



**NEW YORK  
CITY BAR**

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**REPORT ON LEGISLATION BY THE  
LEGAL PROBLEMS OF THE AGING COMMITTEE**

**A.857  
S.2534**

**M. of A. Weinstein  
Sen. Hannon**

AN ACT to amend the mental hygiene law and the surrogate's court procedure act, in relation to establishing the uniform guardianship and protective proceedings jurisdiction act

**THIS BILL IS APPROVED**

The Committee on the Legal Problems of the Aging of the New York City Bar Association wishes to express the Committee's support for the passage of the Uniform Guardianship and Protection Proceedings Jurisdiction Act, A.857/S.2534 ("the Act"). The Act will amend the mental hygiene law and the surrogate's court procedure act to establish uniform procedure for guardianship and protective proceedings, which will ease the coordination with other states' courts and provide simpler procedures for those in need of guardianship who may also need to relocate to other jurisdictions.

This proposed bill does not change NY State's substantive rules regarding guardianship and will accomplish the following beneficial goals:

- (1) To identify one singular state court to adjudicate first time guardianship petitions;
- (2) To establish a system of transferring existing guardianship appointments from one state to another; and
- (3) To establish a system of recognizing and enforcing guardianship orders of one state in another.

The key concept of the Act is to preserve the ward's "home state"<sup>1</sup> jurisdiction over that person for guardianship purposes regardless of where that person is physically located. Thus, the Act, when enacted, essentially requires states to cede jurisdiction in guardianship cases to the proposed ward's home state and cooperate with the home state with regard to the collection of evidence. There would be limited circumstances where guardianship orders can be entered by a state which is not the home state. The Act would also provide procedures for the transfer of guardianship between states and for the "registration" of guardianship orders from one state to

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<sup>1</sup> In general, the "home state" is the one in which the individual resides or holds property.

the other.<sup>2</sup> Guardianship orders would be registered in the same way that judgments of other states are registered and then become enforceable without further proceedings.

The Committee believes that this legislation addresses the complex issues that can arise in our increasingly mobile society. It can help to eliminate expensive litigation in multiple states and reduce incidents of elder abuse (sometimes referred to as “granny-snatching”). Attached is the memo of support written by the NYSBA’s Elder Law Section which our committee strongly endorses. It explains the legislation’s benefit in more detail. Our committee wishes to join in their efforts to have this legislation passed. The Act would effectively address the issue of jurisdiction in adult guardianships and other protective proceedings, by providing a mechanism for resolving multi-state jurisdictional disputes.

Based on the foregoing, the Committee on the Legal Problems of the Aging of the New York City Bar Association **SUPPORTS** the enactment of the Act, which was developed by the NY State Bar Association’s Elder Law Section.

Respectfully Submitted,

Judith D. Grimaldi  
Chair of Legal Problems of the Aging Committee

March 2013

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<sup>2</sup> The Committee notes that the transfer of any health information under the Uniform Guardianship and Protective Proceedings Jurisdiction Act would be subject to the federal Health Insurance Portability and Accountability Act of 1996.

## Memorandum in Support

NYSBA #1

February 7, 2013

S. 2534  
A. 857

By: Senator Hannon  
By: M of A Weinstein  
Senate Committee: Mental Health  
Assembly Committee: Judiciary

**AN ACT** to amend the mental hygiene law and the surrogate's court procedure act, in relation to establishing the uniform guardianship and protective proceedings jurisdiction act.

**THE NEW YORK STATE BAR ASSOCIATION SUPPORTS  
THE UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS  
JURISDICTION ACT (UAGPPJA OR THE ACT).**

### **UAGPPJA OBJECTIVES AND KEY CONCEPTS**

There are more than 50 guardianship systems in the United States. The UAGPPJA does not change a state's substantive rules regarding guardianship. The objectives of the Act are as follows:

- (1) To identify one singular state court to adjudicate first time guardianship petitions;
- (2) To establish a system of transferring existing guardianship appointments from one state to another; and
- (3) To establish a system of recognizing and enforcing guardianship orders of one state in another.

The key concept of the Act is that the "home state" of a person should have jurisdiction over that person for guardianship purposes regardless of where that person is physically located. Thus, the Act, when enacted, would require states to cede jurisdiction in guardianship cases to the proposed ward's home state and cooperate with the home state with regard to the collection of evidence. There would be limited circumstances where guardianship orders can be entered by a state which is not the home state. The Act would also provide procedures for the transfer of guardianship between states and for the "registration" of guardianship orders from one state to the other. Guardianship orders would be registered in the same way that judgments of other states are registered and then become enforceable without further proceedings.

## **BACKGROUND**

The UAGPPJA provides a set of uniform rules that address jurisdiction and related issues in adult guardianship cases where multiple states are involved. The Act has widespread support from organizations such as the National Academy of Elder Law Attorneys, the National Guardianship Foundation, the Alzheimer's Association, the Conference of Chief Justices and Conference of State Court Administrators, the Council of State Governments, and the American Bar Association. Its impact will be most effective if all states enact these rules or some variation of them. Currently, 32 states and the District of Columbia have enacted the UAGPPJA, which rose from just five states in 2008. For 2012, in addition to New York, the Act has been introduced in seven more jurisdictions, i.e., Massachusetts, Ohio, Hawaii, Mississippi, New Jersey, Pennsylvania, and Puerto Rico.

With an increasingly mobile society, multi-state guardianship issues are not uncommon. These issues arise among snowbirds who may be residents of New York but spend their winters in Florida, caregivers who may be moving sick family members in or out of New York, individuals who may be utilizing out of state health care providers, individuals who may wander in or out of New York, and elderly persons who are victims of granny-snatching into or outside of New York.

As in most states, New York has jurisdiction to appoint a guardian of an individual who is a resident of New York or who simply is physically present in the state. Extensive and costly litigation over jurisdiction may result where the domicile of the alleged incapacitated person (AIP) is difficult to determine. In addition, jurisdiction based merely on the physical presence of an AIP in New York encourages the occurrence of granny-snatching.

Currently, in cases where a guardianship or conservatorship has been established outside of New York and an incapacitated person is to move to New York, transferring such existing guardianship or conservatorship is not available. Like many states, New York would require that a new petition for guardianship be commenced in New York. This results in added costs and delays because a redetermination has to be made as to the individual's capacity and whether the guardian to be appointed is appropriate. This also discourages caregivers from moving an incapacitated individual to a better living arrangement, such as a locale that is closer to a caregiver. Moreover, the process takes time and attention away from the caregiver's primary task of caring for the incapacitated person.

## **BENEFITS OF ENACTING THE UAGPPJA**

The enactment of the UAGPPJA would result in substantial benefits to New York State and the parties in a guardianship matter involving multiple states. The uniform rules create an expeditious and predictable process by which incapacitated persons and their caregivers may seek either initial guardianship appointment, transfer of existing guardianship, or recognition of out of state orders in New York. The UAGPPJA would

save money for New York State by conserving judicial resources, and would minimize the cost to the incapacitated person. Furthermore, the rules under the UAGPPJA also help to reduce incidences of elder abuse.

In “Nine Ways to Reduce Elder Abuse Through Enactment of The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act,” Lori A. Stiegel and Erica F. Wood, described how the UAGPPJA reduces elder abuse including the following:

- (1) Reducing the incidents of granny snatching by eliminating the mere physical presence of an incapacitated individual as a basis of jurisdiction;
- (2) Enabling a court to decline to exercise jurisdiction where jurisdiction exists because of an unjustifiable conduct such as granny-snatching;
- (3) Requiring a court to consider elder abuse when making a determination of the issue of an appropriate forum;
- (4) Requiring a court to consider its own ability to monitor the conduct of the guardian when making a determination of the issue of an appropriate forum; and
- (5) Establishing transfer procedures that could remove individuals from abusive circumstances.

It is anticipated the UAGPPJA will provide substantial savings to New York State. For example, in cases where a guardian has been appointed in another state and the incapacitated person is to be moved to New York, the UAGPPJA provides for a streamlined procedure for transferring that guardianship matter to New York. Without the UAGPPJA, a new guardianship action would have to be commenced from scratch in New York. In addition, New York State will derive considerable savings as the UAGPPJA sets forth a clear mechanism to determine what state will have initial jurisdiction of a guardianship proceeding. Many of these cases are contested and it often costs a great deal of money to have states battle over jurisdiction of these matters.

## **CONCLUSION**

The UAGPPJA would effectively address the issue of jurisdiction in adult guardianships and other protective proceedings, by providing a mechanism for resolving multi-state jurisdictional disputes.

Based on the foregoing, the New York State Bar Association **SUPPORTS** the enactment of the UAGPPJA.