under the factors set forth in Subsection 11(3); and

192 (iii) whether the court of any other state would have jurisdiction under
193 factual circumstances in substantial conformity with the jurisdictional standards of Section 8.

194 (2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or
195 issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable
196 conduct, it may assess against that party necessary and reasonable expenses, including attorney
197 fees, investigative fees, court costs, communication expenses, witness fees and expenses, and
198 travel expenses. The court may not assess fees, costs, or expenses of any kind against the state or a
199 governmental subdivision, agency, or instrumentality of the state unless authorized by law other
200 than this chapter.

201
202 Section 13. [*Notice of proceeding.*] If a petition for the appointment of a guardian or
203 issuance of a protective order is brought in this state and this state was not the respondent's home
204 state on the date the petition was filed, in addition to complying with the notice requirements of
205 this state, notice of the petition shall be given to those people who would be entitled to notice of
206 the petition if the proceeding were brought in the respondent's home state. The notice shall be
207 given in the same manner as notice is given in this state.

208
209 Section 14. [*Proceedings in more than one state.*] Except for a petition for the appointment
210 of a guardian in an emergency or issuance of a protective order limited to property located in this
211 state as provided in Section 9(1)(a) or (b), if a petition for the appointment of a guardian or
212 issuance of a protective order is filed in this state and in another state and neither petition has been
213 dismissed or withdrawn, the following rules apply:

214 (1) If the court in this state has jurisdiction under Section 8, it may proceed with the case
215 unless a court in another state acquires jurisdiction under Section 8 before the appointment or
216 issuance of the order.

217 (2) If the court in this state does not have jurisdiction under Section 8, whether at the time
218 the petition is filed or at any time before the appointment or issuance of the order, the court shall
219 stay the proceeding and communicate with the court in the other state. If the court in the other
220 state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other
221 state determines that the court in this state is a more appropriate forum.

222
223 Part 3.
224 Transfer of Jurisdiction

225
226 Section 15. [*Transfer of guardianship or conservatorship to another state.*]

227 (1) A guardian or conservator appointed in this state may petition the court to transfer the
228 guardianship or conservatorship to another state.

229 (2) Notice of a petition under Subsection (1) must be given to the persons that would be
230 entitled to notice of a petition in this state for the appointment of a guardian or conservator.

231 (3) On the court's own motion or on request of the guardian or conservator, the
232 incapacitated or protected person, or other person required to be notified of the petition, the court
233 shall hold a hearing on a petition filed pursuant to Subsection (1).

234 (4) The court shall issue an order provisionally granting a petition to transfer a
235 guardianship and shall direct the guardian to petition for guardianship in the other state if the court
236 is satisfied that the guardianship will be accepted by the court in the other state and the court finds
237 that:

238 (a) the incapacitated person is physically present in or is reasonably expected to
239 move permanently to the other state;

240 (b) an objection to the transfer has not been made or, if an objection has been made,
241 the objector has not established that the transfer would be contrary to the interests of the
242 incapacitated person; and

243 (c) plans for care and services for the incapacitated person in the other state are
244 reasonable and sufficient.

245 (5) The court shall issue a provisional order granting a petition to transfer a
246 conservatorship and shall direct the conservator to petition for conservatorship in the other state if
247 the court is satisfied that the conservatorship will be accepted by the court of the other state and
248 the court finds that:

249 (a) the protected person is physically present in or is reasonably expected to move
250 permanently to the other state, or the protected person has a significant connection to the other
251 state considering the factors in Section 7(2);

252 (b) an objection to the transfer has not been made or, if an objection has been made,
253 the objector has not established that the transfer would be contrary to the interests of the protected
254 person; and

255 (c) adequate arrangements will be made for management of the protected person's
256 property.

257 (6) The court shall issue a final order confirming the transfer and terminating the
258 guardianship or conservatorship upon its receipt of:

259 (a) a provisional order accepting the proceeding from the court to which the
260 proceeding is to be transferred which is issued under provisions similar to Section 16; and

261 (b) the documents required to terminate a guardianship or conservatorship in this
262 state.

263
264 Section 16. [*Accepting guardianship or conservatorship transferred from another state.*]

265 (1) To confirm transfer of a guardianship or conservatorship transferred to this state under
266 provisions similar to Section 15, the guardian or conservator shall petition the court in this state to
267 accept the guardianship or conservatorship. The petition shall include a certified copy of the other
268 state's provisional order of transfer.

269 (2) Notice of a petition under Subsection (1) shall be given by the petitioner to those
270 people who would be entitled to notice if the petition were a petition for the appointment of a
271 guardian or issuance of a protective order in both the transferring state and this state. The notice
272 shall be given in the same manner as notice is given in this state.

273 (3) On the court's own motion or on request of the incapacitated or protected person, or
274 other person required to be notified of the proceeding, the court shall hold a hearing on a petition
275 filed pursuant to Subsection (1).

276 (4) The court shall issue an order provisionally granting a petition filed under Subsection
277 (1) unless:

278 (a) an objection is made and the objector establishes that transfer of the proceeding
279 would be contrary to the interests of the incapacitated or protected person; or

280 (b) the guardian or conservator is ineligible for appointment in this state.

281 (5) The court shall issue a final order accepting the proceeding and appointing the guardian
282 or conservator as guardian or conservator in this state upon its receipt from the court from which
283 the proceeding is being transferred of a final order issued under provisions similar to Section 15
284 transferring the proceeding to this state.

285 (6) Not later than 90 days after issuance of a final order accepting transfer of a
286 guardianship or conservatorship, the court shall determine whether the guardianship or
287 conservatorship needs to be modified to conform to the law of this state.

288 (7) In granting a petition under this section, the court shall recognize a guardianship or
289 conservatorship order from the other state, including the determination of the incapacitated or
290 protected person's incapacity and the appointment of the guardian or conservator.

291 (8) The denial by a court of this state of a petition to accept a guardianship or
292 conservatorship transferred from another state does not affect the ability of the guardian or
293 conservator to seek appointment as guardian or conservator in this state under [insert citation] if
294 the court has jurisdiction to make an appointment other than by reason of the provisional order of
295 transfer.

296 Part 4.

298 Registration and Recognition of Orders from Other States

299
300 Section 17. [*Registration of guardianship orders.*] If a guardian has been appointed in
301 another state and a petition for the appointment of a guardian is not pending in this state, the
302 guardian appointed in the other state, after giving notice to the appointing court of an intent to
303 register, may register the guardianship order in this state by filing certified copies of the order and
304 letters of office as a foreign judgment in a court in any appropriate county of this state.

305
306 Section 18. [*Registration of protective orders.*] If a conservator has been appointed in
307 another state and a petition for a protective order is not pending in this state, the conservator
308 appointed in the other state, after giving notice to the appointing court of an intent to register, may
309 register the protective order in this state by filing as a foreign judgment in a court of this state, in
310 any county in which property belonging to the protected person is located, certified copies of the
311 order, letters of office, and any bond.

312
313 Section 19. [*Effect of registration.*]

314 (1) Upon registration of a guardianship or protective order from another state, the guardian
315 or conservator may exercise in this state all powers authorized in the order of appointment except
316 as prohibited under the laws of this state, including maintaining actions and proceedings in this
317 state and, if the guardian or conservator is not a resident of this state, subject to any conditions
318 imposed upon nonresident parties.

319 (2) A court of this state may grant any relief available under this Chapter and other law of
320 this state to enforce a registered order.

321
322 Part 5.
323 Miscellaneous Provisions
324

325 Section 20. [*Uniformity of application and construction.*] In applying and construing this
326 Uniform Act, consideration shall be given to the need to promote uniformity of the law with
327 respect to its subject matter among states that enact it.

328
329 Section 21. [*Relation to electronic signatures in global and national commerce act.*] This
330 chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National
331 Commerce Act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede Section
332 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices
333 described in Section 103(b), 15 U.S.C. Sec. 7003(b).

334
335 Section 22. [*Transitional provision.*]

336 (1) This Chapter applies to guardianship and protective proceedings begun on or after
337 [January 1, 2009].

338 (2) Parts 1, 3, and 4 and Sections 20 and 21 apply to proceedings begun before [January 1,
339 2009], regardless of whether a guardianship or protective order has been issued.

340
341 Section 23. [*Effective date.*] This act takes effect on [January 1, 2009].