



STATE OF NEW JERSEY

NEW JERSEY LAW REVISION COMMISSION

Final Report

Relating to

**New Jersey Adult Guardianship and Protective Proceedings
Jurisdiction Act**

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Introduction

In 2007, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”), which is derived but separate from the broader Uniform Guardianship and Protective Proceedings Act (“UGPPA”) released in 1997.¹ The UAGPPJA provides a uniform mechanism for addressing multi-jurisdictional adult guardianship issues that have become time-consuming and costly for courts and families.

The issues that the act seeks to address arise when an adult subject to guardianship proceedings in more than one state, or in a state and another country, has contacts or property in each place. Virtually all state courts rely upon a person’s domicile or residence to determine jurisdiction for the purpose of appointing a guardian. Presence of the person’s property is usually the basis for a determination of jurisdiction for the purpose of appointing a conservator or a guardian of property. Consequently, more than one state court could adjudge authority over the same allegedly incapacitated person (or the person’s property) at the same time.

Disputes over jurisdiction have become commonplace. Perhaps a person domiciled in one state suffers an incapacitating stroke while on business or vacation in another state. Or an allegedly incapacitated senior owns a second home in a second state, in which case the adult’s very domicile or residence may be uncertain. Often family disputes arise from well-meaning and caring individuals who simply disagree on what is best for their loved one. But in some cases, battling family members resort to what has come to be called “granny snatching”, where one family member transports the incapacitated person to the family member’s state and thereafter establishes contacts for the incapacitated person in the new jurisdiction.

The UAGPPJA seeks to resolve disputes over court authority to make decisions about guardianship by first ensuring that only one state exercises jurisdiction over the alleged incapacitated person at any time.² Thus, the UAGPPJA sets out a mechanism by which a court can determine the state with primary jurisdiction, which in most cases, will be the incapacitated person’s “home state”. An individual’s “home state” is defined as the state in which the individual is physically present for at least six consecutive months immediately before the filing of a petition for a protective order or appointment of a guardian. If the home state is not appropriate for jurisdiction for a reason determined by the home state court, the “significant-connection state”, or the state in which the individual has a significant connection other than mere physical presence, will then have jurisdiction. In determining whether the individual has a “significant connection”, a court is directed to look at a range of factors, including but not limited to, the location of the person’s family, the length of time the person is physically present in the state and the duration of any absences, the location of the person’s property, and the extent to which the person has ties to the state such as voting registration, tax return filings, a driver’s

¹ NCCUSL proposes state enactment of the UAGPPJA either separately or as part of the broader UGPPA or the even broader Uniform Probate Code (“UPC”). New Jersey has very clearly defined statutes providing for guardianships of both minors and incapacitated individuals, dating back to 1981 and most recently amended in 2005. In 2004, New Jersey adopted some sections of the 1989 revision of the UPC that pertain to guardianships.

² NCCUSL notes that the principal objective of article 2 of the uniform act is to assure that an appointment or order is made or issued in only one state except in cases of emergency or in situations where the individual owns property located in multiple states.

license and receipt of governmental services. A person may have multiple significant-connection states but will have only one home state.

Whether a guardianship proceeding in one state will be recognized in another state is also addressed by the act. Because the Full Faith and Credit Clause of the United States Constitution has not been applied to court orders pertaining to guardianship and protective proceedings, such proceedings in one state may not be honored in another state unless state law provides otherwise. The UAGPPJA provides for the transfer and acceptance of a guardianship or conservatorship by one state to or from another state. The act also creates a registration procedure to facilitate recognition of out-of-state orders. A guardianship or protective order registered in the second state permits the guardian to exercise in the second state all powers authorized in the original state's order of appointment except for powers that cannot be legally exercised in the second state. A state court may treat a foreign country as if it were a state for all purposes under the uniform act except for registration.

The act further empowers courts in differing jurisdictions to communicate with each other and to allow the parties to participate in the communication. A court may even request another court to cooperate, for example, by holding an evidentiary hearing, ordering that an evaluation be made of the allegedly incapacitated person, or issuing any order necessary to assure the appearance in the proceeding of a person whose presence is deemed necessary for the first state to make a determination.

Notably, the UAGPPJA is modeled after the Uniform Child Custody Jurisdiction Act ("UCCJA") approved by NCCUSL in 1968, and succeeded by the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). Those uniform laws address many of the same multi-jurisdictional issues addressed by UAGPPJA but in connection with child custody determinations. The UAGPPJA is limited to adults, in part, because most jurisdictional issues involving guardianships for minors are covered by the UCCJEA. New Jersey adopted the UCCJEA after recommendation by this Law Revision Commission. See N.J.S. 2A:34-53 et seq.

The UAGPPJA has been adopted in 19 states and the District of Columbia.³ In 2011, the UAGPPJA was introduced in 13 more states. The act has been endorsed by the Alzheimer's Association, including its Greater New Jersey and Delaware Valley Chapters, the National Association of Elder Law Attorneys (NAELA), including its New Jersey Chapter, the National College of Probate Judges, the Conference of Chief Justices and the Conference of State Court Administrators and the National Guardianship Association. The American Bar Association, Commission on Law and Aging, approves and supports enactment of the UAGPPJA in all states, commenting that a lack of clear jurisdictional guideposts can take up vast amounts of time for courts and lawyers, burden family members, exacerbate family conflict, and facilitate "granny snatching" and other abusive actions. All agree that the UAGPPJA cannot work to provide jurisdictional uniformity and reduce conflict unless it is adopted by all or most states.

³ The states are: Alabama, Alaska, Arizona, Colorado, Delaware, Illinois, Iowa, Maryland, Minnesota, Montana, Nevada, North Dakota, Oklahoma, Oregon, South Carolina, Tennessee, Utah, Washington, and West Virginia. The states where the introduced legislation is still pending are Arkansas, Connecticut, Idaho, Indiana, Kentucky, Mississippi, Missouri, New Mexico, Nebraska, Ohio, South Dakota, Vermont and Virginia.

Current New Jersey Law

The appointment of a guardian in New Jersey is governed by N.J.S. 3B:12-1 *et seq.* and R.4:86-1 through R.4:86-8.⁴ The statute covers both minors and incapacitated adults. Jurisdiction over an incapacitated person in New Jersey requires a determination of domicile. New Jersey courts have held that “domicile” is where a person has a true, fixed, permanent home and principal establishment to which, whenever absent, the person has the intention of returning. See *In re Seyse*, 353 N.J. Super. 580, 586 (App. Div. 2002) *cert. denied*, 175 N.J. 80 (2002) and *In re Jacobs*, 315 N.J. Super.189, 193 (Chan. Div.1998). Domicile may be obtained by birth or place of origin, by the choice of a person capable of choosing a domicile, or by operation of law in the case of a person who lacks capacity to acquire a new domicile by choice. It is well settled that a person in need of a guardian may have the capacity to change domicile. See *In re Seyse*, *supra*.

Subject to due process principles, New Jersey gives full faith and credit to determinations of incapacity made in other states. See N.J.S. 3B:12-66.2(d). New Jersey law provides for the transfer into New Jersey of a guardianship established in another state by the out-of-state’s guardian’s filing in New Jersey of a summary action for the transfer and the appointment as guardian. The incapacitated person’s existing or upcoming domicile in this State must be established. The court is required to grant the application unless the court determines that the proposed guardianship is a “collateral attack on an existing or proposed guardianship or the transfer and appointment would not be in the best interest of the ward.” N.J.S. 3B:12-66.2 (c). New Jersey permits the transfer of a guardianship appointed here to another state if the court is satisfied that a transfer will serve the best interests of the incapacitated person. N.J.S. 3B:12-66.1. New Jersey also provides for a mechanism by which the court may appoint a guardian for the New Jersey property of a nonresident who has been declared to be incapacitated in that person’s state of residence. N.J.S. 3B:12-29.

⁴ New Jersey recognizes four types of guardians for incapacitated persons: general guardians; limited guardians; special guardians and pendent lite temporary guardians. If a court finds that an allegedly incapacitated person is without capacity to govern or manage the person’s own well-being and financial affairs, then the court will appoint a general guardian to exercise all rights and powers of the incapacitated person. If the court finds that the incapacitated person lacks capacity to do some, but not all of the tasks necessary for self-care, then the court will appoint a limited guardian. Special guardians assist the court in providing for any protective arrangements and serve until discharged by the order of appointment after reporting to the court of all matters done in accordance with the order. Pendent lite guardians may be appointed temporarily, pending a hearing for the appointment of a general or limited guardian, to act for the alleged incapacitated person only for those services the court determines are necessary to deal with critical needs or risk of substantial harm to the person. See N.J.S. 3B:12-24.1. The statute also provides for the appointment for an incapacitated adult, by will, of a testamentary guardian of the person or the estate or both. See N.J.S. 3B:12-30; 3B:12-32; 3B:12-34; 3B:12-35. Finally, New Jersey also provides for two specialized types of guardianships of children that do not terminate parental rights. However, neither would be affected by New Jersey’s adoption of the uniform act because neither is applicable to incapacitated adults. The *New Jersey Standby Guardianship Act*, N.J.S. 3B:12-67 *et. seq.*, creates a guardianship to enable a custodial parent or legal custodian suffering from a progressive chronic condition or fatal illness to plan for the permanent future care or interim care of a child. N.J.S. 3B:12A-1 *et seq.*, creates a kinship legal guardianship for caregivers who have a biological, legal, or extended psychological relationship with a child and who are willing to assume care of that child due to parental incapacity or inability.

Unlike the UAGPPJA, which upon a determination of incapacity provides for a guardian of the person as distinct from the conservator of the person's property, New Jersey law provides for guardians of the person or of the estate of an incapacitated adult. A "conservator" may be appointed for a person who is not incapacitated so long as the conservatee does not object to the appointment. See N.J.S. 3B:13A-2 and 3B:13A-5.⁵ A conservator is defined by statute as "a person appointed by the court to manage the estate of a conservatee" and a "conservatee" is defined as a person who has not been judicially declared incapacitated "but who by reason of advanced age, illness or physical infirmity, is unable to care for or manage his property or has become unable to provide for himself or others dependent upon him for support." N.J.S. 3B:13A-1.

New Jersey also protects vulnerable adults with limited capacity, illness, disability or deficiency under the *Adult Protective Services Act*, N.J.S. 52:27D-406, et seq. Under this act, a "vulnerable adult" means a person at least 18 years old who resides in a community setting and who, "because of a physical or mental illness, disability or deficiency, lacks sufficient understanding or capacity to make, communicate or carry out decisions concerning his well-being and is the subject of abuse, neglect or exploitation." A temporary guardian (or conservator if the vulnerable adult has capacity and consents to the conservatorship) may be appointed for a vulnerable adult.

New Jersey law is further affected by *Winberry v. Salisbury*, 5 N.J. 240, 252, cert. denied, 340 U.S. 877 (1950), where the New Jersey Supreme Court held that its rulemaking power is not subject to overriding legislation but is confined to practice, procedure and administration. Accordingly, at least one section of the uniform act that dictates how courts shall conduct themselves requires modifications in order to comply with the *Winberry* ruling. This report further recommends the adoption by the Supreme Court of conforming rules of court.

Modifications to the Uniform Act

Although the Commission recommends that the Legislature adopt the UAGPPJA, consistent with New Jersey law and practice, some modifications to the wording of the uniform law are deemed necessary. Proposed modifications are set forth below in the text of the act, annotated with strikethroughs and underscoring.

The format of the current uniform law also is modified in significant ways. First, the "definitions" sections in articles 1 and 2 are combined in one section (compare Sections 102 and 201 of uniform act with section 3B:12B-2.) The proposed New Jersey version of the uniform act does not divide the act into separate articles. Third, the uniform act sets forth within the

⁵ An action to appoint a conservator and an action to appoint a guardian are quite distinct. The court in *In re Farnkkopf*, 363 N.J.Super. 382, 391 (App. Div. 2003), explained the distinction, stating that:

The Superior Court is empowered to appoint a guardian for the person or property, or both, of a person found to be incapacitated. N.J.S.A. 3B:12-25. A person is incapacitated, in this context, if 'impaired by reason of mental illness or mental deficiency to the extent that he lacks sufficient capacity to govern himself and manage his affairs.' N.J.S.A. 3B:1-2. The extent of incapacitation, of course, can vary in degree, requiring our courts to act cautiously so that a guardian is not empowered to do things which the ward may still be capable of [citation omitted]. *On the other hand, a conservator may be appointed for a "person who has not been judicially declared incapacitated but who, by reason of advanced age, illness or physical infirmity, is unable to care for or manage his property or has become unable to provide for himself or others dependent upon him for support."* N.J.S.A. 3B:13A-1a. (emphasis added.)

See also *In re Guardianship of Macak*, 377 N.J.Super. 167, 175-176 (App. Div. 2005).

definitions section (section 201), the factors to be applied in making a determination of whether a state is a “significant-connection” state. Because this determination requires an analysis of factors, rather than merely an application of a definition, in the New Jersey version a separate section is created for this purpose (see section 3B:12B-9).

Since under N.J.S. 3B:12-25, New Jersey law provides for the appointment of a guardian of the person or the estate, or both, and New Jersey provides for a separate proceeding to address conservatorship (see 3B:13A-1 *et seq.*), any reference to a conservator is modified in this revision to reflect this distinction. A proceeding for a conservatorship in New Jersey is a separate proceeding that pertains to a person who is not judicially determined or declared to be incapacitated. See N.J.S. 3B:13A-1(a). The proposed New Jersey version of the UAGPPJA is made applicable to conservatorships as well as to protective arrangements for vulnerable adults and others under New Jersey law. In addition, although any out-of-state conservatorship for an incapacitated adult, if transferred to New Jersey, likely would be considered a guardianship of the estate under New Jersey state law, the proposed statute provides an out-of-state conservator the option to apply for a conservatorship in accordance with New Jersey law. Finally, section 202 of the uniform act has been subsumed within new section 3B:12B-4.

The proposed legislation is entitled the New Jersey Adult Guardianship and Protective Proceedings Act and is numbered beginning with 3B:12B-1 *et seq.* Placement of the act after the existing provisions regarding guardianships in the New Jersey Statutes, which appear in Title 3B, Chapter 12 and Title 3B, Chapter 12A, seems appropriate. A comment appears after each section; in some cases comments also are incorporated from the text of the uniform act.

As a result of the recommended adoption of the act, the Commission recommends repeal of current 3B:12-29 (appointment of guardian of the property for nonresident incapacitated person) as it will be superseded by enactment of the uniform law. The Commission also recommends amendment of two additional current statutes: 3B:12-66.1 (removal from New Jersey after appointment of guardian) and 3B:12-66.2 (transfer into New Jersey of guardianship established in another state). Both statutes should be limited in their application to minors because their application to incapacitated adults will be superseded by the enactment of the uniform law.

3B:12B-1. Short title

This act shall be known and may be cited as the New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act.

COMMENT

The source for this section appears at the very beginning of the Uniform Act as section 101. In the revision, the Commission maintains the section at the beginning of the statute in keeping with customary New Jersey statutory practice. Jurisdictional issues concerning guardians for minors are subsumed by the *Uniform Child Custody Jurisdiction and Enforcement Act*, which appears at N.J.S. 2A:34-53 *et seq.* The act is called the New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act because it has been modified to accommodate New Jersey practice.

3B:12B-2. Definitions

As used in this act, unless otherwise defined:

- (1) “Adult” means an individual at least 18 years of age.
- (2) “Conservator” means a person appointed by the court to administer the property of an adult, including a person appointed, as appropriate, under N.J.S. 3B:13A-1 *et seq.*
- (3) “Guardian” means a person appointed by the court to make decisions regarding the person or property of an incapacitated adult, including a person who has qualified as a guardian of the person or estate, or both, of an incapacitated person pursuant to court appointment in accordance with N.J.S. 3B:12-1 *et seq.* or its equivalent in a state other than New Jersey.
- (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) “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 the appointment of a guardian or a protective order; 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.

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

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

(9) “Protected person” means an adult for whom a protective order has been issued.

(10) “Protective order” means:

(i) an order related to an adult who has been declared incapacitated by a court or for whom such a declaration is sought, including but not limited to an arrangement or order related to management of the incapacitated person’s property, which is issued pursuant to N.J.S. 3B:12-1 and N.J.S. 3B:12-2; or

(ii) an order appointing a conservator, including but not limited to an order which is issued pursuant to N.J.S. 3B:13A-1 et seq; or

(iii) an order to protect a “vulnerable adult” as that term is defined in N.J.S. 52:27D-407, including but not limited to an order which is issued pursuant to the *Adult Protective Services Act*, N.J.S. 52:27D-406 et seq; or

(iv) an order or arrangement, pursuant to N.J.S. 3B:12-1, for a person for whom a declaration of incapacity is not sought.

(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 the appointment of a guardian or the issuance of a protective order is sought.

(14) “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.

(15) “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.

COMMENT

This section combines sections 102 and 201 of the Uniform Act but differs from the Uniform Act in several ways. The format for this section is modeled on existing sections 3B:1-1 and 3B:1-2. The definition of “guardian” is made consistent with the definition that appears in title 3B, specifically N.J.S. 3B:1-1. A guardian of the person *or of the estate* may be appointed in accordance with N.J.S. 3B:12-25. Accordingly, the definition of “conservator” has been modified to reflect current New Jersey law. The definition of “protective order” (called “protective arrangement” in New Jersey) also has been modified accordingly. These modifications are consistent with the Legislative Note to the Uniform Act section. The definition of “person” is omitted from the revision because that term is already defined at N.J.S. 3B:1-2, which governs the entire title. The definition of “emergency” is also omitted from the revision because the concept of an emergency guardian is already covered in N.J.S. 3B:12-24.1(c) (appointment of pendent lite; temporary guardian) and the concept therein is consistent with the Uniform Act definition. Although the definition of “significant connection state” is incorporated in new 3B:12B-2, the criteria for determining whether a state is a “significant connection state”, as now appear at subsection (3) (b) of section 201, have been separated from the definition and are set forth in new section 3B:12B-9.

The list of factors in deciding whether a particular place is a significant connection state are separated from the definition in the source and now provided in section N.J.S. 3B:12B-9 .

3B:12B-3. International application of the act

A court of this State may treat a foreign country as if it were a state for the purpose of applying all sections of the act except for sections 3B:12B-18 and 3B:12B-19 pertaining to registration.

COMMENT

This section continues the substance of section 103 of the Uniform Act with minor changes.

As stated in the Legislative Note to the Uniform Act, a foreign order is not enforceable pursuant to the registration procedures of the statute (sections 3B:12B-18 and 3B:12B-19 in this revision), but a court in this country may otherwise apply the Uniform Act to a foreign proceeding as if the foreign country were an American state. Consequently, a court may decline to exercise jurisdiction over the respondent, concluding that the court in the foreign country has jurisdiction because that country is the respondent’s “home state” or “significant-connection state”. A court in this country may also treat the foreign country as a state for purposes of applying the transfer provisions of the statute. See sections 3B:12B-16 and 3B:12B-17. The fact that a guardianship or protective order

of a foreign country cannot be enforced pursuant to the registration procedures of the statute does not preclude enforcement by the court under another provision or rule of law.

3B:12B-4. What act governs; exclusive jurisdictional basis; applicability

This act governs jurisdiction of guardianship proceedings and provides the exclusive jurisdictional basis for a court of this State to appoint a guardian or issue a protective order. The appointment of a guardian shall continue to be governed by N.J.S. 3B:12-1 et seq. and the appointment of a conservator shall continue to be governed by N.J.S. 3B:13A-1 et seq. This act shall be construed and applied in conjunction with N.J.S. 3B:12-1 et. seq. and 3B:13A-1 et seq.

COMMENT

This section, although new, incorporates Section 202 of the Uniform Act. This section is added to clarify that the sole purpose of this act is to govern determinations of jurisdiction only. Current law with regard to guardianships and conservatorships is in no way contravened or replaced by this act except that, because of this act, the Commission recommends modifications to N.J.S. 3B:12-66.1 and N.J.S. 3B:12-66.2, as those sections apply to transfers of guardians of incapacitated adults appointed in other states. See section 3B:12B-22 at the end of this report. The Commission also recommends repeal of N.J.S. 3B:12-29 (appointment of guardian of the property for nonresident incapacitated person) as that section is superseded by this act.

3B:12B-5. 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 in accordance with the Rules Governing the Courts of the State of New Jersey.

b. Except as otherwise provided in subsection (c), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

c. Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

COMMENT

This section continues the substance of section 104 of the Uniform Act, but also references the New Jersey court rules.

3B:12B-6. Cooperation between courts

a. In a guardianship or protective proceeding, 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, 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.

COMMENT

This section continues the substance of section 105 of the Uniform Act. Subsection (a) (7) addresses the release of health information protected by HIPAA. As noted in the Comment to the Uniform Act, court cooperation is essential to the success of this act. As also noted in the official Comment, this section does not address assessment of costs and expenses, leaving that issue to other local law. However, should a court acquire jurisdiction because of a party's unjustifiable conduct, section 3B:12B-13 (based on source section 207 (b)) authorizes the court to assess against the party all costs and expenses, including attorneys' fees.

3B:12B-7. Taking testimony in another state

In a guardianship or protective proceeding:

a. 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; and a witness located in another state may be deposed or may

testify by any means permitted by the Rules Governing the Courts of the State of New Jersey. A court of this State shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

b. documentary evidence transmitted from another state to a court of this State shall be admitted into evidence consistent with the New Jersey Rules of Evidence.

COMMENT

This section continues the substance of section 106 of the Uniform Act but eliminates references to subsection (c) as New Jersey's evidentiary rules accommodate this concern. See Rule 1001 (c) of the New Jersey Rules of Evidence.

As noted in the Comment to the Uniform Act, the source section is consistent with and complementary to the Uniform Interstate Depositions and Discovery Act (2007), which specifies the procedures for taking depositions in other states, and which thus far has not been adopted in New Jersey. Because of the precepts of *Winberry v. Salisbury*, 5 N.J. 240, 252, *cert. denied*, 340 U.S. 877 (1950), the concept is retained but the language from the source section is modified. The Commission will recommend to the New Jersey Supreme Court that it adopt rules to determine the manner for taking depositions and testimony in accordance with this section.

3B:12B-8. Jurisdiction; determination

A court of this State has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) this State is the respondent's home state as defined in this act; or

(2) on the date the petition is filed, this State is a significant-connection state, as defined in this act and determined in accordance with section 3B:12B-9, and:

(a) the respondent either 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

(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 this State's court acts:

(i) a petition for an appointment or order is not filed in the respondent'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

(iii) the court concludes that it is an appropriate forum under the factors set forth in section 3B:12B-12;

(3) although this State does not have jurisdiction under either (1) or (2) of this section, the 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 New Jersey and United States Constitutions; or

(4) the requirements for special jurisdiction under section 3B:12B-10 are met.

COMMENT

This section continues the substance of section 203 of the Uniform Act but streamlines current subsection (2) (B) to make it clearer and more concise.

3B:12B-9. Significant-connection state; determination

In determining 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.

COMMENT

This section, although new, continues the substance of section 201 (b) of the Uniform Act. Since the determination of whether a state is a significant-connection state requires more than applying a definition, this section has been excerpted from the definitions in the Uniform Act and incorporated into a separate section devoted to setting forth the standards for making this determination. This section should be applied in conjunction with section 3B:12B-2 (13).

3B:12B-10. Special jurisdiction

a. A court of this State lacking jurisdiction under section 3B:12B-8 has special jurisdiction to do any of the following:

(1) appoint a guardian or issue a protective order in an emergency, in accordance with N.J.S. 3B:12-24.1 (c), for a respondent who is physically present in this State;

(2) appoint a guardian of real or tangible personal property located in this State for which the respondent has an ownership interest;

(3) issue a protective order with respect to real or tangible personal property in this State;

or

(4) appoint, under procedures similar to 3B:12B-16, 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.

b. If a petition for the appointment of a guardian or issuance of a protective order in an emergency in accordance with N.J.S. 3B:12-24.1 (c) 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.

COMMENT

This section continues the substance of section 204 of the Uniform Act. However, subsection a. (1) is modified to make reference to current New Jersey law providing for the appointment of temporary guardians for emergency purposes. Subsection a. (5) is added in accordance with the last paragraph of the Comment to section 204 of the Uniform Act. Subsection a. (2) supersedes current N.J.S. 3B:12-29. Accordingly, that current law is recommended for repeal.

As noted in the Comment to the Uniform Act, if the court has jurisdiction under section 3B:12B-8, reference to this section is unnecessary. The general jurisdiction granted under section 3B:12B-8 includes all of the special circumstances specified in this section.

3B:12B-11. Exclusive and continuing jurisdiction

Except as otherwise provided in section 3B:12B-10, 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 the proceeding is terminated by the court or the appointment or order expires by its own terms.

COMMENT

This section continues the substance of section 205 of the Uniform Act.

3B:12B-12. Appropriate forum

a. A court of this State having jurisdiction under section 3B:12B-8 to appoint a guardian or issue a protective order may decline to exercise 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 jurisdiction under subsection (a), it shall either dismiss or stay the proceeding. The court may impose any condition it deems 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.

c. In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

- (1) any expressed preference of the respondent;
 - (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;
 - (3) the length of time the respondent 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;
 - (5) the financial circumstances of the respondent's estate;
 - (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;
 - (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 the conservator.

COMMENT

This section continues the substance of section 206 of the Uniform Act.

3B:12B-13. 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:

(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

(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;

(B) whether it is a more appropriate forum than the court of any other state under the factors set forth in subsection c. of 3B:12B-12; and

(C) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 3B:12B-8.

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 attorneys' 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.

COMMENT

This section continues the substance of section 207 of the Uniform Act. Although the Uniform Act does not define “unjustifiable conduct”, concluding that this is best left to the courts, as noted in the Comment to the Uniform Act, a common example is the unauthorized removal of an adult to another state. Under such circumstances, however, that state, if it had adopted the Uniform Act, would acquire emergency jurisdiction immediately upon the move. So long as a petition for guardianship or a protective order is not filed in the then home state during the interim, that state also would acquire home state jurisdiction six months following the move.

3B:12B-14. Notice of proceeding

If on the date a petition for the appointment of a guardian or issuance of a protective order is filed in this State, this State was not the respondent’s home state, notice of the petition shall be given, in the same manner as notice is required to be given in this State, to the respondent and to the persons who would be entitled to notice if the regular procedures for appointment of a guardian or a conservator under the Rules Governing the Courts of the State of New Jersey were applicable.

COMMENT

This section continues the substance of section 208 of the Uniform Act with modifications in language to make it clearer and more concise.

3B:12B-15. Proceedings in more than one state

Except for a petition for the appointment of a guardian or issuance of a protective order in an emergency under subsection a. (1) of 3B:12B-10, or appointment of a guardian of property or issuance of a protective order limited to property located in this State under subsections a. (2) or (3) of 3B:12B-10, 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 shall apply:

(1) a court in this State with jurisdiction under section 3B:12B-8, may proceed unless a court in another state acquires jurisdiction under similar provisions before the appointment or issuance of the order.

(2) a court in this State without jurisdiction under section 3B:12B-8, whether at the time the petition is filed or at any time before the appointment or issuance of the order, 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.

COMMENT

This section continues the substance of section 209 of the Uniform Act. As noted in the Comment to the Uniform Act, emergency guardianship appointments and protective proceedings with respect to property in other states (proposed 3B:12B-10) are excluded from this section because the need for dual appointments is frequent in these cases; for example, a petition will be brought in the respondent's home state but emergency action will be necessary in the place where the respondent is temporarily located.

As also noted in the Comment to the Uniform Act, under this section, if the court has jurisdiction under section 203 (now 3B:12B-8), the court has the right to proceed unless a court of another state acquires jurisdiction prior to the first court making an appointment or issuing a protective order. If the court does not have jurisdiction, it must defer to the court with jurisdiction unless that court determines that the court in this State is the more appropriate forum and thereby acquires jurisdiction. Since factual issues can arise as to which state is the home state or significant-connection state, while there most always will be a court having jurisdiction to proceed under this section, reliance on the communication, court cooperation, and evidence gathering provisions of this act may be necessary to determine which court that might be.

3B:12B-16. Transfer of guardianship or 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.

b. Notice of a petition for transfer shall 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.

c. On the court's own motion or upon request of the guardian or conservator, or other person required to be notified of the petition, the court shall hold a hearing on a petition to transfer.

d. The court shall issue an order provisionally granting a petition to transfer a guardianship and 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:

(1) in the case of a guardianship of the person, the incapacitated person is physically present in or is reasonably expected to move permanently to the other state, or in the case of a guardianship of property, the incapacitated person is physically present in or is reasonably expected to move permanently to, or has a significant connection to, the other state; and

(2) an objection to the transfer has not been made or, the court determines that the transfer would be contrary to the interests of the incapacitated person; and

(3) in the case of a guardianship of the person, plans for care and services for the incapacitated person in the other state are reasonable and sufficient, or in the case of a guardianship of property, adequate arrangements are made for management of the incapacitated person's property.

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:

(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 3B:12B-9;

(2) an objection to the transfer has not been made or the court determines that the transfer would be contrary to the interests of the protected person; and

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

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

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred under provisions similar to section 3B:12B-17; and

(2) the documents required to terminate a guardianship or conservatorship in this State.

COMMENT

This section continues the substance of section 301 of the Uniform Act but consolidates and makes more concise the source provision. Such a transfer is often appropriate where the incapacitated person has moved or has been placed in a facility in another state, making it impossible for the original court to adequately monitor the proceeding. In conjunction with the adoption of the Uniform Act, current N.J.S. 3B:12-66.1 is recommended for amendment to provide that it shall apply only with regard to the transfer of a guardianship of a minor.

3B:12B-17. Accepting guardianship or conservatorship transferred from another state

a. To confirm transfer of a guardianship or conservatorship to this State under provisions similar to section 3B:12B-16, the guardian or conservator in the other state shall petition the court in this State to accept the guardianship of the person or the person's property, or both, or the conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.

b. Notice of a petition under this section shall be given, in the same manner as notice is required to be given in this State, to those persons that would be entitled to notice if the petition were for the appointment of a guardian or issuance of a protective order in both the transferring state and this State.

c. On the court's own motion or upon request of the guardian or of the conservator, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to this section.

d. The court shall issue an order provisionally granting a petition filed under this section unless:

(1) an objection is made and the court determines 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.

e. The final order accepting the proceeding and appointing the guardian or conservator from the other state as guardian of the person or property, or both, or conservator in this State shall be issued upon the receipt by this State's court of a final order issued under provisions similar to section 3B:12B-16 transferring the proceeding to this State.

f. Not later than 90 days after issuance of a final order accepting the transfer, the court shall determine whether the guardianship of the person or property, or both, or the conservatorship needs to be modified to conform to the law of this State.

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 person's incapacity and the appointment of the guardian of the person or property, or both, or of the conservator.

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 of the person or property, or both in this State under N.J.S. 3B:12-25, or as conservator under N.J.S. 3B:13A-1 et seq., if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

COMMENT

This section continues the substance of section 302 of the Uniform Act. In conjunction with the adoption of the Uniform Act, current N.J.S. 3B:12-66.2 is recommended for amendment to provide that it shall only apply with regard to the transfer of a guardianship of a minor. Notably, although New Jersey law provides for a guardian of the property of an incapacitated person and not a conservatorship of that person's property (conservatorship is

applicable to persons who are not declared incapacitated under N.J.S. 3B:13A-1 *et seq.*), a conservator from another state may seek acceptance of the conservatorship and appointment in this State as a guardian of the property of the incapacitated person or as a conservator under New Jersey law.

3B:12B-18. Registration of guardianship or conservatorship orders

If a guardian has been appointed in another state and a petition for the appointment of a guardian of the person or property, or both, is not pending in this State, or if a conservator has been appointed in another state and a petition for the appointment of a conservator is not pending in this State, the guardian or conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship or conservatorship 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, and of any bond, as appropriate. For purposes of a guardian of the person, an appropriate county is any county where the guardian seeks to maintain an action or proceeding on behalf of the incapacitated person; for purposes of a guardian of the property or of a conservatorship, an appropriate county is the county where the property belonging to the incapacitated person or conservatee is located.

COMMENT

This section continues the substance of sections 401 and 402 of the Uniform Act, but combines the sources into one section. The Uniform Act does not designate how to determine the appropriate county for purposes of registration of a guardian of the person or a conservator. The additional language, in part, sets forth a guideline for the appropriate venue for guardianship registrations. The Comment to the Uniform Act notes that the drafters concluded that the registration of certified copies provides sufficient protection and that it was not necessary to mandate the filing of authenticated copies.

3B:12B-19. 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.

COMMENT

This section continues the substance of section 403 of the Uniform Act.

3B:12B-20. 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.

COMMENT

This section continues the substance of section 501 of the Uniform Act.

3B:12B-21. Relations 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).

COMMENT

This section continues the substance of section 502 of the Uniform Act.

3B:12B-22. Repeals; limitation of application of existing provisions to minors

a. The following provisions are hereby repealed:

(1) N.J.S.3B:12-29.

b. The following provisions are hereby limited in their application to minors only:

(1).N.J.S. 3B:12-66.1; and

(2) N.J.S. 3B:12-66.2.

COMMENT

This section continues the substance of section 503 of the Uniform Act and the Legislative Note which recommends that upon enactment, the state should (1) repeal existing provisions on subject matter jurisdiction for adult guardianship and protective proceedings and any existing provisions authorizing transfer of a guardianship or conservatorship proceeding to another state or authorizing a guardian or conservator to act in another state, and (2) if existing provisions address proceedings for both minors and adults, amend such provisions to limit their application to minors.

3B:12B-23. Transitional provision

a. This act applies to guardianship and protective proceedings begun on or after [the effective date].

b. Sections 3B:12B-1, 3B:12B-2, 3B:12B-3, 3B:12B-5, 3B:12B-6, 3B:12B-7, 3B:12B-20 and 3B:12B-21 (general provisions) of this act; sections 3B:12B-16 and 3B:12-17 (transfer provisions) of this act; and sections 3B:12B-18 and 3B:12B-19 (registration provisions) of this act, apply to proceedings begun before [the effective date], regardless of whether a guardianship or protective order has been issued.

COMMENT

This section continues the substance of section 504 of the Uniform Act. As noted in the Comment to the Uniform Act, the act applies retroactively to guardianships in existence on the effective date. The guardian or conservator appointed prior to the effective date of the act may petition to transfer the proceeding to another state (and in the case of out-of-state conservators, the conservator appointed prior to the effective date of the act may petition to transfer the proceeding to this State) and register and enforce the order in other states in accordance with sections 3B:12B-16 through 3B:12B-19. The jurisdictional provisions of the act (sections 3B:12B- 4; and 3B:12B-8 through 3B:12B-15) also apply to proceedings begun on or after the effective date but the act does not change the jurisdictional rules midstream for petitions filed prior to the effective date for which an appointment has not been made or order issued as of the effective date. Jurisdiction in such cases is governed by prior law. Nor does the act affect the validity of already existing appointments even though the court might not have had jurisdiction had this act been in effect at the time the appointment was made.

3B:12B-24. Effective date

This act takes effect on [fill in date].

COMMENT

This section continues the substance of section 505 of the Uniform Act.