Study L-750 August 10, 2012

Memorandum 2012-36

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act: New Communications

In October 2011, the Commission had to interrupt its study of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA"). Since then, the Commission has received the following new communications relating to UAGPPJA:

Each of those communications is discussed below.

For an introduction to UAGPPJA and California conservatorship law, see Memorandum 2012-34. For the history of the Commission's study and a proposed course of action, see Memorandum 2012-35.

States use varying terminology to refer to a proceeding in which a court appoints someone to assist an adult with personal care and/or financial matters because the adult cannot adequately handle those activities without such assistance. In California, this type of proceeding is referred to as a "conservatorship," the person appointed to provide assistance is referred to as the "conservator," and the adult who requires assistance is referred to as the "conservatee." For the sake of simplicity, we will use California terminology throughout this memorandum.

NEW COMMENTS FROM THE ALZHEIMER'S ASSOCIATION

While the Commission's study of UAGPPJA was on hold, Theresa Renken (State Public Policy Director of the Alzheimer's Association) wrote the

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

Commission's Executive Director "**to strongly urge the Commission to expedite [its UAGPPJA discussions]** so that California can join the growing number of states that have already passed UAGPPJA legislation." Exhibit p. 5 (emphasis in original). She provided a fact sheet on UAGPPJA, which shows that "every state that borders California has already passed this legislation." *Id.* at 5-7. She also noted that "[c]onsidering the dynamic family structures that exist today — where adult children may live outside of California — our organization strongly believes that UAGPPJA addresses an incredibly relevant issue, both in California and nationally." *Id.* at 5. She concluded by stating:

> I believe that the support UAGPPJA has received from other legal associations indicates that the proposals are sound. While I understand the Commission has other mandated duties, I would strongly encourage you all to finalize this.

Id.

When Ms. Renken's letter arrived, the Commission was immersed in the study of redevelopment clean-up legislation. The Executive Director therefore informed her that when the Commission receives a mandatory statutory assignment that contains a fixed deadline, that must take priority over discretionary work without a deadline. See Email from B. Hebert to T. Renken (5/22/12). However, the redevelopment study is now off the table, so the Commission can move forward on UAGPPJA as the Alzheimer's Association requested.

NEW COMMENTS FROM CANHR

In October 2011, Disability Rights California ("DRC") suggested that California's version of UAGPPJA should not permit transfer of a court proceeding involving involuntary mental health care to California, or registration of such a proceeding in California. Third Supplement to Memorandum 2011-31, Exhibit pp. 7-8. California Advocates for Nursing Home Reform ("CANHR") has since taken the same position: "We agree with Disability Rights California that California's version of UAGPPJA, if it is adopted, should exclude any involuntary mental health care." Exhibit p. 1.

CANHR has also responded to the staff's query about whether "involuntary mental health care" in this context ought to include placement of a conservatee with dementia in a secured facility. CANHR "absolutely believe[s]" that such

placement is a form of involuntary mental health care that should be excluded from UAGPPJA's transfer procedure. *Id.*

The remainder of CANHR's most recent letter explains its position on that point. CANHR begins by observing that "Probate Code Section 2356.5 permits conservators to authorize placement in a secured perimeter facility as well as appropriate medications upon a showing that a conservatee has dementia and would benefit from such treatment." *Id.* According to CANHR, "[t]he powers regarding 'secured perimeter' and 'appropriate medications' give a conservator the ability to lock up a conservatee and have her injected with psychotropic drugs, *actions strongly associated with involuntary mental health care*." *Id.* (emphasis added).

CANHR also notes that California affords special procedural protections in proceedings under Section 2356.5, and "requires a very specific demonstration of a conservatee's disabilities, reflecting a precise California balance between individual rights and state interests." *Id.* CANHR thus asserts that "[p]ermitting out-of-state conservators … to assume dementia powers without meeting California's exacting standard would subject a class of conservatees to massive deprivations of their liberty without the assurances of propriety our state requires." Exhibit pp. 1-2.

CANHR further explains that antipsychotic drugs involve significant risks and might be of little benefit in treating dementia. Exhibit p. 2. CANHR then concludes:

> Given the enormous risks of using antipsychotics to treat dementia, the gravity of 2356.5 dementia powers, and a statute that expressly contemplates involuntary treatment for a cognitive disability, automatically granting dementia powers to out-of-state conservators via UAGPPJA would be a misplaced evasion of due process and state policy. The powers at stake are certainly akin if not indistinguishable from involuntary mental health care. In order to receive such powers, California due process demands stringency that is simply not guaranteed in UAGPPJA.

Id.

NEW COMMENTS FROM TEXCOM'S WORKING GROUP ON UAGPPJA

Last month, TEXCOM's working group on UAGPPJA submitted two new documents for the Commission to consider: (1) an analysis of UAGPPJA that Peter Stern prepared for TEXCOM's annual retreat in May 2012, and (2) a

discussion draft prepared by the working group, which would modify UAGPPJA in various respects for introduction here in California. See Exhibit pp. 8-41.

Mr. Stern's analysis for TEXCOM's annual retreat reiterates much of the analysis in the staff memoranda prepared for the Commission in the course of this study. He also provides some perspectives on those memoranda:

- The memorandum on the Full Faith and Credit Clause (Memorandum 2011-18) "serves to underscore a major problem: the backbone of the Uniform Act is to grant deference to the actions of another state, but to do so without applying the basic provisions of California conservatorship law would upset our own tradition of not giving full faith and credit to the laws of other states" in this context. Exhibit p. 10.
- "The CLRC's discussion of the incapacity determination has led our group to the conclusion that if the standards can differ so much just in the three states that CLRC has analyzed in detail, it would be extremely burdensome on California courts to attempt to analyze the incapacity standards in all jurisdictions from which cases might come as transfers or possible registrations; *our suggestion, thus, is to have the applicant relitigate the conservatorship in every case* by filing, with the court order from the transferring state, a petition for appointment of conservator in California and to require a court investigation." Exhibit pp. 13-14 (emphasis added).
- "The CLRC's conclusions are that California could end up granting conservatorship authority to someone who was less qualified to serve as conservator than someone else. While the terms of the Act allow California to reject as conservator someone who was appointed in another state but who is not qualified to act in California, the person appointed could be someone who would not have been appointed here, who might not be the conservatee's first choice, or a person who is not the most qualified to serve." Exhibit pp. 16-17.
- The CLRC's discussions of procedural protections "were influential in the recommendations the working group has used to shape its version of the Act." Exhibit p. 18.

Mr. Stern's analysis also provides some thoughts and information about UAGPPJA developments in other jurisdictions:

- "By the middle of 2012, the Uniform Act had been adopted by some thirty US jurisdictions. All other western states have enacted the Uniform Act. Given our initial reluctance to import the Act in California, we looked at all of our sister states, to see how much of the Uniform Act they brought into their own legislation. *By and large, most states simply inserted the Act into their existing law, with*

minimal changes to conform to some state particularities." Exhibit p. 9 (emphasis added).

- "Many Western states use the [Uniform Probate Code] as their conservatorship law. They do not have elaborate conservatorship law, unlike California. Many simply enacted the Uniform Act nearly intact. We thought at first that the study of other states would provide models for how California could adopt the act. Instead, *we have concluded tentatively that we have to create procedures to protect aspects of California conservatorship law.*" Exhibit p. 9 (emphasis added).
- Florida has not adopted UAGPPJA, but already has a statutory procedure for "domestication" of a foreign guardianship. Exhibit pp. 18-19. "These procedures would allow a California conservator to exercise the powers granted in California, subject to accepting the jurisdiction of the Florida court, with a minimum of procedural complication." *Id*.
- Texas has "brought in only fragments" of UAGPPJA. Exhibit p. 9. "Texas decided to modify its own transfer proceedings to incorporate portions of the Uniform Act, and not much more, in the changes made to Texas guardianship law in 2011 …." *Id.* at 19.

Another member of TEXCOM's working group (Jennifer Wilkerson) recently examined legislation to adopt UAGPPJA in Ohio, New York, and New Jersey. She found that "[s]ignificantly, the proposed legislation pending in these 3 important States makes no modifications to the Uniform Act." Exhibit p. 8.

In addition to reviewing relevant law in other jurisdictions, TEXCOM's working group has attempted to revise UAGPPJA in a manner it considers appropriate for adoption in California. See Exhibit pp. 24-41. The resultant discussion draft (hereafter, the "TEXCOM subgroup draft") reflects the views of the working group, not the official views of TEXCOM or the State Bar.

The TEXCOM subgroup draft proposes the enactment of a "California Conservatorship Jurisdiction Act," which starts from what Peter Stern describes as "a conservative bias." Exhibit p. 9. As he puts it,

> We have concluded that the California Conservatorship law should stand as the paradigm for enactment of parts of the Uniform Act. As CLRC memos point out, California law affords [m]any protections to conservatees and proposed conservatees. *We think the proper way to look at enactment of the Uniform Act is to keep as much as possible of these protections.*

Id. (emphasis added).

Some important differences between UAGPPJA and the TEXCOM subgroup draft are:

(1) The TEXCOM subgroup draft uses California conservatorship terminology, not the terminology used in UAGPPJA.

(2) When a conservatorship is being transferred to another state under UAGPPJA, the transferring court must conduct a hearing only on the court's own motion or on request of the conservator, the conservatee, or other person required to be notified of the transfer petition. See UAGPPJA § 301. In contrast, the TEXCOM subgroup "propose[s] a *mandatory* hearing before a conservatee's residence may be established outside of this state …." Exhibit p. 35 (emphasis added). The subgroup also proposes to require the transferring court to find that the proposed new residence for the conservatee is the "least restrictive appropriate residence … that is available and necessary to meet the needs of the conservatee and that is in the best interests of the conservatee." *Id.*

(3) UAGPPJA "provides an 'expedited proceeding' for transfers to avoid the need for an entirely new proceeding when a Conservatee has, or intends, to move" to a new state." Exhibit p. 37. Due to "California's stricter protections for Conservatees," the TEXCOM subgroup proposes to "heighten the requirements on transfer to be basically equivalent to a new conservatorship appointment in this state." *Id.* Under the subgroup's proposal, the transfer process would include a mandatory hearing and redetermination of capacity and appointment of the conservator. The subgroup took this approach because it "oppose[s] forced recognition of the transferring state's determination of capacity and appointment of conservator, which may not have been made in accordance with the more protective standards under CA law, including the priority given to registered domestic partners for appointment." *Id.* at 38.

(4) The TEXCOM subgroup draft would "preclude the transfer of a conservatorship which must meet the stricter requirements of an LPS conservatorship." *Id.* at 38, 39.

(5) The TEXCOM subgroup draft would preclude use of the UAGPPJA registration process when California would have "primary jurisdiction as either a home state or a significant connection state …." *Id.* at 39.

Two members of TEXCOM's working group are planning to attend the upcoming Commission meeting in Los Angeles. They will be able to provide further information about the group's draft at that time.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

CALIFORNIA ADVOCATES FOR NURSING HOME REFORM

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January 3, 2012

JAN 10 2012

California Law Revision Commission
Barbara Gaal, Chief Deputy Counsel
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

Re: Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA)

Dear Ms. Gaal:

Thank you for your continued work and the work of your staff regarding the UAGPPJA and for your thoughtful memoranda and supplementary material. This letter is in response to your Third Supplement to Memorandum 2011-31.

On page 6 of the Third Supplement, you addressed the issue of involuntary mental health care as it relates to UAGPPJA. We agree with Disability Rights California that California's version of UAGPPJA, if it is adopted, should exclude any involuntary mental health care. The supplement asks if involuntary mental health care includes situations in which a conservatee with dementia is placed in a secured facility. We absolutely believe that it does.

Probate Code Section 2356.5 permits conservators to authorize placement in a secured perimeter facility as well as appropriate medications upon a showing that a conservatee has dementia and would benefit from such treatment. The powers regarding "secured perimeter" and "appropriate medications" give a conservator the ability to lock up a conservatee and have her injected with psychotropic drugs, actions strongly associated with involuntary mental health care. I have reviewed the legislative history of Section 2356.5 (Senate Bill 1481 (1996)) and the statute was clearly intended to both bypass and substitute for the LPS conservatorship process in dementia cases. The enclosed letter written by Senator Henry Mello, the author of SB 1481, states that the bill is intended to help conservators avoid "the costly and arduous process of a Lanterman Petris Short conservatorship."

While the legislature believed the procedures in the LPS conservatorship were inappropriate for proposed conservatees with dementia, it nonetheless required special procedures due to the fundamental nature of the rights involved. Section 2356.5 requires clear and convincing evidence that the conservatee has dementia, lacks capacity, and has significant impairments. In addition, an attorney must represent the conservatee, expert testimony is required, and additional court reviews are required. These procedures demonstrate that dementia powers contemplate infringements on a conservatee's autonomy that go far beyond the normal probate conservatorship.

Section 2356.5 requires a very specific demonstration of a conservatee's disabilities, reflecting a precise California balance between individual rights and state interests. Although I've not done the research, I expect that no state has an identical standard and few states have similar standards. Permitting out-of-state conservators or guardians to assume dementia powers without

meeting California's exacting standard would subject a class of conservatees to massive deprivations of their liberty without the assurances of propriety our state requires.

The importance of additional due process in cases involving involuntary dementia care is underscored by recent developments in dementia care research. Since SB 1481's passage in 1996, clinical studies have exposed significant shortcomings of psychotropic drugs for "treating" dementia. In 2005, following a number of studies showing severe side effects, including death, the FDA issued a public health advisory that the treatment of dementia with atypical antipsychotic drugs was contra-indicated. Antipsychotics are associated with increased stroke, heart attack, pneumonia, extrapyramidal side effects, and a host of other serious conditions.

The significant risks of declines and death associated with antipsychotics for "treating" dementia might be acceptable if the drugs had proven countervailing clinical benefits. Yet, research demonstrates that antipsychotics have minimal benefit, often outperformed by placebos or simple pain medications like Tylenol. There are no studies showing that antipsychotics improve the cognitive functioning of a person with dementia. The only benefits – if they can be called benefits – are sedation and submission.

Given the enormous risks of using antipsychotics to treat dementia, the gravity of 2356.5 dementia powers, and a statute that expressly contemplates involuntary treatment for a cognitive disability, automatically granting dementia powers to out-of-state conservators via UAGPPJA would be a misplaced evasion of due process and state policy. The powers at stake are certainly akin if not indistinguishable from involuntary mental health care. In order to receive such powers, California due process demands stringency that is simply not guaranteed in UAGPPJA.

Thank you for the opportunity to comment on the continued development of UAGPPJA.

Sincerely,

Anthony Chicotel
Staff Attorney

enclosure

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California Legislature

Senate Subcommittee on Aging

HENRY J. MELLO
CHAIRMAN

June 25, 1996

Assemblyman Bill Morrow, Chairman
Assembly Judiciary Committee
Room 6027 State Capitol
Sacramento, CA 95814

Dear Assemblyman Morrow:

My SB 1481 will be heard in Assembly Judiciary on Wednesday June 26, 1996. I would like you to take the following points in consideration as you prepare for the hearing.

Summary

SB 1481 would clearly authorize in the Probate Code, authority for a conservator of the person to place a person with dementia in a secured facility or administer appropriate medications under specified conditions.

The Need for SB 1481

Many Alzheimer's family members cannot place their loved ones in secured facilities appropriate to Alzheimer's care or have appropriate medications administered because Section 3211 of the Probate Code prohibits a person being placed in a mental health treatment facility under provisions of Probate Code.

It has therefore been a point of considerable contention that a person may be placed in a secured facility or medicated using Probate Code sections. Some public guardians have argued that conservators may be and are granted authority to do so under the general medical powers authority in Probate.

The problem is that this interpretation is indeed not universal and it is doubtful that any Probate Judge would grant these powers to private conservators, particularly family members, and in some counties not even to public guardians.

As a consequence, for hundreds if not thousands of families every year must make the choice to either keep a person with dementia at home without the necessary human, monetary or medical resources or resort to the costly and arduous process of a Lanterman Petris Short conservatorship. Most dementia experts agree that LPS placement for progressive degenerative dementia, such as Alzheimer's is inappropriate.

Specific Provisions of SB 1481

SB 1481 clarifies the ambiguity inherent in the Probate codes and specifies that if a person (1). has a diagnosis of dementia made by an appropriate professional, (2). they have undergone the necessary mental competency process outlined in Probate Sections 812 and 1882, (3). if it is demonstrated that they need or could benefit from such placement or medication and (4). the placement is in the least restrictive environment, then a probate court should be able to grant authority to medicate or place in a secure facility.

Sponsors

This bill is sponsored by the Alzheimer's Disease Association, California Chapter, and is supported by a wide array of groups. I should add that this bill was worked out with a work-group of interested parties, including family members, attorneys, guardians, representatives of the State Bar, Psychological Assoc., Protection and Advocacy Inc., among others.

I ask for your 'Aye' vote regarding this very important measure.

Thank you.

Sincerely,

Henry J. Mello
Chairman

JHM:gk

alzheimer's association

the compassion to care, the leadership to conquer

May 17, 2012

California Law Revision Commission
ATTN: Brian Herbert, Executive Director
4000 Middlefield Rd, Room D-2
Palo Alto, CA 94303

RE: Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA)

Dear Mr. Herbert:

Approximately one year ago, the California Law Revision Commission began discussions regarding UAGPPJA, which would establish a uniform set of rules for determining jurisdiction and simplify the process in multi-jurisdictional cases. While I appreciate the discussion that has taken place on the issue, **I write to strongly urge the Commission to expedite these discussions** so that California can join the growing number of states that have already passed UAGPPJA legislation.

As you can see in the attached fact sheet, every state that borders California has already passed this legislation. Considering the dynamic family structures that exist today – where adult children may live outside of California – our organization strongly believes that UAGPPJA addresses an incredibly relevant issue, both in California and nationally.

I believe that the support UAGPPJA has received from other legal associations indicates that the proposals are sound. While I understand the Commission has other mandated duties, I would strongly encourage you all to finalize this. If it is not possible for the Commission to do so, I would like to try and schedule a meeting or phone call with you to discuss other ways our Association can move UAGPPJA forward.

Thank you for your time and efforts on this issue. I look forward to speaking with you further. I can be reached at (916) 447-2731 or theresarenken@caalz.org.

Sincerely,

Theresa M. Renken
State Public Policy Director

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California State Public Policy Office

alzheimer's association

factsheet

MARCH 2012

alz.org

Adult Guardianship Jurisdiction

Alzheimer's disease can impair a person's judgment and cause disorientation, confusion and memory loss – sometimes requiring the appointment of a guardian.

- Due to the impact of Alzheimer's on a person's ability to make decisions and in the absence of other advanced directives, people with Alzheimer's disease may need the assistance of a court-appointed guardian.
- A court may appoint an individual to serve as the legal decision-maker (guardian) for another adult who, due to incapacity or other disability, is unable to make decisions for him/herself.
- Once appointed, the guardian may make decisions for the individual that relate to the person's health, well-being and economic interest.
- A 1996 estimate put the total number of adult guardianship orders in the United States at 1.5 million. Demographic trends suggest that today this number is probably higher.

Organizations Supporting UAGPPJA

Alzheimer's Association
American Bar Association Commission on Law and Aging
Conference on Chief Justices
Conference of State Court Administrators
National Academy of Elder Law Attorneys
National Council of Probate Judges
National Guardianship Association
Uniform Law Commission

The process of appointing a guardian is handled in 55 state and territorial courts.

- As a result, multiple states or territories, each with its own adult guardianship system, may have a jurisdictional interest in a single guardianship case, and it may be unclear which state court has jurisdiction to hear and decide the legal issues.
- Adult guardianship jurisdiction issues arise in situations involving snowbirds (those who live part of the year in the north and part in the south), interstate health markets, transferred or long-distance caregiving arrangements, wandering and even the rare incident of elderly kidnapping.

In response, the Uniform Law Commission developed the *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act* (UAGPPJA).

- The legislation establishes a uniform set of rules for determining jurisdiction, thus simplifying the process in multi-jurisdictional cases, and creates a framework that allows state court judges in different states to communicate with each other about where appropriate jurisdiction lies.
- UAGPPJA does not make any substantive changes to adult guardianship law, such as whether guardianship is appropriate or who should be awarded guardianship. It simply allows cases to be settled more quickly and with more predictable outcomes.

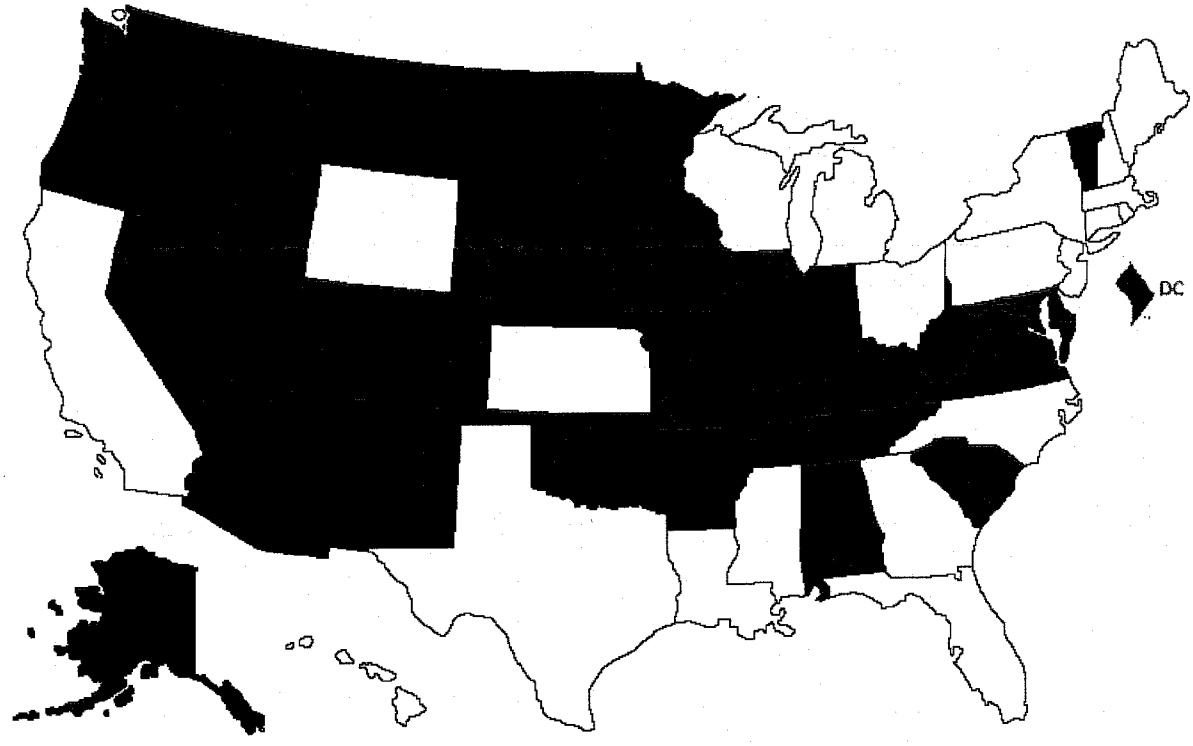
By removing jurisdictional barriers, UAGPPJA would make the process easier for the families and caregivers of those with Alzheimer's who have adult guardianship orders.

- However, to effectively apply UAGPPJA in a case, all states involved must have adopted UAGPPJA. It will only work if a large number of states adopt it.
- As of March 2012, 30 states and the District of Columbia have enacted UAGPPJA.

Ultimately, states must increase awareness of the need for advanced planning and end-of-life issues for all seniors. UAGPPJA will move that process forward.

- The disorganized array of state adult guardianship laws and the lack of communication between states is a barrier to addressing end-of-life issues.
- Simplifying one aspect of the adult guardianship system by enacting UAGPPJA may encourage more states to dedicate increased resources to meaningful end-of-life systems change.

States That Have Adopted the
Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
As of March 2012



EMAIL FROM JENNIFER WILKERSON, TEXCOM WORKING GROUP ON UAGPPJA (7/24/12)

Re: TEXCOM assistance to CLRC re UAGPPJA for 8/17 hearing

Dear Barbara:

Linda Durston and I will be attending the 8-17 CLRC meeting in LA on behalf of TEXCOM, specifically to offer comments on the UAGPPJA. As part of Peter Stern's working group and in preparation for the discussion of the proposed Act at the TEXCOM annual retreat in May, 2012, we compiled a number of materials including the following documents which are attached for your reference:

1. First attached is an article by Peter Stern prepared for the TEXCOM discussion, which summarizes the implications of the Act in comparison with the law of neighboring States (relying primarily on your prior memos). His summary concludes with comments on the selective adoption of the Act in Florida and Texas.

   I have recently reviewed the pending legislation to adopt the Act in OH, NY (http://open.nysenate.gov/legislation/bill/S7464-2011) and NJ (http://legiscan.com/gaits/text/655207). Significantly, the proposed legislation pending in each of these 3 important States makes no modifications to the Uniform Act.

2. The final attachment is our working group's comparison of UAGPPJA with a beginning draft proposal which we envision could be incorporated into our Probate Code as the "California Conservatorship Jurisdiction Act" as Probate Code Sections 1980-2024. This proposal was well received overall and garnered much discussion, most significantly about the suggested modifications to Article 3 concerning the procedure for accepting Conservatorships transferred to California from other states.

We propose to schedule a phone conference with you and Peter Stern, possibly on July 27 or 30. Would you be available on either of these dates? We are also available the week of August 13th, closer to the hearing date.

TEXCOM hopes to be of assistance to you and the Commission in reviewing the Act for adoption in California.

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The UAGPPJA ("Uniform Act") and Conservatorship Law in Other States: Problems in Adapting the Act to California

By the middle of 2012, the Uniform Act had been adopted by some thirty US jurisdictions. All other western states have enacted the Uniform Act. Given our initial reluctance to import the Act in California, we looked at all of our sister states, to see how much of the Uniform Act they brought into their own legislation. By and large, most states simply inserted the Act into their existing law, with minimal changes to conform to some state particularities.

1. The common genetic structure of UPC states and the Uniform Act:
Many Western states use the UPC as their conservatorship law. They do not have elaborate conservatorship law, unlike California. Many simply enacted the Uniform Act nearly intact. We thought at first that the study of other states would provide models for how California could adopt the act. Instead, we have concluded tentatively that we have to create procedures to protect aspects of California conservatorship law.

2. Where our study group reviewed over a dozen neighboring jurisdictions to understand how they had brought the Uniform Act into their law, the more important study has been to look closely at the conservatorship law in the neighboring states, to see what differs between their laws and California laws. We have found that the memos prepared by Barbara Gaal for the California Law Revision Commission provide the best analysis of these other states [referred to as "CLRC Memos"]. We have uploaded many of her memos in the Workroom (Incapacity Committee/Uniform Adult Guardianship…/CLRC Memos). This article summarizes some of her findings and looks at the law of some states that have either not adopted the Uniform Act at all (Florida) or have brought in only fragments of the law (Texas).

3. Our conclusions, embodied in our proposal for a California Conservatorship Jurisdiction Act, start from a conservative bias. We have concluded that the California Conservatorship law should stand as the paradigm for enactment of parts of the Uniform Act. As CLRC Memos point out, California law affords any protections to conservatees and proposed conservatees. We think the proper way to look at enactment of the Uniform Act is to keep as much as possible of these protections.

4. Full Faith and Credit in California: One of the starting points for the CLRC study was an examination of the extent to which full faith and credit applies to judgments in conservatorship matters. Memo 11-18 (April 11, 2011, p. 17) discusses Code of Civil Procedure Section 1913:

" (a) Subject to subdivision (b), the effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced in this state by an action or special proceeding.
"(b) The authority of a guardian, conservator, or committee, or of a personal representative, does not extend beyond the jurisdiction of the

government under which that person was invested with authority, except to the extent expressly authorized by statute."

The memo cites a number of California cases that refuse to grant full faith and credit to conservatorship and analogous proceedings in other states. It serves to underscore a major problem: the backbone of the Uniform Act is to grant deference to the actions of another state, but to do so without applying the basic provisions of California conservatorship law would upset our own tradition of not giving full faith and credit to the laws of other states.

5. The CLRC looked at a number of specific areas of law to compare California with its neighbor states, in order to evaluate how transfer of a procedure or registration of a conservatorship/guardianship order from another state to California might impinge on California law.

A. Determination of Incapacity: After reviewing DPCDA and the procedures for determination of incapacity and the standards relating to necessary finding for appointment of conservators of the person and estate, the memo looked at the law in Arizona, Nevada, and Oregon. The summaries follow:

i) In California:

"(1) California has detailed statutory requirements for determining whether a person is incapacitated.
(2) There is a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions.
(3) To establish incapacity, it is not enough to show that a person has a mental or physical disorder. There must be evidence of a deficit in one or more specified mental functions. There must also be evidence of a correlation between that deficit and the activity the person is alleged to be incapable of undertaking.
(4) A person has capacity to make a decision when the person has the ability to communicate the decision, as well as the ability to understand and appreciate (a) the rights, duties, and responsibilities created by, or affected by the decision, (b) the probable consequences of the decision, and (c) the significant risks, benefits, and reasonable alternatives involved in the decision.
(5) To establish a "conservatorship of the person" or a "conservatorship of the estate," the court must find that conservatorship is the least restrictive alternative that will protect the person.
(6) A "conservator of the person" may be appointed for a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter.
(7) A "conservator of the estate" may be appointed for a person who is "substantially unable" to handle his or her own financial matters

or resist fraud or undue influence. Such inability may not be proved solely through "isolated incidents of negligence or improvidence."
(8) The standard of proof for appointment of a conservator (any kind) is clear and convincing evidence.
(9) Once a conservatorship is established, the conservatee is presumed to lack capacity and bears the burden of showing that it has been restored." (CLRC Memo 11-31, pp. 21-22)

ii) Arizona:

"(1) Arizona's rules regarding determination of capacity are not as detailed as California's rules.
(2) Nonetheless, Arizona's rules reflect an intent to ensure that a guardian is appointed to assist an individual with *personal care* only if the individual's decisionmaking process is impaired in a way that puts his or her safety in jeopardy, appointment of a guardian is necessary to address that problem, and there is no less restrictive way to resolve the problem.
(3) As in California, the standard of proof for these matters is clear and convincing evidence.
(4) Arizona's rules on appointing someone to assist an individual with *financial matters* are not nearly as strict as California's rules on that point. The standard of proof for such a determination is not specified by statute.
(5) With regard to personal care, a court has statutory authority to bar readjudication of incapacity for a period of up to one year. With regard to financial matters, there does not seem to be any comparable provision."
(CLRC Memo 11-31, p. 25)

iii) Nevada:

"(1) Nevada's rules regarding determination of capacity are not as detailed as California's rules.
(2) Nonetheless, Nevada's rules reflect an intent to ensure that someone is appointed to assist an individual with personal care and/or financial matters only if such an appointment is necessary.
(3) As in California, the standard of proof for this matter is clear and convincing evidence.
(4) As in California, medical evidence must be presented before an appointment is made, including evidence of the individual's limitations of capacity and how those limitations affect the individual's ability to live independently.
(5) By distinguishing between general guardians and special

guardians, and permitting such appointments only to the extent necessary, Nevada appears to follow the practice of using the least restrictive means available to meet the needs of an incapacitated or partially incapacitated individual. But this is not as clearly stated and demanded as in California law."
(CLRC Memo 11-31, pp. 27-28)

iv) Oregon:

"(1) Oregon's rules regarding determination of capacity are not as detailed as California's rules.
(2) As in California, persons in Oregon are rebuttably presumed to have the capacity to make decisions for themselves.
(3) To establish "incapacity" or "financial incapability" in Oregon, it does not appear to be enough to show that a person has a mental or physical disorder such as chronic alcoholism. It is also necessary to show the existence of a functional deficit, and a correlation between that deficit and the activity the person is alleged to be incapable of undertaking.
(4) Although Oregon's rules on capacity are not as detailed as California's, they reflect an intent to ensure that someone is appointed to assist an individual with *personal care* only if the individual's decisionmaking process is impaired in a way that puts his or her safety in jeopardy, appointment of someone is necessary to address that problem, and there is no less restrictive way to resolve the problem.
(5) Unlike California, Oregon's rules on appointing of someone to assist an individual with *financial matters* do not expressly require that such an appointment be "necessary," or that it be the "least restrictive means" of protecting the individual. But case law suggests that solid factual evidence is required.
(6) In Oregon, a person is considered "financially incapable" if the person is unable to manage the person's financial resources effectively. In California, it is necessary to show that the person is "substantially unable" to manage the person's financial resources or to resist fraud or undue influence.
(7) As in California, the standard of proof for appointment of someone in Oregon to assist with *either personal care or financial matters* is clear and convincing evidence.
(8) Once an appointment is made, the protected person is still presumed to have capacity. In this respect, Oregon law is more protective of the person's liberties than California law."
(CLRC Memo 11-31, pp. 31-32)

What then would be the impact upon California law of transferring a procedure from one of those states?

"–The degree of conflict would depend on the extent to which the other state's capacity standard differs from California's standard. For example, Arizona's standard for appointing someone to assist with personal care seems almost as strong as California's corresponding standard. If a case involving that type of appointment was transferred to California from Arizona, there would be relatively little impingement on California's policy interests. In contrast, Arizona's standard for appointing someone to assist with financial matters appears to be much weaker than California's corresponding standard. If a case involving that type of appointment was transferred to California from Arizona, there would be significant impingement on California's policy interests.
In either situation, however, the impingement does not have to be permanent. Based on the information we obtained from the ULC representatives, it would not be inconsistent with UAGPPJA to permit relitigation of capacity, pursuant to California law, in some circumstances after a transfer is accomplished. As we previously suggested, **the Commission might consider doing the following:**
• Expressly state that in some circumstances capacity can be relitigated after a case is transferred to California under UAGPPJA.
• Specify the circumstances in which such relitigation can occur — e.g., whether it is necessary to show a significant change in circumstances; whether it is sufficient if someone simply requests that capacity be relitigated; whether the court could raise the matter on its own motion; whether some type of investigation has to be completed before deciding whether to permit relitigation; whether another state's bar on relitigation will be honored in California.
• Expressly state that if capacity is relitigated after a case is transferred to California under UAGPPJA, the issue shall be decided pursuant to California law.
• Specify who bears the burden of proof when capacity is relitigated after a case is transferred to California under UAGPPJA. It may be best to presume that the respondent has capacity unless shown otherwise, because the proceeding would be the respondent's first opportunity to have his or her capacity determined pursuant to California law.
• Specify the appropriate procedure for such a relitigation of capacity." (CLRC Memo 11-31, pp. 32-33).

The CLRC's discussion of the incapacity determination standard has led our group to the conclusion that if the standards can differ so much just in the three states that CLRC has analyzed in detail, it would be extremely burdensome on California courts to attempt to analyze the incapacity standards in all jurisdictions from which cases might come as transfers or possible registrations; our suggestion, thus, is to have the applicant relitigate

the conservatorship in every case by filing, with the court order from the transferring state, a petition for appointment of conservator in California and to require a court investigation.

B. The CLRC memo next looks at the differing standards for choice of a conservator:

i) California:

"(1) California law gives strong preference to the wishes of the incapacitated person regarding the choice of conservator.
(2) California provides protections against appointment of a spouse or domestic partner as conservator when the marriage or partnership is in the process of breaking up. A court can still make such an appointment, but only if certain conditions are satisfied.
(3) Subject to the preceding rules, selection of a conservator in California is solely in the discretion of the court, and the court is to be guided by the best interests of the conservatee.
(4) California Probate Code Section 1812 specifies a hierarchy for a court to use in deciding between persons the court considers equally qualified to serve as conservator. In that hierarchy, spouses and domestic partners are treated equally, and rank at the top of the list.
(5) There is uncertainty regarding the extent to which a convicted felon, bankrupt or insolvent person, or someone who has engaged in "gross immorality" is eligible to serve as a conservator in California. " (CLRC Memo 11-31, p. 42)

ii) In Arizona:

"(1) Arizona gives preference to the wishes of the incapacitated person regarding the choice of appointee, but not as much preference as California. A fiduciary appointed in another jurisdiction has highest priority, regardless of whether that fiduciary is the incapacitated person's choice.
(2) Arizona does not have protections comparable to California's protections against appointment of a spouse or domestic partner as conservator when the marriage or partnership is in the process of breaking up.
(3) In selecting who is to assist an incapacitated person, an Arizona court has less discretion than a California court. An Arizona court must follow the 10-item statutory hierarchy, unless good cause exists for deviating from that hierarchy. In California, the statutory hierarchy only provides guidance on who to select when the court deems two or more candidates equally well qualified.
(4) Unlike California, Arizona treats domestic partners less favorably than spouses in the process of selecting someone to assist an incapacitated person.
(5) Arizona requires disclosure of information about a felony

conviction, but does not disqualify a convicted felon from serving as a guardian or conservator. Apparently, a bankrupt or insolvent person, or a person who engaged in "gross immorality," could also be considered for appointment.
(6) Arizona permits a parent or spouse of an incapacitated person to appoint a guardian for the incapacitated person in the will of the parent or spouse.
(7) By a properly executed power of attorney, an Arizona guardian may select another person to serve in the guardian's place for up to six months." (CLRC Memo 11-31, pp. 45-46)

iii) In Nevada:

"(1) In appointing someone to assist an incapacitated person, a Nevada court takes the incapacitated person's preference into account, but is not required to give that preference as much weight as in California.
(2) Nevada does not have protections comparable to California's protections against appointment of a spouse or domestic partner as conservator when the marriage or partnership is in the process of breaking up.
(3) In appointing someone to assist an incapacitated person, a Nevada court must focus on "who is most suitable and willing to serve." That is similar to California's focus on the best interests of the incapacitated person.
(4) Nevada has a hierarchy for courts to use in selecting a guardian from among relatives. In that hierarchy, spouses rank highest. As in California, a domestic partner is to be treated the same way as a spouse.
(5) In Nevada, a felon is disqualified from being a guardian unless the court affirmatively finds that the conviction should not disqualify the person. A similar rule applies to anyone who has committed abuse, neglect, or exploitation of a person.
(6) In Nevada, a person who has been suspended or disbarred from the practice of law or accounting, or a similar profession, is disqualified from being a guardian during the period of suspension or disbarment.
(7) Bankruptcy, insolvency, and "gross immorality" are not listed as grounds for disqualification, but bankruptcy within the previous five years is a permissible ground for removal of a guardian in Nevada.
(8) A Nevada court may appoint a special master or master of the court to conduct a hearing on who to select as guardian. The master makes a recommendation, which the court must take into account in deciding who to select." (CLRC Memo 11-31, pp. 49-50)

iv) In Oregon:

"(1) In appointing someone to assist an incapacitated person, an Oregon court must take the incapacitated person's preference into account, but is not required to give that preference as much weight as in California.
(2) Oregon does not have protections comparable to California's protections against appointment of a spouse or domestic partner as conservator when the marriage or partnership is in the process of breaking up.

(3) In appointing someone to assist an incapacitated person, an Oregon court must identify "the most suitable person who is willing to serve." That is similar to California's focus on the best interests of the incapacitated person.
(4) Oregon does not have a hierarchy for courts to use in selecting a guardian from among relatives. An Oregon court must take into account "the relationship by blood or marriage of the person nominated to be fiduciary to the respondent." It is not clear how this rule applies to a domestic partner; there is no assurance that a domestic partner would rank equally with a spouse.
(5) In Oregon, a felon is not automatically disqualified from being appointed to assist an incapacitated person, but information about the felony conviction must be disclosed to the court. A similar rule applies to a person who has declared bankruptcy, or who has had a professional or occupational license revoked or cancelled." (CLRC Memo 11-31, p. 51)

"Impact of UAGPPJA
From the preceding discussion, it is clear that California's rules for selecting someone to assist an incapacitated person differ from those of its three neighbors. The states vary with respect to such matters as:
• How much weight a court must give to the preference of an incapacitated person.
• Whether there are any protections against appointment of a spouse or domestic partner to assist an incapacitated person when the marriage or partnership is in the process of breaking up.
• How much flexibility and discretion a court has in the selection process.
• How a court is to treat a domestic partner in the selection process.
• Whether, and, if so, under what conditions, a court may appoint a felon to assist an incapacitated person.
• Whether, and, if so, under what conditions, a court may appoint a person who is or has been bankrupt or insolvent.
• Whether, and, if so, under what conditions a court may appoint a person who has abused, neglected, or exploited someone else.
• Whether, and, if so, under what conditions a court may appoint a person who has engaged in "gross immorality."
• Whether, and, if so, under what conditions a court may appoint a person who has had a professional or occupational license revoked, canceled, or the equivalent.
• Whether a parent or spouse of an incapacitated person may make an appointment by will.
• Whether a special master or master of the court is used in the selection process.
• The extent to which an appointee can delegate authority to another person without court approval." CLRC Memo 11-31, p. 52)

The CLRC's conclusions are that California could end up granting conservatorship authority to someone who was less qualified to serve as conservator than someone else. While the terms of the Act allow California to reject as conservator someone who was appointed in another state but who is not qualified to act in California, the person

appointed could be someone who would not have been appointed here, who might not be the conservatee's first choice, or a person who is not the most qualified to serve.

C. The CLRC memo next turned to procedural considerations, reviewing right to trial by jury, notice provisions, right to be present and be heard, court investigation and report to the court, and right to counsel. The Memo concludes on these points:

"Impact of UAGPPJA
"The procedural protections provided in a California conservatorship proceeding differ in some respects from those provided in comparable proceedings in neighboring states. Yet there is also considerable similarity, and the staff suspects that all of the proceedings would be deemed consistent with due process.
Whether that would be true of every state in the country is not clear based on the research we have done so far.

"With the foregoing information in mind, we consider the potential impact of UAGPPJA's transfer procedure and registration procedure on the policies underlying the procedural protections provided in California conservatorship proceedings.

"Potential Impact of the Transfer Procedure
Under UAGPPJA's transfer process, a case involving an allegedly incapacitated person could be "transferred" to California from another state, and California would be expected to defer to the other state's determinations on such matters as capacity and choice of appointee, at least temporarily so as to expedite the transfer process. If the other state followed procedures closely similar to California's in reaching those determinations, temporarily deferring to its determinations would not seriously offend the policies underlying the procedural protections provided in California. If the other state's procedures sharply differed from California's, however, the situation would be more troubling. . . .
However, the Commission might consider **making UAGPPJA's transfer procedure available only if the proceeding to be transferred to California complied with due process.** Alternatively, or perhaps in addition, the Commission might want to **make the transfer procedure available only if the proceeding to be transferred to California complied with specified procedural requirements,** such as the right to counsel or presentation of medical evidence of incapacity.

"Potential Impact of the Registration Procedure
Similar considerations apply to UAGPPJA's registration procedure, under which a person appointed by a court in another state could take action in California on behalf of an allegedly incapacitated person. Should that be possible if the out-of-state proceeding failed to comply with due process, or to accord

certain procedural protections to the respondent?
Again, the Commission may want to consider **imposing some limitations relating to the procedural protections provided in the out-of-state proceeding, or lack thereof.** As before, care would have to be taken to ensure that any such limitations are easy to administer.

"Further, this is another context in which the degree of concern would vary depending on whether the allegedly incapacitated person has only weak ties to California, or relatively strong ties. It is another reason to consider possible means of limiting UAGPPJA's registration procedure to the former situation." (CLRC Memo 11-31, pp. 67-69)

These extracts from the August memo (11-31) were influential in the recommendations the working group has used to shape its version of the Act.

6. We also looked at the law in some states that have procedures for adopting conservatorships from other states already and in some states that have picked up only small parts of the Uniform Act.

In Florida, for instance, the law permits domestication of a foreign guardianship:

Florida Stats, Title XLIII, Chapter 744: Guardianship

" 744.306: Foreign Guardians
(1) When the residence of a foreign guardian is moved to this state, the guardian shall, within 60 days of such change of residence, file the authenticated order of her or his appointment with the clerk of the court in the county where the ward resides. Such order shall be recognized and given full faith and credit in the courts of this states. The guardian and the ward are subject to this chapter.
(2) A guardian appointed in any state, territory, or country may maintain or defend any action in this states as a representative of her or his ward. . . . ."

"744.307: Foreign Guardian May Manage the Property of Nonresident Ward
(1) A guardian of the property of a nonresident ward, duly appointed by a court of another state . . ., who desires to manage any part or all of the property of the ward located in this state, may file a petition showing his or her appointment, describing the property, stating its estimated value, and showing the indebtedness, if any, existing against the ward in this state. . .. .
(2) The guardian shall designate a resident agent as required by the Florida Probate rules.
(3) The guardian shall file authenticated copies of his or her letters of guardianship or other authority and of his or her bond or other security. . . .
(4) Thereafter, the guardianship shall be governed by the law concerning guardianships."

These procedures would allow a California conservator to exercise the powers granted in California, subject to accepting the jurisdiction of the Florida court, with a minimum of

procedural complication. In one recent case, the author was able to get a Florida attorney to stand by with exemplified California letters and the order, to give the California conservator full powers under Florida law in a case involving an adult abduction.

Texas decided to modify its own transfer proceedings to incorporate portions of the Uniform Act, and not much more, in the changes made to Texas guardianship law in 2011:

A. Texas statutes prior to change of law 2011

SUBPART G. INTERSTATE GUARDIANSHIPS

Sec. 891. TRANSFER OF GUARDIANSHIP TO FOREIGN JURISDICTION. (a) A guardian of the person or estate of a ward may apply with the court that has jurisdiction over the guardianship to transfer the guardianship to a court in a foreign jurisdiction if the ward has moved permanently to the foreign jurisdiction.

(b) Notice of the application to transfer a guardianship under this section shall be served personally on the ward and shall be given to the foreign court to which the guardianship is to be transferred.

(c) On the court's own motion or on the motion of the ward or any interested person, the court shall hold a hearing to consider the application to transfer the guardianship.

(d) The court shall transfer a guardianship to a foreign court if the court determines the transfer is in the best interests of the ward. The transfer of the guardianship must be made contingent on the acceptance of the guardianship in the foreign jurisdiction. To facilitate the orderly transfer of the guardianship, the court shall coordinate efforts with the appropriate foreign court.

Added by Acts 2001, 77th Leg., ch. 479, Sec. 1, eff. Sept. 1, 2001.

Sec. 892. RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP. (a) A guardian appointed by a foreign court to represent an incapacitated person who is residing in this state or intends to move to this state may file an application with a court in which the ward resides or intends to reside to have the guardianship transferred to the court.

(b) Notice of the application for receipt and acceptance of a foreign guardianship under this section shall be served personally on the ward and shall be given to the foreign court from which the guardianship is to be transferred.

(c) If an application for receipt and acceptance of a foreign guardianship is filed in two or more courts with jurisdiction, the proceeding shall be heard in the court with jurisdiction over the

application filed on the earliest date if venue is otherwise proper in that court. A court that does not have venue to hear the application shall transfer the proceeding to the proper court.

(d) In reviewing an application for receipt and acceptance of a foreign guardianship, the court should determine:

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

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

(e) On the court's own motion or on the motion of the ward or any interested person, the court shall hold a hearing to consider the application for receipt and acceptance of a foreign guardianship.

(f) The court shall grant an application for receipt and acceptance of a foreign guardianship if the transfer of the guardianship from the foreign jurisdiction is in the best interests of the ward. In granting an application under this subsection, the court shall give full faith and credit to the provisions of the foreign guardianship order concerning the determination of the ward's incapacity and the rights, powers, and duties of the guardian.

(g) The court shall coordinate efforts with the appropriate foreign court to facilitate the orderly transfer of the guardianship.

(h) The denial of an application for receipt and acceptance of a guardianship under this section does not affect the right of a guardian appointed by a foreign court to file an application to be appointed guardian of the incapacitated person under Section 682 of this code.

Added by Acts 2001, 77th Leg., ch. 479, Sec. 1, eff. Sept. 1, 2001.

Sec. 893. REVIEW OF TRANSFERRED GUARDIANSHIP. Not later than the 90th day after the date a court grants an application for receipt and acceptance of a foreign guardianship under Section 892 of this code, the court shall hold a hearing to consider modifying the administrative procedures or requirements of the transferred guardianship in accordance with local and state law.

Sec. 894. GUARDIANSHIP PROCEEDINGS FILED IN THIS STATE AND IN FOREIGN JURISDICTION. (a) A court in which a guardianship proceeding is filed and in which venue of the proceeding is proper may delay further action in the proceeding in that court if:

(1) another guardianship proceeding involving a matter at issue in the proceeding filed in the court is subsequently filed in a court in a foreign jurisdiction; and

(2) venue of the proceeding in the foreign court is proper.

(b) A court that delays further action in a guardianship proceeding under Subsection (a) of this section shall determine whether venue of the proceeding is more suitable in that court or in the foreign court. In making that determination, the court may consider:

(1) the interests of justice;

(2) the best interests of the ward or proposed ward; and

(3) the convenience of the parties.

(c) A court that delays further action under Subsection (a) of this section may issue any order it considers necessary to protect the proposed ward or the proposed ward's estate.

(d) The court shall resume the guardianship proceeding if the court determines that venue is more suitable in that court. If the court determines that venue is more suitable in the foreign court, the court shall, with the consent of the foreign court, transfer the proceeding to the foreign court.

B. Changes Made in 2011:
Sec. 892. RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP.
(a) A guardian appointed by a foreign court to represent an incapacitated person who is residing in this state or intends to move to this state may file an application with a court in which the ward resides or intends to reside to have the guardianship transferred to the court. The application must have attached a certified copy of all papers of the guardianship filed and recorded in the foreign court.
(b)—(d) [No change.]
(e) The [On the court's own motion or on the motion of the ward or any interested person, the] court shall hold a hearing to:
(1) consider the application for receipt and acceptance of a foreign guardianship; and
(2) consider modifying the administrative procedures or requirements of the proposed transferred guardianship in accordance with local and state law.
(f) [No change.]
(f-1) At the time of granting an application for receipt and acceptance of a foreign guardianship, the court may also modify the administrative procedures or requirements of the transferred guardianship in accordance with local and state law.
(g)—(h) [No change.]
Amended by Acts 2011, 82nd Legislature, 1st Called Session, Ch. ____ (SB 1), effective September 28, 2011. Section 66.10 of SB 1 provides: "The changes in law made by this article to Sections 892 and 893, Texas Probate Code, apply only to an application for receipt and acceptance of a foreign guardianship filed on or after the effective date of this article. An application for receipt and acceptance of a foreign guardianship

filed before the effective date of this article is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose." See also transitional note following Section 612.

Sec. 893. REVIEW OF TRANSFERRED GUARDIANSHIP.

Repealed by Acts 2011, 82nd Legislature, 1st Called Session, Ch. ____ (SB 1), effective September 28, 2011. Section 66.08 of SB 1 provides: "Section 893, Texas Probate Code, is repealed. See transitional note following Section 892.

Sec. 894. GUARDIANSHIP PROCEEDINGS FILED IN THIS STATE AND IN FOREIGN JURISDICTION.

(a) [No change.]

(b) A court that delays further action in a guardianship proceeding under Subsection (a) of this section shall determine whether venue of the proceeding is more suitable in that court or in the foreign court. In making that determination, the court may consider:

(1) the interests of justice;

(2) the best interests of the ward or proposed ward; [and]

(3) the convenience of the parties; and

(4) the preference of the ward or proposed ward, if the ward or proposed ward is 12 years of age or older.

(c)—(d) [No change.]

Amended by Acts 2011, 82nd Legislature, 1st Called Session, Ch. ____ (SB 1), effective September 28, 2011. Section 66.11 of SB 1 provides: "Section 894, Texas Probate Code, as amended by this article, and Section 895, Texas Probate Code, as added by this article, apply only to a guardianship proceeding filed on or after the effective date of this article. A guardianship proceeding filed before the effective date of this article is governed by the law in effect on the date the proceeding was filed, and the former law is continued in effect for that purpose." See also transitional note following Section 612.

Sec. 895. DETERMINATION OF MOST APPROPRIATE FORUM FOR CERTAIN GUARDIANSHIP PROCEEDINGS.

(a) If at any time a court of this state determines that it acquired jurisdiction of a proceeding for the appointment of a guardian of the person or estate, or both, of a ward or proposed ward because of unjustifiable conduct, the court may:

(1) decline to exercise jurisdiction;

(2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the ward or proposed ward or the protection of the ward's or proposed ward's property or prevent a repetition of the unjustifiable conduct, including staying

the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or
(3) continue to exercise jurisdiction after considering:
(A) the extent to which the ward or proposed ward and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;
(B) whether the court of this state is a more appropriate forum than the court of any other state after considering the factors described by Section 894(b) of this code; and
(C) whether the court of any other state would have jurisdiction under the factual circumstances of the matter.
(b) If a court of this state determines that it acquired jurisdiction of a proceeding for the appointment of a guardian of the person or estate, or both, of a ward or proposed ward because a party seeking to invoke the court's jurisdiction engaged in unjustifiable conduct, the court may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by other law.
Amended by Acts 2011, 82nd Legislature, 1st Called Session, Ch. ____ (SB 1), effective September 28, 2011.
See transitional note following Section 894.

Deborah Green, who is the Guardianship Committee chair of REPTL, the Texas equivalent of TEXCOM, shared her perspective on how Texas dealt with the Uniform Act. A number of groups, including NCCUSL and the Alzheimer's Association, actively pushed the legislature and REPTL to support the Act. The probate judges gave it a hard look, essentially trying to conclude whether the Act would help or hinder the practice of guardianship law in Texas. The state has a long history of law in this area, and most of the decision makers felt that the existing law worked well. The legislature took a minimalist approach, modifying Sections 892, 894, and 895. There was not much interest in following a guardianship out of Texas—once the ward was gone, as she said, it was not a problem for Texas any more. And the legislature had no interest in the registration process: either the entire guardianship would be brought into Texas, or there would be no recognition at all of the legislation of a sister state.

Comparative Tables of Contents:
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/California Conservatorship Jurisdiction Act (CCJA)

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UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT [UAGPPJA]	[PROPOSED] CALIFORNIA CONSERVATORSHIP JURISDICTION ACT [CCJA] To be added as Chapter 8 to Division 4, Part 3 of the Probate Code
[ARTICLE] 1 **GENERAL PROVISIONS** **SECTION 101. SHORT TITLE.** This [act] may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.	**ARTICLE 1** **GENERAL PROVISIONS** **Section 1980. Short title and purpose.** This Chapter 8 (commencing with Section 1980) may be cited as the California Conservatorship Jurisdiction Act. The purpose of this act is to incorporate into California's Guardianship-Conservatorship Law (commencing with Division 4 of this Code) elements of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.
SECTION 102. DEFINITIONS. In this [act]: (1) "Adult" means an individual who has attained [18] years of age. (2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under [insert reference to enacting state's conservatorship or protective proceedings statute]. (3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under [insert reference to enacting state's guardianship statute]. (4) "Guardianship order" means an order appointing a guardian. (5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued. (6) "Incapacitated person" means an adult for whom a guardian has been appointed. (7) "Party" [1] means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.	**Section 1981. Definitions.** As used in this chapter, unless the provision or context otherwise requires: (1) "Adult" means an individual who has attained 18 years of age.[2] (2) "Conservatee" means an adult for whom a conservator of the person or estate or both has been appointed.[3] (3) "Conservator of the estate" means a person appointed by the court to administer the property of an adult, including a person appointed under the California Guardianship-Conservatorship Law (commencing with Division 4 of this Code).[4] Under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the term "conservator of the estate" is referred to as "conservator." (4) "Conservator of the person" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under the California Guardianship-Conservatorship Law (commencing with Division 4 of this Code). Under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the term "conservator of the person" is referred to as "guardian."

1 Term omitted. Occurs only once in the Act (207(b)).
2 Cf. Probate Code section 3901(a); Family Code section 6501.
3 This CCJA provision combines under a single term UAGPPJA paragraphs (6) "incapacitated person" and (9) "protected person."
4 Probate Code sections 29 ("'Conservatee' includes a limited conservatee") and 30 ("'Conservator' includes a limited conservator").

(8) "Person," except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. (9) "Protected person" means an adult for whom a protective order has been issued. (10) "Protective order" means an order appointing a conservator or other order related to management of an adult's property. (11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued. (12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. (13) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought. (14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States. ***Legislative Note**: A state that uses a different term than guardian or conservator for the person appointed by the court or that defines either of these terms differently may, but is not encouraged to, substitute its own term or definition. Use of common terms and definitions by states enacting this Act will facilitate resolution of cases involving multiple jurisdictions.*	(5) "Conservatorship order" means an order appointing a conservator of the person or estate or both. In some states, as under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the term "conservatorship order" is referred to as either "guardianship order" or "protective order."[5] (6) "Conservatorship proceeding" means a judicial proceeding in which an order for the appointment of a conservator of the person or estate or both is sought or has been issued. In some states, as under the Uniform Adult Guardianship and Protective Proceedings Act, the term "conservatorship proceeding" is referred to as either "guardianship proceeding" or "protective proceeding."[6] (7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.[7] (8) "Proposed conservatee" means an adult for whom a conservatorship order is sought.[8] (9) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. (10) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 103. INTERNATIONAL APPLICATION OF [ACT]. A court of this state may treat a foreign country as if it were a state for the purpose of applying this [article] and [Articles] 2, 3, and 5.	**Section 1982. International application of act.** A court of this state may treat a foreign country as if it were a state for the purpose of applying this article and Articles 2, 3, and 5.

5 This CCJA provision combines under a single term UAGPPJA paragraphs (4) "guardianship order" and (10) "protective order."
6 This CCJA provision combines under a single term UAGPPJA paragraphs (5) "guardianship proceeding" and (11) "protective proceeding."
7 This term may ultimately be omitted.
8 This CCJA provision replaces UAGPPJA term (13) "respondent."

SECTION 104. COMMUNICATION BETWEEN COURTS. [(a)] A court of this state may communicate with a court in another state concerning a proceeding arising under this [act]. The court may allow the parties to participate in the communication. [Except as otherwise provided in subsection (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred. (b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.] ***Legislative Note**: An enacting state is encouraged to enact the bracketed language so that a record will be created of the communication with the other court, even thought the record is limited to the fact that the communication occurred. In some states, however, a legislative enactment directing when a court must make a record in a judicial proceeding may violate the separation of powers doctrine. Such states are encouraged to achieve the objectives of the bracketed language by promulgating a comparable requirement by judicial rule.*	**Section 1983. Communication between courts.**[9] (a) A court of this state may communicate with a court in another state concerning a proceeding arising under this act. The court may allow the parties to participate in the communication. [Except as otherwise provided in subsection (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred. (b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.][10]

SECTION 105. COOPERATION BETWEEN COURTS. (a) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following: (1) hold an evidentiary hearing; (2) order a person in that state to produce evidence or give testimony pursuant to procedures of that state; (3) order that an evaluation or assessment be made of the respondent; (4) order any appropriate investigation of a person involved in a proceeding; (5) forward to the court of this state a certified copy of the transcript or other record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise produced under paragraph (2), and any evaluation or assessment prepared in compliance with an order under paragraph (3) or (4); (6) issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; (7) issue an order authorizing the release of medical,	**Section 1984. Cooperation between courts.** (a) In a conservatorship proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following: (1) hold an evidentiary hearing; (2) order a person in that state to produce evidence or give testimony pursuant to procedures of that state; (3) order that an evaluation or assessment be made of the proposed conservatee; (4) order any appropriate investigation of a person involved in a proceeding; (5) forward to the court of this state a certified copy of the transcript or other record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise produced under paragraph (2), and any evaluation or assessment prepared in compliance with an order under paragraph (3) or (4); (6) issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including a conservatee or proposed conservatee; (7) issue an order authorizing the release of medical,

9 Cf. Probate Code section 1051.

10 Does an enactment by the CA legislature of when a court must make a record in a judicial proceeding violate the separation of powers doctrine of our state? If no, delete brackets. If yes, promulgate comparable requirement by judicial rules.

financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. Section 164.504 [, as amended]. (b) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (a), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request. ***Legislative Note**: A state that permits dynamic references to federal law should delete the brackets in subsection (a)(7). A state that requires that a reference to federal law be to that law on a specific date should delete the brackets and bracketed material, insert a specific date, and periodically update the reference.*	financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. Section 164.504. (b) If a court of another state in which a conservatorship proceeding is pending requests assistance of the kind provided in subsection (a), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

SECTION 106. TAKING TESTIMONY IN ANOTHER STATE. (a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken. (b) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony. [(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.] ***Legislative Note**: In cases involving more than one jurisdiction, documentary evidence often must be presented that has been transmitted by facsimile or in electronic form. A state in which the best evidence rule might preclude the introduction of such evidence should enact subsection (c). A state that has adequate exceptions to its best evidence rule to permit the introduction of evidence transmitted by facsimile or in electronic form should delete subsection (c).*	**Section 1985. Taking testimony in another state.** (a) In a conservatorship proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken. (b) In a conservatorship proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony. (c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

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[ARTICLE] 2. JURISDICTION **SECTION 201. DEFINITIONS; SIGNIFICANT CONNECTION FACTORS.** (a) In this [article]: (1) "Emergency"[11] means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf; (2) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition. (3) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available. (b) In determining under Sections 203 and Section 301(e) whether a respondent has a significant connection with a particular state, the court shall consider: (1) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding; (2) the length of time the respondent at any time was physically present in the state and the duration of any absence; (3) the location of the respondent's property; and (4) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.	**ARTICLE 2. JURISDICTION** **Section 1990. Definitions; significant connection factors.** (a) In this article: (1) "Home state" means the state in which the proposed conservatee was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for conservatorship*;* or if none, the state in which the proposed conservatee was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition. (2) "Significant-connection state" means a state, other than the home state, with which a proposed conservatee has a significant connection other than mere physical presence and in which substantial evidence concerning the proposed conservatee is available. (b) In determining under Sections 1992 and 2000(d) whether a proposed conservatee has a significant connection with a particular state, the court shall consider: (1) the location of the proposed conservatee's family and other persons required to be notified of the conservatorship proceeding; (2) the length of time the proposed conservatee at any time was physically present in the state and the duration of any absence; (3) the location of the proposed conservatee's property; and (4) the extent to which the proposed conservatee has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

11 The proposed CCJA omits this UAGPPJA term as conditions are met under existing law (Probate Code sections 2250-2268).

SECTION 202. EXCLUSIVE BASIS. This [article] provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.	**Section 1991. Exclusive basis.** This article provides the exclusive jurisdictional basis for a court of this state to appoint a conservator of the person or estate or both for an adult.

SECTION 203. JURISDICTION. A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:	**Section 1992. Jurisdiction.** A court of this state has jurisdiction to appoint a conservator of the person or estate or both for a proposed conservatee if:
(1) this state is the respondent's home state;	(1) this state is the proposed conservatee's home state;
(2) on the date the petition is filed, this state is a significant-connection state and:	(2) on the date the petition is filed, this state is a significant-connection state and:
(A) the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or	(A) the proposed conservatee does not have a home state or a court of the proposed conservatee's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or
(B) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:	(B) the proposed conservatee has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:
(i) a petition for an appointment or order is not filed in the respondent's home state;	(i) a petition for an appointment or order is not filed in the proposed conservatee's home state;
(ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and;	(ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and;
(iii) the court in this state concludes that it is an appropriate forum under the factors set forth in Section 206;	(iii) the court in this state concludes that it is an appropriate forum under the factors set forth in Section 1995;
(3) this state does not have jurisdiction under either paragraph (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or	(3) this state does not have jurisdiction under either paragraph (1) or (2), the proposed conservatee's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or
(4) the requirements for special jurisdiction under Section 204 are met.	(4) the requirements for special jurisdiction under Section 1993 are met.

SECTION 204. SPECIAL JURISDICTION. (a) A court of this state lacking jurisdiction under Section 203(1) through (3) has special jurisdiction to do any of the following: (1) appoint a guardian in an emergency for a term not exceeding [90] days for a respondent who is physically present in this state; (2) issue a protective order with respect to real or tangible personal property located in this state; (3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to Section 301. (b) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.	**Section 1993. Special jurisdiction.** (a) A court of this state lacking jurisdiction under Section 1992(1) through (3) has special jurisdiction to do any of the following: (1) appoint a temporary conservator of the person pursuant to Probate Code sections 2250-2258 for a proposed conservatee who is physically present in this state;[12] (2) appoint a temporary conservator of the estate with respect to real or tangible personal property located in this state; (3) appoint a temporary conservator of the person or estate or both for a person conserved in another state for whom a provisional order to transfer a proceeding from another state has been issued under procedures similar to Section 2000. (b) If a petition for the appointment of a temporary conservator of the person is brought in this state and this state was not the home state of the proposed conservatee on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

SECTION 205. EXCLUSIVE AND CONTINUING JURISDICTION. Except as otherwise provided in Section 204, a court that has appointed a guardian or issued a protective order consistent with this [act] has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.	**Section 1994. Exclusive and continuing jurisdiction.** Except as otherwise provided in Section 1993, a court that has appointed a conservator of the person or estate or both consistent with this act has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

SECTION 206. APPROPRIATE FORUM. (a) A court of this state having jurisdiction under Section 203 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum. (b) If a court of this state declines to exercise its jurisdiction under subsection (a), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.	**Section 1995. Appropriate forum.** (a) A court of this state having jurisdiction under Section 1992 to appoint a conservatorship of the person or estate or both may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum. (b) If a court of this state declines to exercise its jurisdiction under subsection (a), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a

12 Notice provisions of California Rule of Court 7.1062(e) would apply to determine good cause under Section 1994(a)(1) and (2).

	conservator of the person or estate or both be filed promptly in another state.
(c) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:	(c) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:
(1) any expressed preference of the respondent;	(1) any expressed preference of the proposed conservatee;
(2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;	(2) whether abuse, neglect, or exploitation of the proposed conservatee has occurred or is likely to occur and which state could best protect the proposed conservatee from the abuse, neglect, or exploitation;
(3) the length of time the respondent was physically present in or was a legal resident of this or another state;	(3) the length of time the proposed conservatee was physically present in or was a legal resident of this or another state;
(4) the distance of the respondent from the court in each state;	(4) the distance of the proposed conservatee from the court in each state;
(5) the financial circumstances of the respondent's estate;	(5) the financial circumstances of the estate of the proposed conservatee;
(6) the nature and location of the evidence;	(6) the nature and location of the evidence;
(7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;	(7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
(8) the familiarity of the court of each state with the facts and issues in the proceeding; and	(8) the familiarity of the court of each state with the facts and issues in the proceeding; and
(9) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.	(9) if an appointment were made, the court's ability to monitor the conduct of the conservator.

SECTION 207. JURISDICTION DECLINED BY REASON OF CONDUCT. (a) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:	**Section 1996. Jurisdiction declined by reasons of conduct.** (a) If at any time a court of this state determines that it acquired jurisdiction to appoint a conservator of the person or estate or both because of unjustifiable conduct, the court may:
(1) decline to exercise jurisdiction;	(1) decline to exercise jurisdiction;
(2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or	(2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the conservatee or proposed conservatee or to protect the property of such individual or to prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a conservatorship of the person or estate

	is filed in a court of another state having jurisdiction; or
(3) continue to exercise jurisdiction after considering:	(3) continue to exercise jurisdiction after considering:
(A) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;	(A) the extent to which the conservatee or proposed conservatee and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;
(B) whether it is a more appropriate forum than the court of any other state under the factors set forth in Section 206(c); and	(B) whether it is a more appropriate forum than the court of any other state under the factors set forth in Section 1995(c); and
(C) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 203.	(C) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 1992.
(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this [act].	(b) If a court of this state determines that it acquired jurisdiction to appoint a conservator of the person or estate or both because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this act.

SECTION 208. NOTICE OF PROCEEDING. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.	**Section 1997. Notice of proceeding.** If a petition for the appointment of a conservatorship of the person or estate or both is brought in this state and this state was not the home state of the proposed conservatee on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the home state of the proposed conservatee. The notice must be given in the same manner as notice is required to be given in this state.

SECTION 209. PROCEEDINGS IN MORE THAN ONE STATE. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under Section 204(a)(1) or (a)(2), if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:	**Section 1998. Proceedings in more than one state.** Except for a petition for the appointment of a temporary conservatorship of a person or estate or both limited to property located in this state under Section 1993(a)(1) or (a)(2), if a petition for the appointment of conservatorship of the person or estate or both is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under Section 203, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to Section 203 before the appointment or issuance of the order.	(1) If the court in this state has jurisdiction under Section 1992, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to Section 1992 before the appointment or issuance of the order.
(2) If the court in this state does not have jurisdiction under Section 203, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.	(2) If the court in this state does not have jurisdiction under Section 1992, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

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[ARTICLE] 3 **TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP**	**ARTICLE 3** **TRANSFER OF CONSERVATORSHIP**
SECTION 301. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE.	**Section 2000. Transfer of conservatorship to another state.**
(a) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.	(a) A conservator appointed in this state may petition the court to transfer the conservatorship proceeding to another state.
(b) Notice of a petition under subsection (a) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.	(b) Notice of a hearing[13] on the petition under this section must be given to the persons who would be entitled to notice of a petition in this state for the appointment of a conservator.
(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (a).	*[paragraph (c) omitted]*
(d) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:	(c) After the hearing held pursuant to section (b), the court shall issue an order provisionally granting a petition to transfer the conservatorship of the <u>person</u> and shall direct the conservator to petition for appointment in the other state if the court is satisfied that the conservatorship will be accepted by the court in the other state and the court finds that:
(1) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;	(1) the conservatee is physically present in or is reasonably expected to move permanently to the other state;
(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and	(2) an objection to the transfer has not been made or, if an objection has been made, the court determines[14] that the transfer would be contrary to the interests of the incapacitated person; and
(3) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.	(3) plans for care and services for the conservatee in the other state are reasonable and sufficient, *and the new residence is the least restrictive appropriate residence, as described in Section 2352.5, that is available and necessary to meet the*

13 The Act provides for a hearing only on the Court's own motion or request of Conservator. We propose a mandatory hearing before a conservatee's residence may be established outside of this state, which is consistent with existing Probate Code section 2352(c) and CA Rule of Court, Rule 7.1063(f).

14 New Jersey's Act also uses this language ("the court determines") which appears to be a lesser burden of proof for the objector.

	needs of the conservatee and that is in the best interests of the conservatee.[15]
(e) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:	(d) After the hearing held pursuant to section (b) above, the court shall issue a provisional order granting a petition to transfer a conservatorship of the estate and shall direct the conservator to petition for appointment in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:
(1) the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in Section 201(b);	(1) the conservatee is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in section 1990(b) of this chapter ;
(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and	(2) an objection to the transfer has not been made or, if an objection has been made the court determines that the transfer would not be contrary to the interests of conservatee; and
(3) adequate arrangements will be made for management of the protected person's property.	(3) adequate arrangements will be made for management of the conservatee's property.
(f) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:	(e) The court shall issue a final order confirming the transfer and terminating the conservatorship upon its receipt of:
(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to Section 302; and	(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 2001; and
(2) the documents required to terminate a guardianship or conservatorship in this state.	(2) the documents required to terminate a conservatorship in this state, including *any required accounting*.16

15 The italicized language appears in Probate Code section 2352(e)(1) which states that a notice of change of residence shall include a declaration that the change is consistent with this standard, as set forth in section 2352(b). Section (b) references only a change of residence *within* California, so there is some ambiguity about its application to the procedure for a change of residence *not within* this state in section 2352(c).

16 At least one other state has included this reference to the requirement of a final accounting.

SECTION 302. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE.	**Section 2001. Accepting conservatorship proceeding transferred from another state.**
(a) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to Section 301, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.	(a) To confirm transfer of a conservatorship proceeding transferred to this state under provisions similar to Section 2000, the conservator, the conservatee or any petitioner permitted under section 1820 must petition the court in this state to accept the conservatorship. The petition must include the following: (1) A certified copy of the other state's provisional order of transfer; and *(2) A petition for appointment of conservator on the approved Judicial Council form for this state, including the supplemental information form required under section 1821.*[17]
(b) Notice of a petition under subsection (a) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.	(b) Notice of a hearing on the petition under subsection (a) must be given to those persons who would be entitled to notice if the petition were a petition for the appointment of a conservator in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.
(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (a).	(c) Prior to the hearing, the Court investigator shall submit a report containing the same determinations referenced in section 1826 of this Code as for a petition for appointment of conservator filed in this state.
(d) The court shall issue an order provisionally granting a petition filed under subsection (a) unless: (1) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or (2) the guardian or conservator is ineligible for appointment in this state.	(d) The court shall hold a hearing on a petition filed pursuant to this section. At the hearing, the court shall issue an order provisionally granting a petition filed under subsection (a) unless: (1) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the conservatee; (2) the proposed conservator is ineligible for appointment in this state; *or* *(3) the requirements for appointment of a conservator in this state, including a finding that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee, are not satisfied.*[18]

17 The primary purpose for this section in the UAGPPJA is to provide an "expedited proceeding" for transfers to avoid the need for an entirely new proceeding when a Conservatee has, or intends to, move to this state. However, due to California's stricter protections for Conservatees, we propose to heighten the requirements on transfer to be basically equivalent to a new conservatorship appointment in this state. An alternative option may be to not adopt this section, thus forcing an entire new proceeding upon a transfer to California, which is the existing law of this state.

18 Probate Code section 1800.3 requires an express finding that conservatorship is the least restrictive alternative.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 301 transferring the proceeding to this state.	(e) The court shall issue a final order accepting the proceeding and appointing the conservator as conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 2000 transferring the proceeding to this state.
(f) Not later than [90] days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.	*Note: section (f) of the Act is omitted, as we propose a mandatory hearing prior to the transfer.*
(g) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, *including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.*	*Note: section (g) of the Act is omitted as we oppose forced recognition of the transferring state's determination of capacity and appointment of conservator, which may not have been made in accordance with the more protective standards under CA law, including the priority given to registered domestic partners for appointment.*
	(f) A conservator appointed pursuant to this section shall thereafter be subject to the laws of this state governing conservatorship proceedings.[19]
(h) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under [insert statutory references to this state's ordinary procedures law for the appointment of guardian or conservator] if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.	(g) The denial by a court of this state of a petition to accept a conservatorship proceeding transferred from another state does not affect the ability of the conservator to seek appointment as conservator in this state under Division 4, Part 3 (beginning with section 1800) of this Code if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.
	(h) A petition to accept the transfer of a conservatorship proceeding to this state under this section shall not be approved if the conservatee is receiving in another state, or plans to receive in this state, involuntary mental health treatment.[20]

19 Section (f) is additional language suggested in CLRC memo 2011-31, at page 8, for clarification that CA law would apply upon acceptance of the transferred proceeding.

20 Section (i) will preclude the transfer of a conservatorship which must meet the stricter requirements of an LPS conservatorship.

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT [UAGPPJA]	[PROPOSED] CALIFORNIA CONSERVATORSHIP JURISDICTION ACT [CCJA] To be added as Chapter 8 to Division 4, Part 3 of the Probate Code
ARTICLE 4 **REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES** **SECTION 401. REGISTRATION OF GUARDIANSHIP ORDERS.** If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate [county] of this state, certified copies of the order and letters of office.	**ARTICLE 4** **REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES** **Section 2010. Registration of conservatorship orders.** (a) If a conservator of the person or estate or both has been appointed in another state, a petition for the appointment of a conservator is not pending in this state, and this state does not have primary jurisdiction as either a home state or a significant connection state[21], the conservator may apply to register the conservatorship order in this state as a foreign judgment.[22] Notice of the application shall be given not less than 15 days prior to the registration to the following: (1) The appointing court in another state; and (2) The persons who would be entitled to notice of a petition for the appointment of a conservator in both the appointing state and this state. The notice must be given in the same manner as notice is required to be given in this state. (b) The notice shall include a statement that a person seeking to object to the proposed registration must submit an objection to the conservator or to the court in this state before the date shown on the notice, or before the registration, whichever is later.

21 Adding a specific exclusion to register another state's order if CA has primary jurisdiction prevents the use of the registration proceeding to circumvent the requirement of a full petition for appointment.

22 "Foreign Judgments" are handled 3 different ways under CA law:
- CCP sec. 1913 requires an "action or special proceeding" to enforce a non-monetary sister state judgment:
  (a) Subject to subdivision (b), the effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced in this state by an *action or special proceeding*.
  (b) The authority of a guardian, conservator, or committee, or of a personal representative, does not extend beyond the jurisdiction of the government under which that person was invested with authority, except to the extent expressly authorized by statute.
- A sister state monetary judgment may be entered by the court clerk upon application (with no hearing requirement). Thirty days' notice is given to the judgment debtor who may then file a motion to vacate the judgment. CCP sections 1717.10 et seq.
- CA has enacted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)) which requires a CA court to register another state's child custody order, subject only to notice to the parties with a post-filing opportunity to contest the registration. Family Code section 3445.

For conservatorship orders, we propose a procedure similar to a 'notice of proposed action' in probate estates, by requiring notice and an opportunity to object to all interested parties *before* the other state's conservatorship order may be registered in this state as a foreign judgment, but not otherwise requiring a court hearing on every petition to register a foreign conservatorship order.

	(c) If an objection is received, the registration may proceed only with court authorization. If no timely objection is received, the conservator may register the conservatorship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, the original notice with proof of mailing attached, and certified copies of the order and letters of office.
SECTION 402. REGISTRATION OF PROTECTIVE ORDERS. If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any [county] in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.	*Note: Section 2010 above incorporates both section 401 (guardianships) and section 402 (protective orders) of the Act into a single section*.
SECTION 403. EFFECT OF REGISTRATION (a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties. (b) A court of this state may grant any relief available under this [act] and other law of this state to enforce a registered order.	**Section 2011. Effect Of Registration** (a) Upon confirmation of an order from another state as a foreign judgment pursuant to this article, the conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties. (b) A court of this state may grant any relief available under this Article 4 (beginning with section 2010) and other law of this state to enforce a registered order.

[ARTICLE] 5 **MISCELLANEOUS PROVISIONS**	**ARTICLE 5** **MISCELLANEOUS PROVISIONS**
SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.	**Section 2020. Uniformity of application and construction.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.
SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).	**Section 2021. Relation to electronic signatures in global and national commerce act.** This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).
SECTION 503. REPEALS. The following acts and parts of acts are hereby repealed: (1) ..... (2) ..... (3) ..... ***Legislative Note:*** *Upon enactment, the state should repeal existing provisions on subject matter jurisdiction for adult guardianship and protective proceedings. If existing provisions address proceedings for both minors and adults, the provisions should be amended to limit their application to minors. In addition, the state should repeal or limit to minors any existing provisions authorizing transfer of a guardianship or conservatorship proceeding to another state and any provisions authorizing a guardian or conservator to act in another state.*	**Section 2022. REPEALS.** The following acts and parts of acts are hereby repealed: (1) ..... (2) ..... (3) .....
SECTION 504. TRANSITIONAL PROVISION. (a) This [act] applies to guardianship and protective proceedings begun on or after [the effective date]. (b) [Articles] 1, 3, and 4 and Sections 501 and 502 apply to proceedings begun before [the effective date], regardless of whether a guardianship or protective order has been issued. **SECTION 505. EFFECTIVE DATE.** This [act] takes effect.....	**Section 2023. Transitional provision.** (a) This Act applies to conservatorship proceedings begun on or after [the effective date]. (b) Articles 1, 3, and 4 and Sections 2020 and 2021 apply to proceedings begun before [the effective date], regardless of whether a conservatorship order has been issued. **Section 2024. Effective date.** This [act] takes effect....