

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII

LORETTA FUDDY, ACSW, MPH  
DIRECTOR OF HEALTH



# LATE Testimony

WESLEY LUM, PhD, MPH  
DIRECTOR

Telephone  
(808) 586-0100

Fax  
(808) 586-0185

STATE OF HAWAII  
EXECUTIVE OFFICE ON AGING  
NO. 1 CAPITOL DISTRICT  
250 SOUTH HOTEL STREET, SUITE 406  
HONOLULU, HAWAII 96813-2831

## Committee on Human Services

### HB2193, RELATING TO ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION

Testimony of Wes Lum  
Director, Executive Office on Aging  
Attached Agency to Department of Health

Thursday, February 2, 2012; Conference Room 329

8:30 a.m.

1 **EOA's Position:** The Executive Office on Aging (EOA) supports this measure.

2 **Purpose and Justification:** This measure addresses the challenges Hawaii has encountered in  
3 dealing with interstate guardianship issues since the enactment of the Uniform Adult Guardianship  
4 and Protective Proceedings Jurisdiction Act (UAGPPJA). The measure has received the support  
5 of the Alzheimer's Association, the National Academy of Elder Law Attorneys, and the American  
6 Bar Association's Commission on Law and Aging.

7 In this age of long distance caregiving, the challenges of legal jurisdiction and the  
8 provision of care are a common place. This measure will address the determination of which state  
9 has jurisdiction to appoint a guardian, transfer guardianship from one state to another, and  
10 recognize guardianship orders from another state. The enactment of the UAGPPJA will address  
11 the financial and emotional impact that caregivers face when dealing with interstate guardianship  
12 situations. Thank you for the opportunity to testify.

**TESTIMONY OF THE  
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

**ON HB 2193 (2012)**

**RELATING TO THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE  
PROCEEDINGS JURISDICTION ACT**

**BEFORE THE HOUSE COMMITTEE ON HUMAN SERVICES**

**DATE:** Thursday, February 2, 2012 at 8:30 a.m.  
Conference Room 329, State Capitol

**PERSON(S) TESTIFYING:** KEVIN P.H. SUMIDA, Commissioner  
Commission to Promote Uniform Legislation

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Chairperson Mizuno and Members of the Committee:

I am testifying on behalf of the Commission to Promote Uniform Legislation, which supports passage of the Uniform Adult Guardianship And Protective Proceedings Jurisdiction Act ("UAGPPJA").

The Act deals primarily with jurisdictional, transfer and enforcement issues relating to adult guardianships and protective proceedings. There are a number of reasons why states should adopt this Act, including that the UAGPPJA:

- Provides procedures to resolve interstate jurisdiction controversies;
- Facilitates transfers of guardianship cases among jurisdictions;
- Provides for recognition and enforcement of a guardianship or protective proceeding orders; and
- Facilitates communication and cooperation between courts of different jurisdictions.

The UAGPPJA will provide uniformity and reduce conflicts among the states. Further information is contained in the UAGPPJA Summary that is attached. To date, approximately thirty jurisdictions including the District of Columbia have adopted the UAGPPJA, and four others, including Hawaii, are considering its adoption this year. It is supported by the Council of State Governments an "Suggested State Legislation," Alzheimer's Association, Conference of Chief Justices, National Academy of Elder Law Attorneys, National College of Probate Judges, and National Guardianship Foundation. In light of present budgetary concerns, the Commission is not opposed to delaying the effective date of the act to give affected agencies sufficient time to properly implement the salutary purposes of this important legislation.

Thank you for the opportunity to testify on this bill.

## **Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act**

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

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

### **The Problem of Multiple Jurisdiction**

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

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

### **The Problem of Transfer**

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

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

The Full Faith and Credit Clause of the U.S. Constitution requires that court orders in one state be honored in another state. But there are exceptions to the full faith and credit doctrine, of which guardianship and protective proceedings law is one. Sometimes, guardianship or protective

proceedings must be initiated in a second state because of the refusal of financial institutions, care facilities, and the courts to recognize a guardianship or protective order issued in another state.

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

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

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

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

### **Key Definitions and Terminology (Section 102)**

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

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

States differ on terminology for the person appointed by the court to handle the personal and

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

## **Jurisdiction (Article 2)**

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

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

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

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

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

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

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

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

#### **Conclusion**

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

# LATE Testimony

To: COMMITTEE ON HUMAN SERVICES  
Rep. John M. Mizuno, Chair  
Rep. Jo Jordan, Vice Chair

From: Elizabeth Stevenson, Executive Director  
Alzheimer's Association, Aloha Chapter

Hearing: February 2, 2012 – 8:30 a.m., Conference Room 329

Subject: SUPPORT OF HB 2193, RELATING TO ADULT GUARDIANSHIP AND  
PROTECTIVE PROCEEDINGS JURISDICTION  
Adopts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction  
Act.

Our national organization and our State Chapter support HB 2193, which will establish a uniform set of rules for determining jurisdiction, and thus, simplify the process for determining jurisdiction between multiple states in adult guardianship cases. It also establishes a framework that allows state court judges in different states to communicate with each other about adult guardianship cases.

Due to the impact of dementia 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 guardian. Jurisdiction in adult guardianship cases often becomes complicated because multiple states, each with its own adult guardianship system, may have an interest in the case. Consequently, it may be unclear which state court has jurisdiction to decide the guardianship issue.

The experience of real people illustrates that adult guardianship issues can frequently intersect with the needs of people with Alzheimer's disease and their families. Approximately ten percent of the caregivers of people with Alzheimer's are classified as long distance caregivers. When this distance involves crossing state lines, the current system with its disorganized array of state adult guardianship laws and the lack of communication between states complicates an already stressful situation. Many families in Hawaii are caregivers to family members who live outside the state, and conversely, many families in other states are caregivers to family members here in Hawaii.

As the Alzheimer's Association works towards increasing awareness of the need for advanced planning, advocating for a more workable adult guardianship system is important. The current systems are barriers to addressing end of life issues, in part, due to the disorganized array of state adult guardianship laws and the lack of communication between states. Simplifying one aspect of the adult guardianship system by enacting HB 2193, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) may encourage more states to dedicate increased resources to meaningful end of life systems change.

Please make one aspect of care giving easier for the 31,000 families in Hawaii struggling with Alzheimer's and dementia, by supporting the enactment of UAGPPJA.

Thank you for this opportunity to testify.



# LATE Testimony

Testimony for HUS 2/2/2012 8:30:00 AM HB2193

Conference room: 329  
Testifier position: Support  
Testifier will be present: Yes  
Submitted by: Scott Wall  
Organization: Individual  
E-mail: [robertscottwall@yahoo.com](mailto:robertscottwall@yahoo.com)  
Submitted on: 2/2/2012

Comments: