

Memorandum 2013-9

**Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
(Discussion Draft)**

The Commission is in the process of preparing a tentative recommendation relating to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”), which will be broadly distributed for comment. To that end, attached is a “discussion draft” prepared by the staff, which implements the decisions that the Commission has made thus far.

Staff Notes (~~is~~ **Staff Note**) in the draft raise issues for the Commission and interested persons to consider. **Comments on these points, and on any other aspect of the attached draft, are much encouraged.**

The following communications are attached as Exhibits:

- | | <i>Exhibit p.</i> |
|--|-------------------|
| • Douglas Miller, Administrative Office of the Courts (2/1/13) | 1 |
| • Jennifer Wilkerson, State Bar Trusts & Estates Section (1/26/13) | 2 |

Mr. Miller’s communication is discussed in Staff Note #2 on proposed Probate Code Section 1982 (definitions); Ms. Wilkerson’s communication is discussed in the Staff Note on proposed Probate Code Section 1993 (jurisdiction).

In preparing the attached draft, the staff closely studied the draft that a working group of the State Bar Trusts and Estates Section (“TEXCOM”) submitted earlier in this study. See Memorandum 2012-36, Exhibit pp. 24-41 (hereafter, “the TEXCOM subgroup draft”). We found that draft very helpful and would like to express our appreciation to the TEXCOM working group for providing it.

The staff is still in the process of preparing conforming revisions for the legislation in the attached draft. Some key conforming revisions are included, but further work is necessary to identify all of the existing provisions that will require revision to reflect the enactment of UAGPPJA in California. The staff will

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.

present a full draft of the conforming revisions later in this study, together with a letter that Jennifer Wilkerson of TEXCOM submitted regarding conforming revisions.

In addition, the staff is still planning to present (1) information on adjustments that other jurisdictions have made to UAGPPJA (including information on this point from the TEXCOM working group), and (2) some further information on conservatorship practices used in other jurisdictions (particularly information gathered by Louis Wai, who worked as a law clerk for the Commission during the summer of 2011).

At the upcoming meeting, the staff plans to proceed through the draft and seek guidance from the Commission on each issue raised in the Staff Notes, as well as any other issues that are brought to the Commission's attention, either at or before the meeting. Upon completing this process, we should be ready to prepare a draft of a tentative recommendation, which will incorporate any revisions the Commission directs the staff to make, as well as a narrative discussion of the proposed legislation. We continue to expect that the Commission will complete its study of UAGPPJA in time to seek introduction of legislation in 2014.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

**EMAIL FROM DOUGLAS MILLER, ADMINISTRATIVE OFFICE OF THE
COURTS (1/31/13)**

Re: UAGPPJA — Tribes as States

Dear Ms. Gaal,

Kristin Burford's Memorandum 2013-8, UAG&PPJA's definition of "State" has thrown some of us here at the AOC into a tizzy.

The memo points out that section 102(14) of the Act defines a "State" to include federally recognized Indian tribes. Ms. Burford's analysis concerns only due process constitutional constraints applicable to conservatorships and similar arrangements.

But a more fundamental question is: Does this mean that the law would require a state court to treat tribal courts, both those located within its territory and those without, as sister states for all purposes under the Act? If so, does that mean that tribes, like states, must "adopt" the Act, and it would apply only to those that do?

I note that the UCCJEA, after which this uniform law is modeled, in California located at Family Code section 3400 et seq., separately defines "States" and "Tribes," and then has specific provisions concerning tribal courts that do not globally apply to state courts. See, e.g., Fam. Code secs. 3402(o) and (p) and 3404(b).

Does the Commission have a view as to what treatment of tribes as states would have in the operation of this law? If not, are there plans to study this issue in more depth?

We would also like to know what is the Commission's intended schedule for making its final recommendations to the Legislature on this uniform law.

Any help you could provide on these questions would be greatly appreciated.

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**EMAIL FROM JENNIFER WILKERSON, TEXCOM
(1/26/13)**

Re: UAGPPJA concern raised by TEXCOM member re action by Court

Dear Barbara and Brian,

One of our TEXCOM members, Jayne Lee, is the probate attorney for Alameda County Court. She asked that we review the provisions in UAGPPJA (Section 203 (2)(A) and (3)) for how a Court would communicate an intention “to decline to exercise jurisdiction” when there is no pending proceeding. Her Court’s Judges are concerned about the procedure for this communication and whether language could be included to avoid the need to file a proceeding in each possible jurisdiction.

One thought would be include a provision for notice (perhaps as an expanded provision in section 208) to the court in all significant connection states with a time by which an intention to exercise jurisdiction must be asserted by the court. Upon expiration of the time period, then the Court which is hearing the petition would be able to proceed based on the “decline” by all other courts to exercise jurisdiction.

I will be interested in your thoughts and further discussion of this interesting procedural point.

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PROPOSED LEGISLATION

Introductory Note. 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.” If the conservatee requires assistance with personal care, the proceeding is known as a “conservatorship of the person.” If the conservatee requires assistance with financial matters, the proceeding is known as a “conservatorship of the estate.” The term “guardianship” is reserved for a proceeding relating to a minor.

In the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”), the Uniform Law Commission (“ULC”) uses the terms “conservatorship,” “guardianship,” and similar terms very differently than in California. For example, UAGPPJA Section 102(3) defines “guardian” as “a person appointed by the court to make decisions regarding the person of an adult.” In California, by contrast, a court would not appoint a “guardian” for an adult.

To prevent confusion, the staff has used California terminology throughout the proposed legislation and commentary shown below. Significant deviations from the text of UAGPPJA, made for this reason or for other purposes, are shown in ~~strikeout~~ and underscore. Insignificant deviations from the text of UAGPPJA (e.g., relabeling of paragraphs to conform to California’s drafting practices) are not indicated, because that would clutter up the document and distract attention from the more significant deviations.

All revisions of the ULC commentary (i.e., the commentary labeled “Background from Uniform Act”) are shown in ~~strikeout~~ and underscore, regardless of significance. There are not as many such revisions as in the statutory text, because it is not necessary to conform to California drafting style. Showing all of the revisions, as opposed to only some of them, will help the staff when we convert this draft into a tentative recommendation.

The use of ~~strikeout~~ and underscore is intended to facilitate review of this draft. In a tentative recommendation, the revisions of the statutory text would not be indicated (only the proposed California text would be shown), and the revisions of the ULC commentary would be indicated through the use of brackets and ellipses.

1 **Prob. Code §§ 1980-2115 (added). Interstate Jurisdiction, Transfer, and Recognition:**
2 **California Version of UAGPPJA**

3 SEC. ____ Chapter 8 (commencing with Section 1980) is added to Part 3 of
4 Division 4 of the Probate Code, to read:

5 CHAPTER 8. INTERSTATE JURISDICTION, TRANSFER, AND
6 RECOGNITION: CALIFORNIA VERSION OF UAGPPJA

7 **Comment.** The Uniform Law Commission approved the Uniform Adult Guardianship and
8 Protective Proceedings Jurisdiction Act (“UAGPPJA”) in 2007. This chapter contains the
9 California version of that Act. Many provisions in this chapter are the same as or are drawn from
10 UAGPPJA. In Comments to sections in this chapter, a reference to the “uniform act” or
11 “UAGPPJA” means the official text of the uniform act approved by the Uniform Law
12 Commission. Variations from the official text of the uniform act are noted in the Comments to
13 sections in this chapter.

14 Article 1. General Provisions

15 **Background from Uniform Act**

16 Article 1 contains definitions and general provisions used throughout the Act. Definitions
17 applicable only to Article 2 are found in Section ~~201~~ 1991. Section ~~401~~ 1980 is the title, Section
18 ~~402~~ 1982 contains the definitions, and Sections ~~403-406~~ 1983-1986 the general provisions.
19 Section ~~403~~ 1983 provides that a court of an enacting state may treat a foreign country as a state
20 for the purpose of applying all portions of the Act other than Article 4. Section ~~404~~ 1984
21 addresses communication between courts, Section ~~405~~ 1985 requests by a court to a court in
22 another state for assistance, and Section ~~406~~ 1986 the taking of testimony in other states. These
23 Article 1 provisions relating to court communication and assistance are essential tools to assure
24 the effectiveness of the provisions of Article 2 determining jurisdiction and in facilitating transfer
25 of a proceeding to another state as authorized in Article 3.

26 **§ 1980. Short title**

27 1980. This chapter may be cited as the ~~Uniform Adult Guardianship and~~
28 ~~Protective Proceedings Jurisdiction Act.~~ “California version of UAGPPJA” or
29 “California UAGPPJA.”

30 **Comment.** Section 1980 is similar to Section 101 of the Uniform Adult Guardianship and
31 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). The section provides a shorthand
32 means of referring to the content of this chapter.

33 The short titles chosen for use in California incorporate the acronym “UAGPPJA” but not the
34 full name of the uniform act (“Uniform Adult Guardianship and Protective Proceedings
35 Jurisdiction Act”). Due to differences between the terminology used in California and the
36 terminology used by the Uniform Law Commission, that name could cause confusion within this
37 state. Use of the acronym should suffice to enable people to readily determine that this chapter
38 constitutes California’s version of the uniform act.

39 **Background from Uniform Act**

40 ~~The title to the Act succinctly describes the Act’s scope.~~ The Act applies only to court
41 jurisdiction and related topics for adults for whom the appointment of a ~~guardian or conservator~~
42 ~~or other protective order~~ is being sought or has been issued.

43 The drafting committee elected to limit the Act to adults for two reasons. First, jurisdictional
44 issues concerning guardians for minors are subsumed by the Uniform Child Custody Jurisdiction

1 and Enforcement Act (1997). Second, while the UCCJEA does not address ~~conservatorship and~~
2 ~~other~~ issues involving the property of minors, all of the problems and concerns that led the
3 Uniform Law Commission to appoint a drafting committee involved adults.

4 **Staff Note.** Earlier in this study, the Executive Committee of the State Bar Trusts and Estates
5 Section (“TEXCOM”) submitted a discussion draft prepared by its working group on UAGPPJA.
6 See Memorandum 2012-36, Exhibit pp. 24-41 (hereafter, “the TEXCOM subgroup draft”). In that
7 discussion draft, the TEXCOM subgroup suggested the short title “California Conservatorship
8 Jurisdiction Act.” See *id.* at Exhibit p. 25.

9 The short title suggested by the TEXCOM subgroup is less cumbersome than the ones
10 proposed above (“California version of UAGPPJA” and “California UAGPPJA”). Nonetheless,
11 the staff would prefer to use a short title that includes the acronym “UAGPPJA.” We think it is
12 important for people to be able to readily determine that this chapter constitutes California’s
13 version of the uniform act. **Which short title would the Commission like to use?**

14 **§ 1981. Scope of chapter**

15 1981. (a) This chapter does not apply to either of the following:

- 16 (1) An adult with a developmental disability.
17 (2) A minor, regardless of whether the minor is or was married.

18 (b) This chapter does not apply to any proceeding in which a person is appointed
19 to provide personal care or property administration for a minor or an adult with a
20 developmental disability, including, but not limited to, the following types of
21 proceedings:

22 (1) A proceeding under Article 7.5 (commencing with Section 416) of Chapter 2
23 of Part 1 of Division 1 of the Health and Safety Code.

24 (2) A guardianship under Part 2 (commencing with Section 1500) of this code.

25 (3) A limited conservatorship under subdivision (d) of Section 1801.

26 (4) A proceeding under Section 4825 of the Welfare and Institutions Code.

27 (5) A proceeding under Article 2 (commencing with Section 6500) of Chapter 2
28 of Part 2 of Division 6 of the Welfare and Institutions Code.

29 (c) This chapter does not apply to any proceeding in which a person is
30 involuntarily committed to a mental health facility or subjected to other
31 involuntary mental health care, including, but not limited to, any of the following
32 proceedings or any proceeding that is equivalent in substance:

33 (1) A proceeding under Sections 1026 to 1027, inclusive, of the Penal Code.

34 (2) A proceeding under Chapter 6 (commencing with Section 1367) of Title 10
35 of Part 2 of the Penal Code.

36 (3) A proceeding under Article 4 (commencing with Section 2960) of Chapter 7
37 of Title 1 of Part 3 of the Penal Code.

38 (4) A proceeding under Article 6 (commencing with Section 1800) of Chapter 1
39 of Division 2.5 of the Welfare and Institutions Code.

40 (5) A proceeding under Article 2 (commencing with Section 3050) of Chapter 1
41 of Division 3 of the Welfare and Institutions Code.

42 (6) A proceeding under Article 3 (commencing with Section 3100) of Chapter 1
43 of Division 3 of the Welfare and Institutions Code.

1 (7) A proceeding under Part 1 (commencing with Section 5000) of Division 5 of
2 the Welfare and Institutions Code, which is also known as the Lanterman-Petris-
3 Short Act.

4 (8) A proceeding under Article 2 (commencing with Section 6500) of Chapter 2
5 of Part 2 of Division 6 of the Welfare and Institutions Code.

6 (9) A proceeding under Article 4 (commencing with Section 6600) of Chapter 2
7 of Part 2 of Division 6 of the Welfare and Institutions Code.

8 **Comment.** Section 1981 restricts the scope of this chapter.

9 Paragraph (1) of subdivision (a) makes clear that this chapter does not apply to an adult with a
10 developmental disability. Under California law, such an adult is entitled to be evaluated by a
11 regional center and to receive a broad range of services pursuant to an individualized plan. See
12 *Welf. & Inst. Code* § 4646; see also *Sanchez v. Johnson*, 416 F.3d 1051, 1064-68 (9th Cir. 2001).
13 The intent is to “enable persons with developmental disabilities to approximate the pattern of
14 everyday living available to people without disabilities of the same age.” *Welf. & Inst. Code* §
15 4501; see also *Welf. & Inst. Code* §§ 4500-4868 (“Services for the Developmentally Disabled”).
16 To further that intent, California provides a variety of conservatorship possibilities for an adult
17 with a developmental disability, including the option of a limited conservatorship in which the
18 adult “retain[s] all legal and civil rights except those which by court order have been designated
19 as legal disabilities and have been specifically granted to the limited conservator.” Section
20 1801(d); *cf.* Section 1801(a)-(c) (regular Probate Code conservatorship); *Health & Safety Code*
21 §§ 416-416.23 (Director of Developmental Services as conservator for developmentally disabled
22 person); *Welf. & Inst. Code* §§ 6500-6513 (judicial commitment of person with developmental
23 disability who is dangerous to others or to self). With regard to action taken under the jurisdiction
24 of this state, the exemption provided by this paragraph serves to ensure that each adult with a
25 developmental disability receives the benefit of California’s procedures for such adults, and full
26 recognition of the rights to which the adult is entitled under California law.

27 Paragraph (2) of subdivision (a) makes explicit that this chapter does not apply to a minor,
28 even if the minor is married or has had a marriage dissolved. That limitation is consistent with the
29 scope of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007)
30 (“UAGPPJA”). See UAGPPJA § 102(1) (defining “adult” as “an individual who has attained [18]
31 years of age”). The uniform act does, however, recognize that some states may wish to modify
32 that scope because their conservatorship law encompasses certain minors. See UAGPPJA § 102
33 Comment. Under California law, a minor who is or was married is treated as an adult for some
34 but not all purposes. See, e.g., Sections 1515 & Comment (guardian of estate may be appointed
35 for minor who is married or has had marriage dissolved, but not guardian of person), 1800.3 &
36 Comment (conservator of person may be appointed for minor who is married or has had marriage
37 dissolved, but not conservator of estate), 1860 & Comment (dissolution of minor’s marriage does
38 not terminate conservatorship of person established for that minor). Different treatment of such
39 minors may apply in other states. To prevent confusion and avoid complications that might arise
40 due to differential treatment of such minors across state lines, they are expressly excluded from
41 the scope of this chapter and the chapter is strictly limited to adults. For definitions consistent
42 with this limitation, see Section 1982 (defining “adult,” “conservatee,” & other terms).

43 Consistent with subdivision (a)’s treatment of an adult with a developmental disability,
44 subdivision (b) expressly states that this chapter is inapplicable to several types of proceedings
45 specifically designed for such an adult: a limited conservatorship (Section 1801), a proceeding in
46 which the Director of Developmental Services serves as conservator for a person with a
47 developmental disability (*Health & Safety Code* §§ 416-416.23; see also *Welf. & Inst. Code* §
48 4825), and a judicial commitment of a person with developmental disability who is dangerous to
49 others or to self (*Welf. & Inst. Code* §§ 6500-6513). Subdivision (b) also makes explicit that this
50 chapter is inapplicable to any guardianship proceeding under this code, or any other proceeding
51 involving personal care or property administration for a minor.

1 Subdivision (c) makes clear that this chapter is inapplicable to any proceeding in which an
2 individual is involuntarily committed to a mental health facility or subjected to other involuntary
3 mental health care. This encompasses, but is not limited to, a conservatorship under the
4 Lanterman-Petris-Short Act (Welf. & Inst. Code §§ 5000-5550), a civil commitment of a person
5 found not guilty by reason of insanity (Penal Code §§ 1026-1027), a civil commitment of a
6 person found incompetent to stand trial (Penal Code §§ 1367-1376), a civil commitment of a
7 mentally disordered offender (Penal Code §§ 2960-2981), a civil commitment of a person who
8 would otherwise be discharged from the Youth Authority (Welf. & Inst. Code §§ 1800-1803), a
9 civil commitment of a narcotics addict (Welf. & Inst. Code §§ 3050-3555, 3100-3111), and a
10 civil commitment of a person with a developmental disability who is dangerous to others or to
11 self (Welf. & Inst. Code §§ 6500-6513).

12 Authority to involuntarily commit a person in California, or to subject a person to other
13 involuntary mental health treatment here, cannot be obtained merely by transferring an out-of-
14 state conservatorship pursuant to Article 3, or by registering an out-of-state conservatorship
15 pursuant to Article 4. To obtain such authority, it is necessary to follow the procedures provided
16 by California law.

17 **☞ Staff Notes.**

18 (1) Proposed paragraph (a)(1) is intended to implement the Commission’s decision that
19 California’s version of UAGPPJA should not apply to an adult with a developmental disability.
20 See Minutes (Dec. 2012), p. 5. The Commission made that decision while discussing
21 UAGPPJA’s transfer process (Article 3). It did not clearly specify whether the decision should
22 apply to UAGPPJA as a whole, or only to the transfer process.

23 Under proposed paragraph (a)(1), California’s version of UAGPPJA would be entirely
24 inapplicable to an adult with a developmental disability. That approach is consistent with the
25 reasoning discussed at the December meeting and stated in the Comment: Making UAGPPJA
26 inapplicable to an adult with a developmental disability would help to ensure that the adult
27 receives the full benefit of California’s procedures, policies, and programs for such adults.

28 That reasoning is forceful with regard to UAGPPJA’s transfer process, under which an out-of-
29 state conservatorship could be transferred into California, instead of having to be initiated from
30 scratch under California law. Because California’s version of UAGPPJA would not apply to an
31 adult with a developmental disability, an out-of-state proceeding involving such an adult could
32 not be transferred to California. Thus, existing law would continue to apply and moving the adult
33 to California would still require commencement of an appropriate California proceeding from
34 scratch, allowing full application of California’s rules relating to adults with developmental
35 disabilities.

36 The reasoning is less forceful with regard to UAGPPJA’s registration process (Article 4), under
37 which an out-of-state conservatorship could be registered in California and California courts and
38 other entities would be required to recognize the out-of-state conservator’s authority to make
39 decisions for the conservatee. The Commission has already decided to “limit the use of
40 registration when a conservatee establishes residence in California,” so that registration cannot
41 “be used as a means of avoiding transfer.” Minutes (Oct. 2012), p. 5. Consequently, we are
42 dealing with a situation in which the adult with a developmental disability is not a California
43 resident and probably will not be in a position to participate in California’s programs for such
44 adults.

45 Allowing registration of an out-of-state conservatorship of an adult with a developmental
46 disability would have several advantages:

- 47 • It would conserve resources. Through the registration process, the conservator could
48 take action on the conservatee’s behalf in California without having to incur the
49 expense and effort of initiating a California conservatorship from scratch. This would
50 not only benefit the conservator and conservatee, but would also reduce the burden on
51 California courts.

- 1 • It would further the principle of comity — the idea that California should show respect
2 and courtesy for the decisions of its sister states, and vice versa. By recognizing the
3 authority of an out-of-state conservator through the registration process, California
4 would show a measure of respect for the other state’s ability to make decisions
5 affecting citizens of that state.
- 6 • It would avoid the possibility of a double-bind, in which no one could take action in
7 California on behalf of an out-of-state conservatee with a developmental disability
8 because (1) the conservatee lacks authority to act pursuant to the law of the other state,
9 and (2) the conservator lacks authority to act in California due to unavailability of the
10 registration procedure and prohibitive costs of initiating a California conservatorship
11 proceeding.

12 On the other hand, allowing such registration may also have some disadvantages:

- 13 • It would necessarily entail recognizing the authority of the out-of-state conservator to
14 take action in California on the conservatee’s behalf. As a result, an adult with a
15 developmental disability might be deprived of an opportunity to handle a matter that
16 the adult would be considered capable of handling under California law.
- 17 • Because it would excuse the out-of-state conservator from commencing a California
18 conservatorship proceeding, it might mean that a non-resident conservatee with a
19 developmental disability fails to receive some type of benefit that might be available
20 to such a non-resident under California law.

21 **The Commission should consider both the advantages and the disadvantages discussed**
22 **above, and decide whether to stick with the blanket approach used in this draft, or extend**
23 **UAGPPJA’s registration process and perhaps also its jurisdictional rules or other aspects to**
24 **an adult with a developmental disability.**

25 (2) For purposes of simplicity, proposed paragraph (a)(2) would exclude all minors from
26 California’s version of UAGPPJA. As explained in the proposed Comment, California law treats
27 a minor who is or was married the same way as an adult for purposes of appointing a conservator
28 of the person, but not for purposes of appointing a conservator of the estate. That could create
29 problems in applying the UAGPPJA procedures, particularly with regard to transferring an out-
30 of-state proceeding involving both personal care and property management for a minor who is or
31 was married. Problems could also arise because other states might not treat such minors the same
32 way as California. Rather than attempting to tailor UAGPPJA to effectively address such minors,
33 the staff recommends leaving them subject to existing law. **Is that approach acceptable to the**
34 **Commission?**

35 (3) Subdivision (c), in combination with proposed Section 1982, is intended to implement the
36 Commission’s decision that California’s version of UAGPPJA should not apply to a Lanterman-
37 Petris-Short conservatorship or other type of involuntary commitment. See Minutes (Dec. 2012),
38 p. 5. As drafted, proposed subdivision (c) would exclude all proceedings involving involuntary
39 mental health treatment, not just proceedings that involve involuntary commitment to a mental
40 health facility. The Comment is similar. **Is this approach consistent with the Commission’s**
41 **intent?**

42 **§ 1982. Definitions**

43 1982. In this chapter:

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

45 (b) Except as otherwise provided in this section, “conservatee” means an adult
46 for whom a conservator of the estate, a conservator of the person, or a conservator
47 of the person and estate has been appointed. Notwithstanding Section 29,

1 “conservatee” does not include a limited conservatee or any other respondent in a
2 proceeding described in subdivision (b) or (c) of Section 1981.

3 (c) Except as otherwise provided in this section, “conservator” means a person
4 appointed by the court to serve as a conservator of the estate, a conservator of the
5 person, or a conservator of the person and estate. Notwithstanding Section 30,
6 “conservator” does not include a limited conservator or any other person
7 appointed in a proceeding described in subdivision (b) or (c) of Section 1981.

8 (b) (d) “Conservator of the estate” means a person appointed by the court to
9 administer the property of an adult, including a person appointed for that purpose
10 under subdivision (b) of Section 1801.

11 (e) (e) “Guardian” “Conservator of the person” means a person appointed by the
12 court to make decisions regarding the person of an adult, including a person
13 appointed for that purpose under subdivision (a) of Section 1801.

14 (f) “Conservator of the person and estate” means a person appointed by the court
15 to make decisions regarding the person of an adult and to administer the property
16 of that adult, including a person appointed for those purposes under subdivision
17 (c) of Section 1801.

18 (d) (g) “Guardianship “Conservatorship order” means an order appointing a
19 guardian conservator of the estate, a conservator of the person, or a conservator of
20 the person and estate in a conservatorship proceeding.

21 (e) (h) “Guardianship Except as otherwise provided in this section,
22 “conservatorship proceeding” means a judicial proceeding in which an order for
23 the appointment of a guardian conservator of the estate, a conservator of the
24 person, or a conservator of the person and estate is sought or has been issued.
25 Conservatorship proceeding does not include any proceeding described in
26 subdivision (b) or (c) of Section 1981.

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

29 (g) (i) “Party” means the respondent proposed conservatee, petitioner, guardian,
30 conservator, or any other person allowed by the court to participate in a
31 guardianship or protective conservatorship proceeding.

32 (h) (j) “Person,” except in the term incapacitated person or protected person,
33 “Person” means an individual, corporation, business trust, estate, trust,
34 partnership, limited liability company, association, joint venture, public
35 corporation, government or governmental subdivision, agency, or instrumentality,
36 or any other legal or commercial entity.

37 (k) “Proposed conservatee” means an adult for whom a conservatorship order is
38 sought.

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

41 (j) “Protective order” means an order appointing a conservator or other order
42 related to management of an adult’s property.

1 ~~(k) “Protective proceeding” means a judicial proceeding in which a protective~~
2 ~~order is sought or has been issued.~~

3 ~~(l) (L) “Record” means information that is inscribed on a tangible medium or that~~
4 ~~is stored in an electronic or other medium and is retrievable in perceivable form.~~

5 ~~(m) “Respondent” means an adult for whom a protective order or the~~
6 ~~appointment of a guardian is sought.~~

7 ~~(n) (m) Notwithstanding Section 74, “State” means a state of the United States,~~
8 ~~the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally~~
9 ~~recognized Indian tribe, or any territory or insular possession subject to the~~
10 ~~jurisdiction of the United States.~~

11 **Comment.** Section 1982 defines terms used in this chapter. To prevent confusion, the
12 definitions generally conform to usage elsewhere in this code and throughout this state, instead of
13 the conflicting usage employed by the Uniform Law Commission in the Uniform Adult
14 Guardianship and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”).

15 Subdivision (a) (defining “adult”) is the same as Section 102(1) of UAGPPJA. This chapter
16 only applies to a conservatorship for an adult. The chapter does not apply to a minor, even if the
17 minor is married or has had a marriage dissolved. See Section 1981(a)(2) & Comment (scope of
18 chapter).

19 Subdivision (b) (defining “conservatee”) is similar to Section 102(6) & (9) of UAGPPJA
20 (defining “incapacitated person” and “protected person”). For purposes of this chapter, the term
21 does not include a limited conservatee, because this chapter is inapplicable to an adult with a
22 developmental disability. See Section 1981(a)(1) & Comment (scope of chapter). Likewise, the
23 term does not include a respondent in a civil commitment proceeding or any other proceeding
24 described in subdivision (b) or (c) of Section 1981.

25 Subdivision (c) (defining “conservator”) is included for drafting convenience. For purposes of
26 this chapter, the term does not include a limited conservator, because this chapter is inapplicable
27 to an adult with a developmental disability. See Section 1981 (a)(1) & Comment (scope of
28 chapter). Likewise, the term does not include a person appointed in a civil commitment
29 proceeding (e.g., a Lanterman-Petris-Short conservator) or in any other proceeding described in
30 subdivision (b) or (c) of Section 1981.

31 Subdivision (d) (defining “conservator of the estate”) is similar to Section 102(2) of UAGPPJA
32 (defining “conservator”). See Section 1801(b) (standard for appointment of conservator of estate).
33 A “conservator of the estate” under this chapter must not only satisfy the definition in subdivision
34 (d), but must also be a “conservator” as defined in subdivision (c).

35 Subdivision (e) (defining “conservator of the person”) is similar to Section 102(3) of
36 UAGPPJA (defining “guardian”). See Section 1801(a) (standard for appointment of conservator
37 of person). A “conservator of the person” under this chapter must not only satisfy the definition in
38 subdivision (e), but must also be a “conservator” as defined in subdivision (c).

39 Subdivision (f) (defining “conservator of the person and estate”) is included for the sake of
40 completeness. See Section 1801(c) (standard for appointment of conservator of person and
41 estate). A “conservator of the person and estate” under this chapter must not only satisfy the
42 definition in subdivision (f), but must also be a “conservator” as defined in subdivision (c).

43 Subdivision (g) (defining “conservatorship order”) is similar to Section 102(4) & (10) of
44 UAGPPJA (defining “guardianship order” and “protective order”). A “conservatorship order”
45 under this chapter must be entered in a “conservatorship proceeding,” as defined in subdivision
46 (h).

47 Subdivision (h) (defining “conservatorship proceeding”) is similar to Section 102(5) & (11) of
48 UAGPPJA (defining “guardianship proceeding” and “protective proceeding”). The term does not
49 include a limited conservatorship, a Lanterman-Petris-Short conservatorship, or any other
50 proceeding described in subdivision (b) or (c) of Section 1981.

51 Subdivision (i) (defining “party”) is similar to Section 102(7) of UAGPPJA (defining “party”).

1 Subdivision (j) (defining “person”) is the similar to Section 102(8) of UAGPPJA (defining
2 “person”). See also Section 56 (“person”).

3 Subdivision (k) (defining “proposed conservatee”) is similar to Section 102(13) of UAGPPJA
4 (defining “respondent”).

5 Subdivision (l) (defining “record”) is the same as Section 102(12) of UAGPPJA.

6 Subdivision (m) (defining “State”) is the same as Section 102(14) of UAGPPJA, except that
7 the term “Virgin Islands is substituted for “United States Virgin Islands” because “Virgin
8 Islands” is the official name for the entity in question.

9 Background from Uniform Act

10 ~~The definition of “adult” (paragraph (1) would exclude an emancipated minor. The Act is not~~
11 ~~designed to supplant the local substantive law on guardianship. States whose guardianship law~~
12 ~~treats emancipated minors as adults may wish to modify this definition.~~

13 ~~Three of the other definitions are standard uniform law terms. These are the definitions of~~
14 ~~“person” (paragraph (8)), “record” (paragraph (12)), and “state” (paragraph (14)). Two are~~
15 ~~common procedural terms. The individual for whom a guardianship or protective order is sought~~
16 ~~is a “respondent” (paragraph (13)). A person who may participate in a guardianship or protective~~
17 ~~proceeding is referred to as a “party” (paragraph (7)).~~

18 ~~The remaining definitions refer to standard guardianship terminology used in a majority of~~
19 ~~states. A “guardian” (paragraph (3)) is appointed in a “guardianship order” (paragraph (4)) which~~
20 ~~is issued as part of a “guardianship proceeding” (paragraph (5)) and which authorizes the~~
21 ~~guardian to make decisions regarding the person of an “incapacitated person” (paragraph (6)). A~~
22 ~~“conservator” (paragraph (2)) is appointed pursuant to a “protective order” (paragraph 10)) which~~
23 ~~is issued as part of a “protective proceeding” (paragraph 11)) and which authorizes the~~
24 ~~conservator to manage the property of a “protected person” (paragraph (9)).~~

25 ~~In most states, a protective order may be issued without the appointment of a conservator. For~~
26 ~~example, under the Uniform Guardianship and Protective Proceedings Act, the court may~~
27 ~~authorize a so-called single transaction for the security, service, or care meeting the foreseeable~~
28 ~~needs of the protected person, including the payment, delivery, deposit, or retention of property;~~
29 ~~sale, mortgage, lease, or other transfer of property; purchase of an annuity; making a contract for~~
30 ~~life care, deposit contract, or contract for training and education; and the creation of or addition to~~
31 ~~a suitable trust. UGPPA (1997) § 412(1). It is for this reason that the Act contains frequent~~
32 ~~references to the broader category of protective orders. Where the Act is intended to apply only to~~
33 ~~conservatorships, such as in Article 3 dealing with transfers of proceedings to other states, the Act~~
34 ~~refers to conservatorship and not to the broader category of protective proceeding.~~

35 ~~The Act does not limit the types of conservatorships or guardianships to which the Act applies.~~
36 ~~The Act applies whether the conservatorship or guardianship is denominated as plenary, limited,~~
37 ~~temporary or emergency. The Act, however, would not ordinarily apply to a guardian ad litem,~~
38 ~~who is ordinarily appointed by the court to represent a person or conduct an investigation in a~~
39 ~~specified legal proceeding.~~

40 ~~Section 102 1982 is not the sole definitional section in the Act. Section 204 1991 contains~~
41 ~~definitions of important terms used only in Article 2. These are the definitions of “emergency”~~
42 ~~(Section 204(1); “home state” (Section 204(2) 1991(a)(1)); and “significant-connection state”~~
43 ~~(Section 204(3) 1991(a)(2)).~~

44 Staff Notes.

45 (1) Many of the definitions in UAGPPJA Section 102 are inconsistent with California usage.
46 See the “Introductory Note” above; see also Memorandum 2012-34, pp. 11-13, 32-33. To prevent
47 confusion, the staff has used California terminology throughout this draft, as we have done in a
48 number of recent staff memoranda and Commission meetings. **Is the Commission comfortable**
49 **with that approach, or would it like to handle the matter differently?**

50 (2) UAGPPJA Section 102(14) defines “State” to include “a state of the United States, the
51 District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian
52 tribe, or any territory or insular possession subject to the jurisdiction of the United States.” For

1 discussion of the non-state entities included in this definition, see Memorandum 2013-8. For an
2 inquiry regarding the Commission’s view on whether to treat a federally recognized Indian tribe
3 as a “State” under UAGPPJA, see Exhibit p. 1 (email from Douglas Miller of the Administrative
4 Office of the Courts (“AOC”).

5 After researching the due process protections provided by the non-state entities, the staff
6 recommends using the UAGPPJA definition of “State,” as Eric Fish of the ULC strongly urged at
7 the Commission’s December meeting. To the best of the staff’s knowledge, the many
8 jurisdictions that have adopted UAGPPJA have all followed this approach (we will doublecheck
9 this point later in this study, but we are fairly confident of it).

10 More importantly, all of the non-state entities included in the definition provide due process
11 protections, although there might be some variation as to the content of those protections. See
12 Memorandum 2013-8, pp. 6-18. At this point, it is at best unclear whether any harm would flow
13 from due process variations, whereas it is indisputable that some Californians and U.S. citizens
14 would be adversely affected if California does not make UAGPPJA’s streamlined procedures
15 (transfer and recognition) available with regard to the non-state entities mentioned in UAGPPJA
16 Section 102(14).

17 The staff has therefore used the UAGPPJA definition of “State” in proposed Section 1982(m)
18 (with a minor stylistic deviation discussed in item #3 below). **Is inclusion of the non-state
19 entities acceptable to the Commission?**

20 In considering this issue, the Commission should be aware of a question raised by Douglas
21 Miller of the AOC. He asks:

22 [W]ould [UAGPPJA] require a state to treat tribal courts, both those located within its
23 territory and those without, as sister states for all purposes under the Act? If so, does that
24 mean that tribes, like states, must “adopt” the Act, and it would apply only to those that do?

25 Exhibit p. 1.

26 The staff’s understanding of how UAGPPJA would work is as follows:

- 27 • The streamlined transfer process for moving a conservatorship from one jurisdiction to
28 another would only be available if *both* jurisdictions have adopted UAGPPJA. Otherwise,
29 moving a conservatorship would require reestablishing the conservatorship from scratch, as
30 under existing California law.
- 31 • If California adopted UAGPPJA, a conservatorship established in any other jurisdiction
32 defined as a “State” (including a federally recognized Indian tribe) could be registered in
33 California, regardless of whether the other jurisdiction has adopted UAGPPJA. But a
34 California conservatorship could only be registered in another jurisdiction if that
35 jurisdiction had adopted UAGPPJA.

36 In other words, a federally recognized Indian tribe would only have to adopt UAGPPJA if it
37 wanted to use the streamlined transfer process, permit registration of a conservatorship from
38 another jurisdiction, and take advantage of UAGPPJA’s framework for resolving jurisdictional
39 disputes. We will try to confirm this understanding with ULC representatives before the
40 upcoming meeting.

41 (3) UAGPPJA Section 102(14) defines “State” to include “the United States Virgin Islands.”
42 Similarly, Section 2(4) of the Uniform Interstate Depositions and Discovery Act (2007)
43 (“UIDDA”) defines “State” to include the “United States Virgin Islands.” At a meeting before the
44 ULC approved UIDDA, however, a representative of that group of islands urged the ULC to
45 replace “United States Virgin Islands” with “Virgin Islands” because “Virgin Islands” is the
46 official name of the entity in question. The ULC rejected the suggestion, but the Law Revision
47 Commission viewed the situation differently and used the term “Virgin Islands” in proposing
48 California’s version of UIDDA, which was enacted. See Memorandum 2007-35, pp. 3-4 &
49 Attachment p. 20; Minutes (Aug. 2007), pp. 4-5; Code Civ. Proc. § 2029.200(d). Some code
50 provisions also use the term “Virgin Islands” (see Civ. Code § 1183.5; Fin. Code §§ 175, 207,
51 1676, 1752, 1865, 16001, 16501; Harb. & Nav. § 651; Ins. Code § 1760.1; Unemp. Ins. Code §§

1 139, 142.5; Welf. & Inst. Code § 16172), but others use “United States Virgin Islands” or “U.S.
2 Virgin Islands” (see Corp. Code 15901.01(ag), 17701.02(y); Educ. Code § 49701; Fam. Code
3 3402(o), 4901, 6401, 2003; Gov’t Code §§ 10291, 63049; Health & Safety Code §
4 7150.10(a)(28); Com. Code §§ 1201(b)(38), 9102(a)(76); Welf. & Inst. Code § 1400). The
5 Commission does not appear to have been involved in drafting any of these other provisions.
6 **Which term would the Commission like to use for purposes of a tentative recommendation?**

7 (4) Due to terminological differences, much of the ULC’s Comment to UAGPPJA Section 102
8 would be potentially confusing if it was reproduced in the Commission’s recommendation.
9 Consequently, the staff suggests only reproducing the last paragraph of that Comment (see
10 “Background from Uniform Act”), while clearly indicating that other material has been omitted.
11 **Is that approach acceptable to the Commission?**

12 (5) One of the paragraphs the staff proposes to omit says:

13 In most states, a protective order may be issued without the appointment of a conservator.
14 For example, under the Uniform Guardianship and Protective Proceedings Act, the court may
15 authorize a so-called single transaction for the security, service, or care meeting the
16 foreseeable needs of the protected person, including the payment, delivery, deposit, or
17 retention of property; sale, mortgage, lease, or other transfer of property; purchase of an
18 annuity; making a contract for life care, deposit contract, or contract for training and
19 education; and the creation of or addition to a suitable trust. UGPPA (1997) § 412(1). It is for
20 this reason that the Act contains frequent references to the broader category of protective
21 orders. Where the Act is intended to apply only to conservatorships, such as in Article 3
22 dealing with transfers of proceedings to other states, the Act refers to conservatorship and not
23 to the broader category of protective proceeding.

24 Translated into California terminology, this paragraph indicates that (1) in some states, a
25 protective order relating to a person’s property may be issued under specified circumstances
26 without having to establish a conservatorship of the estate, (2) in general, UAGPPJA is meant to
27 apply to such protective orders, as well as orders issued in connection with a conservatorship of
28 the estate, but (3) UAGPPJA’s transfer procedure is not intended to apply to such protective
29 orders.

30 The staff does not know whether California law authorizes issuance of protective orders such
31 as the ones described by the ULC. We will research this point if the Commission so directs. **We**
32 **would appreciate input on the matter from knowledgeable sources, as well as input on**
33 **whether and to what extent California’s version of UAGPPJA should apply to such**
34 **situations if they exist.**

35 This discussion draft would not encompass any such protective orders; it is limited to the
36 conservatorship setting. The TEXCOM subgroup draft appears to follow the same approach. See
37 Memorandum 2012-36, Exhibit pp. 25-26. **Does the Commission wish to proceed with that**
38 **approach, or should the staff conduct further research on this point?**

39 **§ 1983. International application of chapter**

40 1983. A court of this state may treat a foreign county as if it were a state for the
41 purpose of applying this article and Articles 2, 3, and 5.

42 **Comment.** Section 1983 is the same as Section 103 of the Uniform Adult Guardianship and
43 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”).

44 **Background from Uniform Act**

45 This section addresses application of the Act to ~~guardianship and protective~~ conservatorship
46 orders issued in other countries. A foreign order is not enforceable pursuant to the registration
47 procedures of Article 4, but a court in this country may otherwise apply this Act to a foreign
48 proceeding if the foreign country were an American state. Consequently, a court may conclude

1 that the court in the foreign country has jurisdiction because it constitutes the ~~respondent's~~
 2 ~~proposed conservatee's~~ "home state" or "significant-connection state" and may therefore decline
 3 to exercise jurisdiction on the ground that the court of the foreign country has a higher priority
 4 under Section ~~203~~ 1993. Or the court may treat the foreign county as if it were a state of the
 5 United States for purposes of applying the transfer provisions of Article 3.

6 This section addresses similar issues to but differs in result from Section 105 of the Uniform
 7 Child Custody Jurisdiction and Enforcement Act (1997). Under the UCCJEA, the United States
 8 court must honor a custody order issued by the court of a foreign country if the order was issued
 9 under factual circumstances in substantial conformity with the jurisdictional standards of the
 10 UCCJEA. Only if the child custody law violates fundamental principles of human rights is
 11 enforcement excused. Because ~~guardianship~~ ~~conservatorship~~ regimes vary so greatly around the
 12 world, particularly in civil law countries, it was concluded that under this Act a more flexible
 13 approach was needed. Under this Act, a court may but is not required to recognize the foreign
 14 order.

15 The fact that a ~~guardianship or protective~~ ~~conservatorship~~ order of a foreign country cannot be
 16 enforced pursuant to the registration procedures of Article 4 does not preclude enforcement by the
 17 court under some other provision or rule of law.

18 § 1984. Communication between courts

19 1984. (a) A court of this state may communicate with a court in another state
 20 concerning a proceeding arising under this chapter. The court may allow the
 21 parties to participate in the communication. Except as otherwise provided in
 22 subdivision (b), the court shall make a record of the communication. The record
 23 may be limited to the fact that the communication occurred.

24 (b) Courts may communicate concerning schedules, calendars, court records,
 25 and other administrative matters without making a record.

26 **Comment.** Section 1984 is the same as Section 104 of the Uniform Adult Guardianship and
 27 Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA").

28 Although this section authorizes communication between courts, it does not create authorize ex
 29 parte communication between a party (or attorney for a party) and a court. For guidance on ex
 30 parte communication, see Section 1051 and Rule 7.10 of the California Rules of Court.

31 **Background from Uniform Act**

32 This section emphasizes the importance of communications among courts with an interest in a
 33 particular matter. Most commonly, this would include communication between courts of different
 34 states to resolve an issue of which court has jurisdiction to proceed under Article 2. It would also
 35 include communication between courts of different states to facilitate the transfer of a
 36 ~~guardianship or~~ conservatorship to a different state under Article 3. Communication can occur in
 37 a variety of ways, including by electronic means. This section does not prescribe the use of any
 38 particular means of communication.

39 The court may authorize the parties to participate in the communication. But the Act does not
 40 mandate participation or require that the court give the parties notice of any communication.
 41 Communication between courts is often difficult to schedule and participation by the parties may
 42 be impractical. Phone calls or electronic communications often have to be made after-hours or
 43 whenever the schedules of judges allow. When issuing a jurisdictional or transfer order, the court
 44 should set forth the extent to which a communication with another court may have been a factor
 45 in the decision.

46 ~~This section includes brackets around the language relating to whether a record must be made~~
 47 ~~of any communication with the court of the other state. As indicated by the Legislative Note to~~
 48 ~~this section, the language is bracketed because of a concern in some states that a legislative~~
 49 ~~enactment directing when a court must make a record in a judicial proceeding may violate the~~
 50 ~~doctrine on separation of powers. The language is not bracketed because the drafters concluded~~

1 ~~that the making of a record is not important. Rather, if concerns about separation of powers leads~~
2 ~~to the deletion of the bracketed language, the enacting state is encouraged to achieve the~~
3 ~~objectives of the bracketed language by promulgating a comparable provision by judicial rule.~~

4 This section does not prescribe the extent of the record that the court must make, leaving that
5 issue to the court. A record might include notes or transcripts of a court reporter who listened to a
6 conference call between the courts, an electronic recording of a telephone call, a memorandum
7 summarizing a conversation, and email communications. No record need be made of relatively
8 inconsequential matters such as scheduling, calendars, and court records.

9 Section 110 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) addresses
10 similar issues as this section but is more detailed. As is the case with several other provisions of
11 this Act, the drafters of this Act concluded that the more varied circumstances of adult
12 guardianship and protective proceedings suggested a greater need for flexibility.

13 **☞ Staff Notes.**

14 (1) In UAGPPJA Section 104, the language relating to preparation of a record (subsection (b)
15 and the last two sentences of subsection (a)) is bracketed. The ULC's Comment explains that this
16 is due to concern in some states that a legislative enactment directing when a court must make a
17 record in a judicial proceeding may violate the doctrine on separation of powers. The ULC says
18 such states may omit the bracketed language in their UAGPPJA legislation, but should include
19 comparable language in a court rule.

20 California does not appear to be a state in which this type of concern exists. See, e.g., Code
21 Civ. Proc. §§ 631.8, 632, 764.080, 1291; Fam. Code §§ 2127, 3022.3, 3654; Prob. Code § 1962.
22 Accordingly, the staff has included the ULC's bracketed language in proposed Section 1984.

23 **Does the Commission agree with that approach?**

24 (2) For discussion of another issue relating to this section, see the Staff Note on proposed
25 Section 1993.

26 **§ 1985. Cooperation between courts**

27 1985. (a) In a ~~guardianship or protective~~ conservatorship proceeding in this
28 state, a court of this state may request the appropriate court of another state to do
29 any of the following:

30 (1) Hold an evidentiary hearing.

31 (2) Order a person in that state to produce evidence or give testimony pursuant
32 to procedures of that state.

33 (3) Order that an evaluation or assessment be made of the ~~respondent~~ proposed
34 conservatee.

35 (4) Order any appropriate investigation of a person involved in a proceeding.

36 (5) Forward to the court of this state a certified copy of the transcript or other
37 record of a hearing under paragraph (1) or any other proceeding, any evidence
38 otherwise produced under paragraph (2), and any evaluation or assessment
39 prepared in compliance with an order under paragraph (3) or (4).

40 (6) Issue any order necessary to assure the appearance in the proceeding of a
41 person whose presence is necessary for the court to make a determination,
42 including the ~~respondent or the incapacitated or protected person~~ conservatee or
43 the proposed conservatee.

44 (7) Issue an order authorizing the release of medical, financial, criminal, or other
45 relevant information in that state, including protected health information as
46 defined in Section 160.103 of Title 45 of the Code of Federal Regulations.

1 (b) If a court of another state in which a ~~guardianship or protective~~
2 conservatorship proceeding is pending requests assistance of the kind provided in
3 subdivision (a), a court of this state has jurisdiction for the limited purpose of
4 granting the request or making reasonable efforts to comply with the request.

5 **Comment.** Section 1985 is similar to Section 105 of the Uniform Adult Guardianship and
6 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
7 conform to California terminology for the proceedings in question and reflect limitations on the
8 scope of this chapter. See Sections 1981 & Comment (scope of chapter), 1982 & Comment
9 (definitions).

10 **Background from Uniform Act**

11 ~~Subsection~~ Subdivision (a) of this section is similar to Section 112(a) of the Uniform Child
12 Custody Jurisdiction and Enforcement Act (1997), although modified to address issues of concern
13 in ~~adult guardianship and protective conservatorship~~ proceedings and with the addition of
14 ~~subsection~~ subdivision (a)(7), which addresses the release of health information protected under
15 HIPAA. ~~Subsection~~ Subdivision (b), which clarifies that a court has jurisdiction to respond to
16 requests for assistance from courts in other states even though it might otherwise not have
17 jurisdiction over the proceeding, is not found in although probably implicit in the UCCJEA.

18 Court cooperation is essential to the success of this Act. This section is designed to facilitate
19 such court cooperation. It provides mechanisms for courts to cooperate with each other in order to
20 decide cases in an efficient manner without causing undue expense to the parties. Courts may
21 request assistance from courts of other states and may assist courts of other states. Typically, such
22 assistance will be requested to resolve a jurisdictional issue arising under Article 2 or an issue
23 concerning a transfer proceeding under Article 3.

24 This section does not address assessment of costs and expenses, leaving that issue to local law.
25 Should a court have acquired jurisdiction because of a party’s unjustifiable conduct, Section
26 ~~207(b)~~ 1997(b) authorizes the court to assess against the party all costs and expenses, including
27 attorney’s fees.

28 **☞ Staff Notes.**

29 (1) UAGPPJA Section 105(a)(7) refers to “45 C.F.R. 160.103 [, as amended].” In a Legislative
30 Note, the ULC explains:

31 A state that permits dynamic references to federal law should delete the brackets in
32 subsection (a)(7). A state that requires that a reference to federal law be to that law on a
33 specific date should delete the brackets and bracketed material, insert a specific date, and
34 periodically update the reference.

35 Proposed Section 1985(a)(7) would refer to “Section 160.103 of Title 45 of the Code of Federal
36 Regulations.” To the best of the staff’s knowledge, this reference conforms to California drafting
37 practices. **We will seek to confirm this point with the Office of Legislative Counsel.**

38 (2) For discussion of another issue relating to this section, see the Staff Note on proposed
39 Section 1993.

40 **§ 1986. Taking testimony in another state**

41 1986. (a) In a ~~guardianship or protective~~ conservatorship proceeding, in addition
42 to other procedures that may be available, testimony of a witness who is located in
43 another state may be offered by deposition or other means allowable in this state
44 for testimony taken in another state. The court on its own motion may order that
45 the testimony of a witness be taken in another state and may prescribe the manner
46 in which and the terms upon which the testimony is to be taken.

(b) In a ~~guardianship or protective~~ 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.

Comment. Section 1986 is similar to Section 106(a)-(b) of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to conform to California terminology for the proceedings in question and reflect limitations on the scope of this chapter. See Sections 1981 & Comment (scope of chapter), 1982 & Comment (definitions).

For further guidance on taking a deposition in another state for purposes of a proceeding pending in this state, see Code Civ. Proc. § 2026.010. For further guidance on telephone depositions, see Code Civ. Proc. § 2025.310. For further guidance on audio or video recording of a deposition, see Code Civ. Proc. §§ 2020.310(c), 2025.220(a), 2025.330(c), 2025.340, 2025.510(f), 2025.530, 2025.560. For the admissibility of secondary evidence (including secondary evidence of a deposition), see Evid. Code §§ 1520-1523 (proof of content of writing). For guidance on taking a deposition in this state for purposes of a proceeding pending in another state, see Code Civ. Proc. §§ 2029.100-2029.900 (Interstate and International Depositions and Discovery Act); *Deposition in Out-of-State Litigation*, 37 Cal. L. Revision Comm’n Reports 99 (2007).

Background from Uniform Act

This section is similar to Section 111 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). That section was in turn derived from Section 316 of the Uniform Interstate Family Support Act (1992) and the much earlier and now otherwise obsolete Uniform Interstate and International Procedure Act (1962).

This section is designed to fill the vacuum that often exists in cases involving an adult with interstate contacts when much of the essential information about the individual is located in another state.

~~Subsection~~ Subdivision (a) empowers the court to initiate the gathering of out-of-state evidence, including depositions, written interrogatories and other discovery devices. The authority granted to the court in no way precludes the gathering of out-of-state evidence by a party, including the taking of depositions out-of-state.

~~Subsections (b) and (c) clarify~~ Subdivision (b) clarifies that modern modes of communication are permissible for the taking of depositions and receipt of documents into evidence. ~~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), which has been placed in brackets for this reason.~~

This section is consistent with and complementary to the Uniform Interstate Depositions and Discovery Act (2007), which specifies the procedure for taking depositions in other states.

Staff Note. UAGPPJA Section 106 includes not only subsections (a) and (b), but also subsection (c), which is bracketed and provides:

(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.

In a Legislative Note, the ULC explains:

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

1 (c). A state that has adequate exceptions to its best evidence rule to permit the introduction of
2 evidence transmitted by facsimile or in electronic form should delete subsection (c).

3 The Best Evidence Rule no longer applies in California. On the Commission’s recommendation,
4 that rule was repealed and replaced with the Secondary Evidence Rule, under which secondary
5 evidence is generally admissible to prove the content of a writing. See Evid. Code §§ 1520-1523;
6 *Best Evidence Rule*, 26 Cal. L. Revision Comm’n Reports 369 (1996). Consequently, it is not
7 necessary to include UAGPPJA Section 106(c) in proposed Section 1986.

8 Article 2. Jurisdiction

9 Background from Uniform Act

10 The jurisdictional rules in Article 2 will determine which state’s courts may appoint a ~~guardian~~
11 ~~or conservator or issue another type of protective order~~. Section ~~201~~ 1991 contains definitions of
12 ~~“emergency,” “home state,” “home state” and “significant connection-state,”~~ terms used only in
13 Article 2 that are key to understanding the jurisdictional rules under the Act. Section ~~202~~ 1992
14 provides that Article 2 is the exclusive jurisdictional basis for a court of the enacting state to
15 appoint a ~~guardian or issue a protective order for an adult conservator~~. Consequently, Article 2 is
16 applicable even if all of the ~~respondent’s proposed conservatee’s~~ significant contacts are in-state.
17 Section ~~203~~ 1993 is the principal provision governing jurisdiction, creating a three-level priority;
18 the home state, followed by a significant-connection state, followed by other jurisdictions. But
19 there are circumstances under Section ~~203~~ 1993 where a significant-connection state may have
20 jurisdiction even if the ~~respondent proposed conservatee~~ also has a home state, or a state that is
21 neither a home or significant-connection state may be able to assume jurisdiction even though the
22 particular ~~respondent proposed conservatee~~ has both a home state and one or more significant-
23 connection states. One of these situations is if a state declines to exercise jurisdiction under
24 Section ~~206~~ 1996 because a court of that state concludes that a court of another state is a more
25 appropriate forum. Another is Section ~~207~~ 1997, which authorizes a court to decline jurisdiction
26 or fashion another appropriate remedy if jurisdiction was acquired because of unjustifiable
27 conduct. Section ~~205~~ 1995 provides that once an appointment is made or order issued, the court’s
28 jurisdiction continues until the proceeding is terminated or the appointment order expires by its
29 own terms.

30 Section ~~204~~ 1994 addresses special cases. Regardless of whether it has jurisdiction under the
31 general principles stated in Section ~~203~~ 1993, a court in the state where the individual is currently
32 physically present has jurisdiction to appoint a guardian conservator of the person in an
33 emergency, and a court in a state where an individual’s real or tangible personal property is
34 located has jurisdiction to appoint a conservator ~~or issue another type of protective order with~~
35 ~~respect to that property of the estate~~. In addition, a court not otherwise having jurisdiction under
36 Section ~~203~~ 1993 has jurisdiction to consider a petition to accept the transfer of an already
37 existing ~~guardianship or conservatorship~~ from another state as provided in Article 3.

38 The remainder of Article 2 ~~address~~ addresses procedural issues. Section ~~208~~ 1998 prescribes
39 additional notice requirements if a proceeding is brought in a state other than the ~~respondent’s~~
40 ~~proposed conservatee’s~~ home state. Section ~~209~~ 1999 specifies a procedure for resolving
41 jurisdictional issues if petitions are pending in more than one state.

42 § 1991. Definitions and significant connection factors

43 1991. (a) In this article:

44 (1) ~~“Emergency” means a circumstance that likely will result in substantial harm~~
45 ~~to a respondent’s health, safety, or welfare, and for which the appointment of a~~
46 ~~guardian is necessary because no other person has authority and is willing to act~~
47 ~~on the respondent’s behalf.~~

1 on when a court acquires emergency jurisdiction, the drafters of this Act concluded that adding a
 2 definition of emergency was essential. The definition does not preclude an enacting jurisdiction
 3 from appointing a guardian under an emergency guardianship statute with a different or broader
 4 test of emergency if the court otherwise has jurisdiction to make an appointment under Section
 5 203.

6 Pursuant to Section ~~203~~ 1993, a court in the ~~respondent's~~ proposed conservatee's home state
 7 has primary jurisdiction to appoint a ~~guardian or issue a protective order~~ conservator. A court in a
 8 significant-connection state has jurisdiction if the ~~respondent~~ proposed conservatee does not have
 9 a home state and in other circumstances specified in Section ~~203~~ 1993. The definitions of "home
 10 state" and "significant-connection state" are therefore important to an understanding of the Act.

11 The definition of "home state" (~~subsection subdivision~~ (a)(2)) is derived from but differs in a
 12 couple of respects from the definition of the same term in Section 102 of the Uniform Child
 13 Custody Jurisdiction and Enforcement Act (1997). First, unlike the definition in the UCCJEA, the
 14 definition in this Act clarifies that actual physical presence is necessary. The UCCJEA definition
 15 instead focuses on where the child has "lived" for the prior six months. Basing the test on where
 16 someone has "lived" may imply that the term "home state" is similar to the concept of domicile.
 17 Domicile, in an ~~adult guardianship~~ a conservatorship context, is a vague concept that can easily
 18 lead to claims of jurisdiction by courts in more than one state. Second, under the UCCJEA, home
 19 state jurisdiction continues for six months following physical removal from the state and the state
 20 has ceased to be the actual home. Under this Act, the six-month tail is incorporated directly into
 21 the definition of home state. The place where the ~~respondent~~ proposed conservatee was last
 22 physically present for six months continues as the home state for six months following physical
 23 removal from the state. This modification of the UCCJEA definition eliminates the need to refer
 24 to the six-month tail each time home state jurisdiction is mentioned in the Act.

25 The definition of "significant-connection state" (~~subsection subdivision~~ (a)(3)) is similar to
 26 Section 201(a)(2) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997).
 27 However, ~~subsection subdivision~~ (b) of this Section adds a list of factors relevant to ~~adult~~
 28 ~~guardianship and protective~~ conservatorship proceedings to aid the court in deciding whether a
 29 particular place is a significant-connection state. Under Section ~~301(e)(4)~~ 2001(e)(1), the
 30 significant connection factors listed in the definition are to be taken into account in determining
 31 whether a conservatorship may be transferred to another state.

32 **☞ Staff Note.** In December, the Commission decided that "[i]nstead of using UAGPPJA's
 33 definition of 'emergency' and its procedure for making an emergency appointment, the
 34 discussion draft should rely on California's existing procedure for appointment of a temporary
 35 conservator" Minutes (Dec. 2012), p. 5. Consistent with that decision, proposed Section 1991
 36 does not include UAGPPJA's definition of "emergency."

37 § 1992. Exclusive basis

38 1992. ~~This~~ For a conservatorship proceeding as defined in Section 1982, this
 39 article provides the exclusive ~~jurisdictional~~ basis for ~~a court of this state~~
 40 ~~determining whether the courts of this state, as opposed to the courts of another~~
 41 ~~state, have jurisdiction~~ to appoint a ~~guardian or issue a protective order for an~~
 42 ~~adult~~ conservator of the person, a conservator of the estate, or a conservator of the
 43 person and estate.

44 **Comment.** Section 1992 is similar to Section 202 of the Uniform Adult Guardianship and
 45 Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to:

- 46 (1) Conform to California terminology for the proceedings in question and reflect
 47 limitations on the scope of this chapter. See Sections 1981 & Comment (scope of
 48 chapter), 1982 & Comment (definitions).

- 1 (2) Make clear that this article only focuses on which state’s courts have jurisdiction to
2 appoint a conservator. The article does not address other jurisdictional issues, such as
3 whether an appellate court may make such an appointment.

4 **Background from Uniform Act**

5 Similar to Section 201(b) of the Uniform Child Custody Jurisdiction and Enforcement Act
6 (1997), which provides that the UCCJEA is the exclusive basis for determining jurisdiction to
7 issue a child custody order, this section provides that this article is the exclusive jurisdictional
8 basis for determining jurisdiction to appoint a ~~guardian or issue a protective order for an adult~~
9 ~~conservator~~. An enacting jurisdiction will therefore need to repeal any existing provisions
10 addressing jurisdiction in ~~guardianship and protective proceedings cases~~ conservatorship
11 proceedings. ~~A Legislative Note to Section 503 provides guidance on which provisions need to be~~
12 ~~repealed or amended~~. The drafters of this Act concluded that limiting the Act to “interstate” cases
13 was unworkable. Such cases are hard to define, but even if they could be defined, overlaying this
14 Act onto a state’s existing jurisdictional rules would leave too many gaps and inconsistencies. In
15 addition, if the particular case is truly local, the local court would likely have jurisdiction under
16 both this Act as well as under prior law.

17 **☞ Staff Note.** As explained in the ULC’s Comment (shown above under “Background from
18 Uniform Act), it will be necessary to repeal any existing jurisdictional rules that conflict with this
19 proposed article. The staff is in the process of determining which, if any, existing provisions fall
20 into that category. We will provide further information on this point later in this study.

21 _____
22 **☞ Special Note.**

23 Section 203 of UAGPPJA provides:

24 **§ 203. Jurisdiction**

25 203. A court of this state has jurisdiction to appoint a guardian or issue a protective order
26 for a respondent if:

27 (1) this state is the respondent’s home state;

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

29 (A) the respondent does not have a home state or a court of the respondent’s home state has
30 declined to exercise jurisdiction because this state is a more appropriate forum; or

31 (B) the respondent has a home state, a petition for an appointment or order is not pending in
32 a court of that state or another significant-connection state, and before the court makes the
33 appointment or issues the order:

34 (i) a petition for an appointment or order is not filed in the respondent’s home state;

35 (ii) an objection to the court’s jurisdiction is not filed by a person required to be notified of
36 the proceeding; and;

37 (iii) the court in this state concludes that it is an appropriate forum under the factors set
38 forth in Section 206;

39 (3) this state does not have jurisdiction under either paragraph (1) or (2), the respondent’s
40 home state and all significant-connection states have declined to exercise jurisdiction because
41 this state is the more appropriate forum, and jurisdiction in this state is consistent with the
42 constitutions of this state and the United States; or

43 (4) the requirements for special jurisdiction under Section 204 are met.

44 The drafting style used in this section differs sharply from the drafting practices of the Office of
45 Legislative Counsel and the Law Revision Commission. Of particular concern is the use of
46 multiple layers of colons and semicolons, which the staff tries hard to avoid and which can be a
47 source of confusion.

1 In drafting a corresponding provision for adoption in California, the staff made several
2 attempts to follow the same approach employed in the rest of this document — i.e., showing the
3 significant deviations from the text of UAGPPJA in ~~strikeout~~ and underscore, but not indicating
4 the insignificant deviations from that text (such as relabeling of paragraphs to conform to
5 California’s drafting practices). In this particular instance, however, we found it difficult to
6 differentiate between deviations that might be deemed significant and ones that would not.

7 Indicating all of the deviations would make the provision unduly difficult to read. Thus, we
8 have not used any ~~strikeout~~ or underscore in presenting our draft of proposed Section 1993, which
9 is shown below.

10
11 **§ 1993. Jurisdiction**

12 1993. (a) A court of this state has jurisdiction to appoint a conservator for a
13 proposed conservatee if this state is the proposed conservatee’s home state.

14 (b) A court of this state has jurisdiction to appoint a conservator for a proposed
15 conservatee if, on the date the petition is filed, this state is a significant-connection
16 state and the respondent does not have a home state.

17 (c) A court of this state has jurisdiction to appoint a conservator for a proposed
18 conservatee if, on the date the petition is filed, this state is a significant-connection
19 state and a court of the proposed conservatee’s home state has declined to exercise
20 jurisdiction because this state is a more appropriate forum.

21 (d) A court of this state has jurisdiction to appoint a conservator for a proposed
22 conservatee if both of the following conditions are satisfied:

23 (1) On the date the petition is filed, this state is a significant-connection state,
24 the proposed conservatee has a home state, and a conservatorship petition is not
25 pending in a court of that state or another significant-connection state.

26 (2) Before the court makes the appointment, no conservatorship petition is filed
27 in the proposed conservatee’s home state, no objection to the court’s jurisdiction is
28 filed by a person required to be notified of the proceeding, and the court in this
29 state concludes that it is an appropriate forum under the factors set forth in Section
30 1996.

31 (e) A court of this state has jurisdiction to appoint a conservator for a proposed
32 conservatee if all of the following conditions are satisfied:

33 (1) This state does not have jurisdiction under subdivision (a), (b), (c), or (d).

34 (2) The proposed conservatee’s home state and all significant-connection states
35 have declined to exercise jurisdiction because this state is the more appropriate
36 forum.

37 (3) Jurisdiction in this state is consistent with the constitutions of this state and
38 the United States.

39 (f) A court of this state has jurisdiction to appoint a conservator for a proposed
40 conservatee if the requirements for special jurisdiction under Section 1994 are
41 met.

42 **Comment.** Section 1993 is similar to Section 203 of the Uniform Adult Guardianship and
43 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
44 follow local drafting practices, conform to California terminology for the proceedings in question,

1 and reflect limitations on the scope of this chapter. See Sections 1981 & Comment (scope of
2 chapter), 1982 & Comment (definitions).

3 Subdivision (a), relating to jurisdiction in the proposed conservatee's home state, corresponds
4 to Section 203(1) of UAGPPJA.

5 Subdivisions (b) and (c), relating to jurisdiction in a significant-connection state, correspond to
6 Section 203(2)(A) of UAGPPJA.

7 Subdivision (d), providing another basis for jurisdiction in a significant-connection state,
8 corresponds to Section 203(2)(B) of UAGPPJA.

9 Subdivision (e), relating to jurisdiction in a state that is neither the home state nor a significant-
10 connection state, corresponds to Section 203(3) of UAGPPJA.

11 Subdivision (f), relating to special jurisdiction, corresponds to Section 203(4) of UAGPPJA.

12 **Background from Uniform Act**

13 Similar to the Uniform Child Custody Jurisdiction and Enforcement Act (1997), this Act
14 creates a three-level priority for determining which state has jurisdiction to appoint a ~~guardian or~~
15 ~~issue a protective order conservator~~; the home state (defined in Section ~~201(a)(2)~~ 1991(a)(1)),
16 followed by a significant-connection state (defined in Section ~~201(a)(3)~~ 1991(a)(2)), followed by
17 other jurisdictions. The principal objective of this section is to eliminate the possibility of dual
18 appointments or orders except for the special circumstances specified in Section ~~204~~ 1994.

19 While this section is the principal provision for determining whether a particular court has
20 jurisdiction to appoint a ~~guardian or issue a protective order conservator~~, it is not the only
21 provision. As indicated in the cross-reference in Section ~~203(4)~~ 1993(f), a court that does not
22 otherwise have jurisdiction under Section ~~203~~ 1993 may have jurisdiction under the special
23 circumstances specified in Section ~~204~~ 1994.

24 Pursuant to Section ~~203(1)~~ 1993(a), the home state has primary jurisdiction to appoint a
25 ~~guardian or conservator or issue another type of protective order~~. This jurisdiction terminates if
26 the state ceases to be the home state, if a court of the home state declines to exercise jurisdiction
27 under Section ~~206~~ 1996 on the basis that another state is a more appropriate forum, or, as
28 provided in Section ~~205~~ 1995, a court of another state has appointed a ~~guardian or issued a~~
29 ~~protective order conservator~~ consistent with this Act. The standards by which a home state that
30 has enacted the Act may decline jurisdiction on the basis that another state is a more appropriate
31 forum are specified in Section ~~206~~ 1996. Should the home state not have enacted the Act, Section
32 ~~203(1)~~ 1993(a) does not require that the declination meet the standards of Section ~~206~~ 1996.

33 Once a petition is filed in a court of the ~~respondent's proposed conservatee's~~ home state, that
34 state does not cease to be the ~~respondent's proposed conservatee's~~ home state upon the passage of
35 time even though it may be many months before an appointment is made or order issued and
36 during that period the ~~respondent proposed conservatee~~ is physically located elsewhere. Only
37 upon dismissal of the petition can the court cease to be the home state due to the passage of time.
38 Under the definition of "home state," the six-month physical presence requirement is fulfilled or
39 not on the date the petition is filed. *See* Section ~~201(a)(2)~~ 1991(a)(1).

40 A significant-connection state has jurisdiction under ~~two these~~ possible ~~bases~~; ~~Section~~
41 ~~203(2)(A) and Section 203(2)(B)~~ bases: Section 1993(b), (c), and (d). Under Section ~~203(2)(A)~~
42 1993(b), a significant-connection state has jurisdiction if the individual does not have a home
43 state ~~or~~. Under Section 1993(c), a significant-connection state has jurisdiction if the home state
44 has declined jurisdiction on the basis that the significant-connection state is a more appropriate
45 forum.

46 Section ~~203(2)(B)~~ 1993(d) is designed to facilitate consideration of cases where jurisdiction is
47 not in dispute. Section ~~203(2)(B)~~ 1993(d) allows a court in a significant-connection state to
48 exercise jurisdiction even though the ~~respondent proposed conservatee~~ has a home state and the
49 home state has not declined jurisdiction. The significant-connection state may assume jurisdiction
50 under these circumstances, however, only in situations where the parties are not in disagreement
51 concerning which court should hear the case. Jurisdiction may not be exercised by a significant-

1 connection state under Section ~~203(2)(B)~~ 1993(d) if (1) a petition has already been filed and is
 2 still pending in the home state or other significant-connection state; or (2) prior to making the
 3 appointment ~~or issuing the order~~, a petition is filed in the ~~respondent's~~ proposed conservatee's
 4 home state or an objection to the court's jurisdiction is filed by a person required to be notified of
 5 the proceeding. Additionally, the court in the significant-connection state must conclude that it is
 6 an appropriate forum applying the factors listed in Section ~~206~~ 1996.

7 There is nothing comparable to Section ~~203(2)(B)~~ 1993(d) in the Uniform Child Custody
 8 Jurisdiction and Enforcement Act (1997). Under Section 201 of the UCCJEA a court in a
 9 significant-connection state acquires jurisdiction only if the child does not have a home state or
 10 the court of that state has declined jurisdiction. The drafters of this Act concluded that cases
 11 involving adults differed sufficiently from child custody matters that a different rule is
 12 appropriate for adult proceedings in situations where jurisdiction is uncontested.

13 Pursuant to Section ~~203(3)~~ 1993(e), a court in a state that is neither the home state or a
 14 significant-connection state has jurisdiction if the home state and all significant-connection states
 15 have declined jurisdiction or the ~~respondent~~ proposed conservatee does not have a home state or
 16 significant-connection state. The state must have some connection with the proceeding, however.
 17 As Section ~~203(a)(3)~~ 1993(e) clarifies, jurisdiction in the state must be consistent with the state
 18 and United States constitutions.

19 **☞ Staff Note.** Sections 203(2)(A) & (3) of UAGPPJA refer to a court that “has declined to
 20 exercise jurisdiction,” and we have included the same phrase in corresponding places in proposed
 21 Section 1993 (see subdivisions (c) & (e)(2)). Jayne Lee, a member of the Executive Committee of
 22 the State Bar Trusts and Estates Section (“TEXCOM”), has queried how a court would
 23 communicate an intention to “decline to exercise jurisdiction.” See Exhibit p. 2. She works for the
 24 Probate Court in Alameda County, where the judges “are concerned about the procedure for this
 25 communication and whether language could be included to avoid the need to file a proceeding in
 26 each possible jurisdiction.” *Id.*

27 Jennifer Wilkerson of TEXCOM suggests that the Commission

28 include a provision for notice (perhaps as an expanded provision in section 208) to the court
 29 in all significant connection states with a time by which an intention to exercise jurisdiction
 30 must be asserted by the court. Upon expiration of the time period, then the Court which is
 31 hearing the petition would be able to proceed based on the ‘decline’ by all other courts to
 32 exercise jurisdiction.

33 *Id.*

34 The staff has not attempted to deal with this issue in this draft. **Comments on it would be**
 35 **helpful.**

36 The staff would also appreciate comments on a related issue that came to mind while we were
 37 considering Ms. Lee’s concern: When a California court communicates or cooperates with an out-
 38 of-state court pursuant to proposed Section 1984 or 1985 (UAGPPJA § 104 or § 105), will any
 39 documents be submitted to the court or prepared by the court? If so, will it be necessary to create
 40 a court file for those documents if the California court does not already have such a file and no
 41 proceeding is pending in that court? **We invite comment on this point as well.**

42 § 1994. Special jurisdiction

43 1994. (a) A court of this state lacking jurisdiction under ~~Section 203(1) through~~
 44 ~~(3)~~ subdivisions (a) to (e), inclusive, of Section 1993 has special jurisdiction to do
 45 any of the following:

46 (1) Appoint a ~~guardian in an emergency for a term not exceeding [90] days~~
 47 temporary conservator of the person under Chapter 3 (commencing with Section

1 2250) of Part 4 for a ~~respondent~~ proposed conservatee who is physically present in
2 this state.

3 (2) ~~Issue a protective order~~ Appoint a temporary conservator of the estate with
4 respect to real or tangible personal property located in this state. A temporary
5 conservator of the person appointed under paragraph (1) may also serve as a
6 temporary conservator of the estate under this paragraph.

7 (3) ~~Appoint a guardian or conservator for an incapacitated or protected person~~
8 temporary conservator of the person, temporary conservator of the estate, or
9 temporary conservator of the person and estate for a proposed conservatee for
10 whom a provisional order to transfer the a proceeding from another state has been
11 issued under procedures similar to Section 301 2001.

12 (b) If a petition for the appointment of a ~~guardian in an emergency~~ temporary
13 conservator of the person is brought in this state and this state was not the
14 ~~respondent's~~ home state of the proposed conservatee on the date the petition was
15 filed, the court shall dismiss the proceeding at the request of the court of the home
16 state, if any, whether dismissal is requested before or after the ~~emergency~~
17 appointment of a temporary conservator of the person.

18 **Comment.** Section 1994 is similar to Section 204 of the Uniform Adult Guardianship and
19 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”).

20 Revisions have been made to apply California law on appointment of a conservator in an
21 urgent situation, rather than UAGPPJA’s procedure for an emergency appointment. See Sections
22 2250-2258 (temporary conservator).

23 Revisions have also been made to conform to California terminology for the proceedings in
24 question and reflect limitations on the scope of this chapter. See Sections 1981 & Comment
25 (scope of chapter), 1982 & Comment (definitions).

26 **Background from Uniform Act**

27 This section lists the special circumstances where a court without jurisdiction under the general
28 rule of Section ~~203~~ 1993 has jurisdiction for limited purposes. The three purposes are (1) the
29 appointment of a ~~guardian in an emergency for a term not exceeding 90 days~~ temporary
30 conservator of the person for a ~~respondent~~ proposed conservatee who is physically located in the
31 state (~~subsection subdivision~~ (a)(1)); (2) the ~~issuance of a protective order~~ appointment of a
32 temporary conservator of the estate for a ~~respondent~~ proposed conservatee who owns an interest
33 in real or tangible personal property located in the state (~~subsection subdivision~~ (a)(2)); and (3)
34 the grant of jurisdiction to consider a petition requesting the transfer of a ~~guardianship or~~
35 conservatorship proceeding from another state (~~subsection subdivision~~ (a)(3)). If the court has
36 jurisdiction under Section ~~203~~ 1993, reference to Section ~~204~~ 1994 is unnecessary. The general
37 jurisdiction granted under Section ~~203~~ 1993 includes within it all of the special circumstances
38 specified in this section.

39 When an emergency arises, action must often be taken on the spot in the place where the
40 ~~respondent~~ proposed conservatee happens to be physically located at the time. This place may not
41 necessarily be located in the ~~respondent's~~ proposed conservatee's home state or even a
42 significant-connection state. ~~Subsection~~ Subdivision (a)(1) assures that the court where the
43 ~~respondent~~ proposed conservatee happens to be physically located at the time has jurisdiction to
44 appoint a ~~guardian in an emergency but only for a limited period of 90 days. The time limit is~~
45 ~~placed in brackets to signal that enacting states may substitute the time period under their existing~~
46 ~~emergency guardianship procedures~~ temporary conservator. As provided in ~~subsection~~
47 subdivision (b), the emergency jurisdiction is ~~also~~ subject to the authority of the court in the

1 respondent's proposed conservatee's home state to request that the emergency proceeding be
 2 dismissed. The theory here is that the emergency appointment in the temporary location should
 3 not be converted into a de facto permanent appointment through repeated temporary
 4 appointments.

5 ~~“Emergency” is specifically defined in Section 201(a)(1). Because of the great variation among~~
 6 ~~the states on how an emergency is defined and its important role in conferring jurisdiction, the~~
 7 ~~drafters of this Act concluded that adding a uniform definition of emergency was essential. The~~
 8 ~~definition does not preclude an enacting jurisdiction from appointing a guardian under an~~
 9 ~~emergency guardianship statute with a different or broader test of emergency if the court~~
 10 ~~otherwise has jurisdiction to make an appointment under Section 203.~~

11 ~~Subsection (a)(2) Subdivision (a)(2) grants a court jurisdiction to issue a protective order~~
 12 ~~appoint a temporary conservator of the estate with respect to real and tangible personal property~~
 13 ~~located in the state even though the court does not otherwise have jurisdiction. Such orders are~~
 14 ~~most commonly issued when a conservator has been appointed but the protected person~~
 15 ~~conservatee owns real property located in another state. The drafters specifically rejected using a~~
 16 ~~general reference to any property located in the state because of the tendency of some courts to~~
 17 ~~issue protective orders with respect to intangible personal property such as a bank account where~~
 18 ~~the technical situs of the asset may have little relationship to the protected person.~~

19 ~~Subsection Subdivision (a)(3) is closely related to and is necessary for the effectiveness of~~
 20 ~~Article 3, which addresses transfer of a guardianship or conservatorship to another state. A~~
 21 ~~“Catch-22” arises frequently in such cases. The court in the transferring state will not allow the~~
 22 ~~incapacitated or protected person conservatee to move and will not terminate the case until the~~
 23 ~~court in the transferee state has accepted the matter. But the court in the transferee state will not~~
 24 ~~accept the case until the incapacitated or protected person conservatee has physically moved and~~
 25 ~~presumably become a resident of the transferee state. Subsection Subdivision (a)(3), which grants~~
 26 ~~the court in the transferee state limited jurisdiction to consider a petition requesting transfer of a~~
 27 ~~proceeding from from another state, is intended to unlock the stalemate.~~

28 Not included in this section but a provision also conferring special jurisdiction on the court is
 29 Section ~~405(b)~~ 1985(b), which grants the court jurisdiction to respond to a request for assistance
 30 from a court of another state.

31 **Staff Note.** In December, the Commission decided that “[i]nstead of using UAGPPJA’s
 32 definition of ‘emergency’ and its procedure for making an emergency appointment, the
 33 discussion draft should rely on California’s existing procedure for appointment of a temporary
 34 conservator (see the approach used by the TEXCOM working group in Memorandum 2012-36,
 35 Exhibit pp. 24-41).” Minutes (Dec. 2012), p. 5. Proposed Section 1994 would implement that
 36 decision (see also proposed Section 1991, which omits UAGPPJA’s definition of “emergency”).

37 A conforming revision of Section 2250 might be in order. That section only permits a person to
 38 file a petition for a temporary conservatorship “[o]n or after the filing of a petition for
 39 appointment of a ... conservator.” In other words, the section appears to contemplate that there
 40 must be both (1) a petition for appointment of a temporary conservator, and (2) a petition for
 41 appointment of a conservator on a more permanent basis.

42 In some of the circumstances addressed in proposed Section 1994, however, it might be
 43 sufficient to appoint a temporary conservator, without ever appointing a conservator on a more
 44 permanent basis. For example, if a woman sustains a severe head injury while traveling in
 45 California and unexpectedly requires a conservator here for a short time before she can be moved
 46 back to her home state, it might be sufficient to appoint a temporary conservator of the person
 47 under proposed Section 1994(a)(1), without requiring the filing of a conservatorship petition
 48 under Section 1801(a).

49 To account for this type of situation, the staff has included a draft of a conforming revision of
 50 Section 2250 later in this discussion draft. See “Key Conforming Revisions” below. **It would be**
 51 **helpful to receive input on whether the staff’s concern is warranted and whether a**

1 **conforming revision of Section 2250 is needed.** The Commission should **consider and resolve**
2 **both of those points.**

3 **§ 1995. Exclusive and continuing jurisdiction**

4 1995. Except as otherwise provided in Section ~~204~~ 1994, a court that has
5 appointed a ~~guardian or issued a protective order~~ conservator consistent with this
6 chapter has exclusive and continuing jurisdiction over the proceeding until it is
7 terminated by the court or the appointment ~~or order~~ expires by its own terms.

8 **Comment.** Section 1995 is similar to Section 205 of the Uniform Adult Guardianship and
9 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
10 conform to California terminology for the proceedings in question and reflect limitations on the
11 scope of this chapter. See Sections 1981 & Comment (scope of chapter), 1982 & Comment
12 (definitions).

13 **Background from Uniform Act**

14 While this Act relies heavily on the Uniform Child Jurisdiction and Enforcement Act (1997)
15 for many basic concepts, the identity is not absolute. Section 202 of the UCCJEA specifies a
16 variety of circumstances whereby a court can lose jurisdiction based on loss of physical presence
17 by the child and others, loss of a significant connection, or unavailability of substantial evidence.
18 Section 203 of the UCCJEA addresses the jurisdiction of the court to modify a custody
19 determination made in another state. Nothing comparable to either UCCJEA section is found in
20 this Act. Under this Act, a ~~guardianship or protective order~~ conservatorship may be modified only
21 upon request to the court that made the appointment ~~or issued the order~~, which retains exclusive
22 and continuing jurisdiction over the proceeding. Unlike child custody matters, ~~guardianships and~~
23 ~~protective proceedings~~ conservatorships are ordinarily subject to continuing court supervision.
24 Allowing the court’s jurisdiction to terminate other than by its own order would open the
25 possibility of competing ~~guardianship or~~ conservatorship appointments in different states for the
26 same person at the same time, the problem under current law that enactment of this Act is
27 designed to avoid. Should the ~~incapacitated or protected person~~ conservatee and others with an
28 interest in the proceeding relocate to a different state, the appropriate remedy is to seek transfer of
29 the proceeding to the other state as provided in Article 3.

30 The exclusive and continuing jurisdiction conferred by this section only applies to ~~guardianship~~
31 ~~conservatorship~~ orders made and protective orders issued under Section ~~203~~ 1993. Orders made
32 under the special jurisdiction conferred by Section ~~204~~ 1994 are not exclusive. And as provided
33 in Section ~~204(b)~~ 1994(b), the jurisdiction of a court in a state other than the home state to
34 appoint a ~~guardian~~ conservator in an emergency is subject to the right of a court in the home state
35 to request that the proceeding be dismissed and any appointment terminated.

36 Article 3 authorizes a ~~guardian or~~ conservator to petition to transfer the proceeding to another
37 state. Upon the conclusion of the transfer, the court in the accepting state will appoint the
38 ~~guardian or~~ conservator as ~~guardian or~~ conservator in the accepting state and the court in the
39 transferring estate will terminate the local proceeding, whereupon the jurisdiction of the
40 transferring court terminates and the court in the accepting state acquires exclusive and
41 continuing jurisdiction as provided in Section ~~205~~ 1995.

42 **§ 1996. Appropriate forum**

43 1996. (a) A court of this state having jurisdiction under Section ~~203~~ 1993 to
44 appoint a ~~guardian or issue a protective order~~ conservator may decline to exercise
45 its jurisdiction if it determines at any time that a court of another state is a more
46 appropriate forum.

1 (b) If a court of this state declines to exercise its jurisdiction under subdivision
2 (a), it shall either dismiss or stay the proceeding. The court may impose any
3 condition the court considers just and proper, including the condition that a
4 petition for the appointment of a ~~guardian or issuance of a protective order~~
5 conservator of the person, conservator of the estate, or conservator of the person
6 and estate be filed promptly in another state.

7 (c) In determining whether it is an appropriate forum, the court shall consider all
8 relevant factors, including all of the following:

9 (1) Any expressed preference of the ~~respondent~~ proposed conservatee.

10 (2) Whether abuse, neglect, or exploitation of the ~~respondent~~ proposed
11 conservatee has occurred or is likely to occur and which state could best protect
12 the ~~respondent~~ proposed conservatee from the abuse, neglect, or exploitation.

13 (3) The length of time the ~~respondent~~ proposed conservatee was physically
14 present in or was a legal resident of this or another state.

15 (4) The distance of the ~~respondent~~ proposed conservatee from the court in each
16 state.

17 (5) The financial circumstances of the ~~respondent's~~ estate of the proposed
18 conservatee.

19 (6) The nature and location of the evidence.

20 (7) The ability of the court in each state to decide the issue expeditiously and the
21 procedures necessary to present evidence.

22 (8) The familiarity of the court of each state with the facts and issues in the
23 proceeding.

24 (9) If an appointment were made, the court's ability to monitor the conduct of
25 the ~~guardian or~~ conservator.

26 **Comment.** Section 1996 is similar to Section 206 of the Uniform Adult Guardianship and
27 Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to
28 conform to California terminology for the proceedings in question and reflect limitations on the
29 scope of this chapter. See Sections 1981 & Comment (scope of chapter), 1982 & Comment
30 (definitions).

31 **Background from Uniform Act**

32 This section authorizes a court otherwise having jurisdiction to decline jurisdiction on the basis
33 that a court in another state is in a better position to make a ~~guardianship or protective order~~
34 conservatorship determination. The effect of a declination of jurisdiction under this section is to
35 rearrange the priorities specified in Section ~~203~~ 1993. A court of the home state may decline in
36 favor of a court of a significant-connection or other state and a court in a significant-connection
37 state may decline in favor of a court in another significant-connection or other state. The court
38 declining jurisdiction may either dismiss or stay the proceeding. The court may also impose any
39 condition the court considers just and proper, including the condition that a petition for the
40 appointment of a ~~guardian or issuance of a protective order~~ conservator be filed promptly in
41 another state.

42 This section is similar to Section 207 of the Uniform Child Custody Jurisdiction and
43 Enforcement Act (1997) except that the factors in ~~Section 206(e) of this Act~~ subdivision (c) of
44 this section have been adapted to address issues most commonly encountered in ~~adult~~
45 ~~guardianship and protective~~ conservatorship proceedings as opposed to child custody
46 determinations.

1 Under Section ~~203(2)(B)~~ 1993(d), the factors specified in ~~subsection~~ subdivision (c) of this
2 section are to be employed in determining whether a court of a significant-connection state may
3 assume jurisdiction when a petition has not been filed in the ~~respondent's proposed conservatee's~~
4 home state or in another significant-connection state. Under Section ~~207(a)(3)(B)~~ 1997(a)(3)(B),
5 the court is to consider these factors in deciding whether it will retain jurisdiction when
6 unjustifiable conduct has occurred.

7 **§ 1997. Jurisdiction declined by reason of conduct**

8 1997. (a) If at any time a court of this state determines that it acquired
9 jurisdiction to appoint a ~~guardian or issue a protective order~~ conservator because
10 of unjustifiable conduct, the court may do any of the following:

11 (1) Decline to exercise jurisdiction.

12 (2) Exercise jurisdiction for the limited purpose of fashioning an appropriate
13 remedy to ensure the health, safety, and welfare of the ~~respondent conservatee or~~
14 proposed conservatee or the protection of the ~~respondent's~~ property of the
15 conservatee or proposed conservatee or to prevent a repetition of the unjustifiable
16 conduct, including staying the proceeding until a petition for the appointment of a
17 ~~guardian or issuance of a protective order~~ conservator of the person, conservator
18 of the estate, or conservator of the person and estate is filed in a court of another
19 state having jurisdiction.

20 (3) Continue to exercise jurisdiction after considering all of the following:

21 (A) The extent to which the ~~respondent conservatee or proposed conservatee~~ and
22 all persons required to be notified of the proceedings have acquiesced in the
23 exercise of the court's jurisdiction.

24 (B) Whether it is a more appropriate forum than the court of any other state
25 under the factors set forth in ~~Section 206(e)~~ subdivision (c) of Section 1996.

26 (C) Whether the court of any other state would have jurisdiction under factual
27 circumstances in substantial conformity with the jurisdictional standards of
28 Section ~~203~~ 1993.

29 (b) If a court of this state determines that it acquired jurisdiction to appoint a
30 ~~guardian or issue a protective order~~ conservator because a party seeking to invoke
31 its jurisdiction engaged in unjustifiable conduct, it may assess against that party
32 necessary and reasonable expenses, including attorney's fees, investigative fees,
33 court costs, communication expenses, witness fees and expenses, and travel
34 expenses. The court may not assess fees, costs, or expenses of any kind against
35 this state or a governmental subdivision, agency, or instrumentality of this state
36 unless authorized by law other than this chapter.

37 **Comment.** Section 1997 is similar to Section 207 of the Uniform Adult Guardianship and
38 Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to
39 conform to California terminology for the proceedings in question and reflect limitations on the
40 scope of this chapter. See Sections 1981 & Comment (scope of chapter), 1982 & Comment
41 (definitions).

42 **Background from Uniform Act**

43 This section is similar to the Section 208 of the Uniform Child Custody Jurisdiction and
44 Enforcement Act (1997). Like the UCCJEA, this Act does not attempt to define "unjustifiable

1 conduct,” concluding that this issue is best left to the courts. However, a common example could
 2 include the unauthorized removal of an adult to another state, with that state acquiring emergency
 3 jurisdiction under Section ~~204~~ 1994 immediately upon the move and home state jurisdiction
 4 under Section ~~203~~ 1993 six months following the move if a conservatorship petition ~~for a~~
 5 ~~guardianship or protective order~~ is not filed during the interim in the soon-to-be former home
 6 state. Although child custody cases frequently raise different issues than ~~do adult guardianship~~
 7 ~~matters~~ conservatorships, the element of unauthorized removal is encountered in both types of
 8 proceedings. For the caselaw on unjustifiable conduct under the predecessor Uniform Child
 9 Custody Jurisdiction Act (1968), see David Carl Minneman, *Parties’ Misconduct as Grounds for*
 10 *Declining Jurisdiction Under §8 of the Uniform Child Custody Jurisdiction Act (UCCJA)*, 16
 11 A.L.R. 5th 650 (1993).

12 Subsection Subdivision (a) gives the court authority to fashion an appropriate remedy when it
 13 has acquired jurisdiction because of unjustifiable conduct. The court may decline to exercise
 14 jurisdiction; exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to
 15 ensure the health, safety, and welfare of the ~~respondent~~ conservatee or proposed conservatee or
 16 the protection of the ~~respondent’s~~ property of the conservatee or proposed conservatee or to
 17 prevent a repetition of the unjustifiable conduct; or continue to exercise jurisdiction after
 18 considering several specified factors. Under ~~subsection~~ subdivision (a), the unjustifiable conduct
 19 need not have been committed by a party.

20 Subsection Subdivision (b) authorizes a court to assess costs and expenses, including attorney’s
 21 fees, against a party whose unjustifiable conduct caused the court to acquire jurisdiction.
 22 Subsection Subdivision (b) applies only if the unjustifiable conduct was committed by a party and
 23 allows for costs and expenses to be assessed only against that party. Similar to Section 208 of the
 24 UCCJEA, the court may not assess fees, costs, or expenses of any kind against this state or a
 25 governmental subdivision, agency, or instrumentality of the state unless authorized by other law.

26 § 1998. Notice of proceeding

27 1998. If a petition for the appointment of a ~~guardian or issuance of a protective~~
 28 ~~order~~ conservator of the person, conservator of the estate, or conservator of the
 29 person and estate is brought in this state and this state was not the ~~respondent’s~~
 30 home state of the proposed conservatee on the date the petition was filed, in
 31 addition to complying with the notice requirements of this state, notice of the
 32 petition or of a hearing on the petition must be given to those persons who would
 33 be entitled to notice of the petition or of a hearing on the petition if a proceeding
 34 were brought in the ~~respondent’s~~ home state of the proposed conservatee. The
 35 notice must be given in the same manner as notice is required to be given in this
 36 state.

37 **Comment.** Section 1998 is similar to Section 208 of the Uniform Adult Guardianship and
 38 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
 39 conform to California terminology for the proceedings in question and reflect limitations on the
 40 scope of this chapter. See Sections 1981 & Comment (scope of chapter), 1982 & Comment
 41 (definitions). Revisions have also been made to reflect that some states require notice of a hearing
 42 on a petition, as opposed to notice of a petition.

43 **Background from Uniform Act**

44 While this Act tries not to interfere with a state’s underlying substantive law on guardianship
 45 and protective conservatorship proceedings, the issue of notice is fundamental. Under this
 46 section, when a proceeding is brought other than in the ~~respondent’s~~ proposed conservatee’s
 47 home state, the petitioner must give notice in the method provided under local law not only to
 48 those entitled to notice under local law but also to the persons required to be notified were the
 49 proceeding brought in the ~~respondent’s~~ proposed conservatee’s home state. Frequently, the

1 respective lists of persons to be notified will be the same. But where the lists are different, notice
2 under this section will assure that someone with a right to assert that the home state has a primary
3 right to jurisdiction will have the opportunity to make that assertion.

4 **☞ Staff Note.** At the December meeting, the Commission decided that “California’s version of
5 UAGPPJA should require notice of a hearing on a transfer petition, not notice of the petition”
6 Minutes (Dec. 2012), p. 6. Consistent with that decision, the staff suggests revising Section 208
7 of UAGPPJA to reflect that some states require notice of a hearing on a petition, as opposed to
8 notice of a petition. We have incorporated such revisions in proposed Section 1998 shown above.
9 **Is that acceptable to the Commission?**

10 **§ 1999. Proceedings in more than one state**

11 1999. Except for a petition for the appointment of a ~~guardian in an emergency or~~
12 ~~issuance of a protective order limited to property located in this state under~~
13 ~~Section 204(a)(1) or (a)(2) temporary conservator under paragraph (1) or~~
14 ~~paragraph (2) of subdivision (a) of Section 1994,~~ if a petition for the appointment
15 of a ~~guardian or issuance of a protective order~~ conservator is filed in this state and
16 in another state and neither petition has been dismissed or withdrawn, the
17 following rules apply:

18 (a) If the court in this state has jurisdiction under Section ~~203~~ 1993, it may
19 proceed with the case unless a court in another state acquires jurisdiction under
20 provisions similar to Section ~~203~~ 1993 before the appointment ~~or issuance of the~~
21 ~~order.~~

22 (b) If the court in this state does not have jurisdiction under Section ~~203~~ 1993,
23 whether at the time the petition is filed or at any time before the appointment ~~or~~
24 ~~issuance of the order,~~ the court shall stay the proceeding and communicate with
25 the court in the other state. If the court in the other state has jurisdiction, the court
26 in this state shall dismiss the petition unless the court in the other state determines
27 that the court in this state is a more appropriate forum.

28 **Comment.** Section 1999 is similar to Section 209 of the Uniform Adult Guardianship and
29 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
30 conform to California terminology for the proceedings in question and reflect limitations on the
31 scope of this chapter. See Sections 1981 & Comment (scope of chapter), 1982 & Comment
32 (definitions).

33 **Background from Uniform Act**

34 Similar to Section 206 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997),
35 this section addresses the issue of which court has the right to proceed when proceedings for the
36 same ~~respondent proposed conservatee~~ are brought in more than one state. The provisions of this
37 section, however, have been tailored to the needs of ~~adult guardianship and protective~~
38 ~~conservatorship~~ proceedings and the particular jurisdictional provisions of this Act. ~~Emergency~~
39 ~~guardianship appointments and protective proceedings with respect to property in other states~~
40 ~~(Sections 204(a)(1) and (a)(2))~~ Temporary conservatorships under Section 204(a)(1) & (2) are
41 excluded from this section because the need for dual appointments is frequent in these cases; for
42 example, a petition will be brought in the ~~respondent’s proposed conservatee’s~~ home state but
43 emergency action will be necessary in the place where the ~~respondent proposed conservatee~~ is
44 temporarily located, or a petition for the appointment of a conservator of the estate will be
45 brought in the ~~respondent’s proposed conservatee’s~~ home state but real estate located in some
46 other state needs to be brought under management.

1 Under the Act only one court in which a petition is pending will have jurisdiction under
 2 Section ~~203~~ 1993. If a petition is brought in the ~~respondent's proposed conservatee's~~ home state,
 3 that court has jurisdiction over that of any significant-connection or other state. If the petition is
 4 first brought in a significant-connection state, that jurisdiction will be lost if a petition is later
 5 brought in the home state prior to an appointment ~~or issuance of an order in the significant-~~
 6 ~~connection state~~. Jurisdiction will also be lost in the significant-connection state if the ~~respondent~~
 7 ~~proposed conservatee~~ has a home state and an objection is filed in the significant-connection state
 8 that jurisdiction is properly in the home state. If petitions are brought in two significant-
 9 connection states, the first state has a right to proceed over that of the second state, and if a
 10 petition is brought in any other state, any claim to jurisdiction of that state is subordinate to that
 11 of the home state and all significant-connection states.

12 Under this section, if the court has jurisdiction under Section ~~203~~ 1993, it has the right to
 13 proceed unless a court of another state acquires jurisdiction prior to the first court making an
 14 appointment ~~or issuing a protective order~~. If the court does not have jurisdiction under Section
 15 ~~203~~ 1993, it must defer to the court with jurisdiction unless that court determines that the court in
 16 this state is the more appropriate forum and it thereby acquires jurisdiction. While the rules are
 17 straightforward, factual issues can arise as to which state is the home state or significant-
 18 connection state. Consequently, while under Section ~~203~~ 1993 there will almost always be a court
 19 having jurisdiction to proceed, reliance on the communication, court cooperation, and evidence
 20 gathering provisions of Sections ~~404-406~~ 1984-1986 will sometimes be necessary to determine
 21 which court that might be.

22 Article 3. Transfer of ~~Guardianship or~~ Conservatorship

23 Background from Uniform Act

24 While this article consists of two separate sections, they are part of one integrated procedure.
 25 Article 3 authorizes a ~~guardian or~~ conservator to petition the court to transfer the ~~guardianship or~~
 26 conservatorship proceeding to a court of another state. Such a transfer is often appropriate when
 27 the ~~incapacitated or protected person~~ conservatee has moved or has been placed in a facility in
 28 another state, making it impossible for the original court to adequately monitor the proceeding.
 29 Article 3 authorizes a transfer of a ~~guardianship~~ conservatorship of the person, a conservatorship
 30 of the estate, or both. There is no requirement that both categories of proceeding be administered
 31 in the same state.

32 Section ~~304~~ 2001 addresses procedures in the transferring state. Section ~~302~~ 2002 addresses
 33 procedures in the accepting state.

34 A transfer begins with the filing of a petition by the ~~guardian or~~ conservator as provided in
 35 Section ~~301(a)~~ 2001(a). ~~Notice of this petition must be given to the persons who would be~~
 36 ~~entitled to notice were the petition a petition for an original appointment. Section 301(b). A~~
 37 ~~hearing on the petition is required only if requested or on the court's own motion. Section 301(c).~~
 38 Assuming the court in the transferring state is satisfied that the grounds for transfer stated in
 39 Section ~~301(d) (guardianship)~~ 2001(d) (conservatorship of the person) or ~~301(e)~~
 40 ~~(conservatorship)~~ 2001(e) (conservatorship of the estate) have been met, one of which is that the
 41 court is satisfied that the court in the other state will accept the case, the court must issue a
 42 provisional order approving the transfer. The transferring court will not issue a final order
 43 dismissing the case until, as provided in Section ~~301(f)~~ 2001(f), it receives a copy of the
 44 provisional order from the accepting court accepting the transferred proceeding.

45 Following issuance of the provisional order by the transferring court, a petition must be filed in
 46 the accepting court as provided in Section ~~302(a)~~ 2002(a). ~~Notice of that petition must be given to~~
 47 ~~those who would be entitled to notice of an original petition for appointment in both the~~
 48 ~~transferring state and in the accepting state. Section 302(b). A hearing must be held only if~~
 49 ~~requested or on the court's own motion. Section 302(c).~~ The court ~~must issue~~ may not issue a
 50 provisional order accepting the case ~~unless~~ if it is established that the transfer would be contrary
 51 to the ~~incapacitated or protected person's conservatee's~~ interests or the guardian or conservator is

1 ~~ineligible for appointment in the accepting state.~~ Section ~~302(d)~~ 2002(d). The term “interests” as
 2 opposed to “best interests” was chosen because of the strong autonomy values in modern
 3 ~~guardianship conservatorship~~ law. Should the court decline the transfer petition, it may consider a
 4 separately brought petition for the appointment of a ~~guardian or issuance of a protective order~~
 5 ~~conservator~~ only if the court has a basis for jurisdiction under Sections ~~203 or 204~~ 1993 or 1994
 6 other than by reason of the provisional order of transfer. Section ~~302(h)~~ 2002(h).

7 ~~The final steps are largely ministerial.~~ Pursuant to Section ~~301(f)~~ 2001(f), the provisional order
 8 from the accepting court must be filed in the transferring court. The transferring court will then
 9 issue a final order terminating the proceeding, subject to local requirements such as filing of a
 10 final report or account and the release of any bond. Pursuant to Section ~~302(e)~~ 2002(e), the final
 11 order terminating the proceeding in the transferring court must then be filed in the accepting
 12 court, which will then convert its provisional order accepting the case into a final order
 13 appointing the petitioning ~~guardian or conservator as guardian or conservator~~ in the accepting
 14 state.

15 Because ~~guardianship and~~ conservatorship law and practice will likely differ between the two
 16 states, the court in the accepting state must within 90 days after issuance of a final order
 17 determine ~~whether the guardianship or conservatorship~~ needs to be modified to conform to the
 18 law of the accepting state. Section ~~302(f)~~ 2002(f). The number “90” is placed in brackets to
 19 encourage states to coordinate this time limit with the time limits for other required filings such as
 20 ~~guardianship or conservatorship~~ plans. This initial period in the accepting state is also an
 21 appropriate time to change the ~~guardian or conservator~~ if there is a more appropriate person to act
 22 as ~~guardian or conservator~~ in the accepting state. The drafters specifically did not try to design the
 23 procedures in Article 3 for the difficult problems that can arise in connection with a transfer when
 24 the ~~guardian or conservator~~ is ineligible to act in the second state, a circumstance that can occur
 25 when a financial institution is acting as conservator ~~of the estate~~ or a government agency is acting
 26 as ~~guardian conservator of the person~~. Rather, the procedures in Article 3 are designed for the
 27 typical case where the ~~guardian or conservator~~ is legally eligible to act in the second state. Should
 28 that particular ~~guardian or conservator~~ not be the best person to act in the accepting state, a
 29 change of ~~guardian or conservator~~ can be initiated once the transfer has been secured.

30 The transfer procedure in this article responds to numerous problems that have arisen in
 31 connection with attempted transfers under the existing law of most states. Sometimes a court will
 32 dismiss a case on the assumption a proceeding will be brought in another state, but such
 33 proceeding is never filed. Sometimes a court will refuse to dismiss a case until the court in the
 34 other state accepts the matter, but the court in the other state refuses to consider the petition until
 35 the already existing ~~guardianship or conservatorship~~ has been terminated. Oftentimes the court
 36 will conclude that it is without jurisdiction to make an appointment until the ~~respondent~~
 37 ~~conservatee~~ is physically present in the state, a problem which Section ~~204(a)(3)~~ 1994(a)(3)
 38 addresses by granting a court special jurisdiction to consider a petition to accept a proceeding
 39 from another state. But the most serious problem is the need to prove the case in the second state
 40 from scratch, including proving the ~~respondent's conservatee's~~ incapacity and the choice of
 41 ~~guardian or conservator~~. Article 3 eliminates this problem. Section ~~302(g)~~ 2002(g) requires that the court
 42 ~~accepting the case recognize a guardianship or conservatorship order from the other state,~~
 43 ~~including the determination of the incapacitated or protected person's incapacity and the~~
 44 ~~appointment of the guardian or conservator, if otherwise eligible to act in the accepting state.~~

45 § 2001. Transfer of ~~guardianship or conservatorship~~ to another state

46 2001. (a) A ~~guardian or conservator~~ appointed in this state may petition the court
 47 to transfer the ~~guardianship or conservatorship~~ to another state.

48 (b) Notice of a hearing on a petition under subdivision (a) must be given to the
 49 persons that would be entitled to notice of a hearing on a petition in this state for
 50 the appointment of a ~~guardian or conservator~~.

1 ~~(c) On the court's own motion or on request of the guardian or conservator, the~~
2 ~~incapacitated or protected person, or other person required to be notified of the~~
3 ~~petition, the~~ The court shall hold a hearing on a petition filed pursuant to
4 subdivision (a).

5 (d) The court shall issue an order provisionally granting a petition to transfer a
6 ~~guardianship conservatorship of the person, and shall direct the guardian~~
7 ~~conservator of the person to petition for guardianship a conservatorship of the~~
8 ~~person in the other state, if the court is satisfied that the guardianship~~
9 ~~conservatorship of the person will be accepted by the court in the other state and~~
10 the court finds all of the following:

11 (1) The ~~incapacitated person conservatee~~ is physically present in or is
12 reasonably expected to move permanently to the other state.

13 (2) An objection to the transfer has not been made or, if an objection has been
14 made, the ~~objector has not established~~ court determines that the transfer would not
15 be contrary to the interests of the ~~incapacitated person conservatee~~.

16 (3) Plans for care and services for the ~~incapacitated person conservatee~~ in the
17 other state are reasonable and sufficient.

18 (e) The court shall issue a provisional order granting a petition to transfer a
19 conservatorship of the estate, and shall direct the conservator of the estate to
20 petition for a conservatorship of the estate in the other state, if the court is satisfied
21 that the conservatorship will be accepted by the court of the other state and the
22 court finds all of the following:

23 (1) The ~~protected person conservatee~~ is physically present in or is reasonably
24 expected to move permanently to the other state, or the ~~protected person~~
25 ~~conservatee~~ has a significant connection to the other state considering the factors
26 in ~~Section 201(b) subdivision (b) of Section 1991~~.

27 (2) An objection to the transfer has not been made or, if an objection has been
28 made, the ~~objector has not established~~ court determines that the transfer would not
29 be contrary to the interests of the ~~protected person conservatee~~.

30 (3) Adequate arrangements will be made for management of the ~~protected~~
31 ~~person's conservatee's~~ property.

32 (f) The court shall issue a provisional order granting a petition to transfer a
33 conservatorship of the person and estate, and shall direct the conservator to
34 petition for a similar conservatorship in the other state, if the requirements of
35 subdivision (d) and the requirements of subdivision (e) are both satisfied.

36 ~~(f)~~ (g) The court shall issue a final order confirming the transfer and terminating
37 the ~~guardianship or conservatorship~~ upon its receipt of both of the following:

38 (1) A provisional order accepting the proceeding from the court to which the
39 proceeding is to be transferred which is issued under provisions similar to Section
40 ~~302~~ 2002.

41 (2) The documents required to terminate a ~~guardianship or conservatorship~~ in
42 this state, including, but not limited to, any required accounting.

1 **Comment.** Section 2001 is similar to Section 301 of the Uniform Adult Guardianship and
 2 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
 3 conform to California terminology for the proceedings in question and reflect limitations on the
 4 scope of this chapter. See Sections 1981 & Comment (scope of chapter), 1982 & Comment
 5 (definitions).

6 Subdivision (a) corresponds to Section 301(a) of UAGPPJA.

7 Subdivision (b) corresponds to Section 301(b) of UAGPPJA. Revisions have been made to
 8 conform to California practice, under which a party is required to give notice *of a hearing* on a
 9 motion or petition, not just notice *of a petition*.

10 Subdivision (c) corresponds to Section 301(c) of UAGPPJA, but a hearing under subdivision
 11 (c) is mandatory in every case. If there is no opposition to a transfer petition, the court may place
 12 the matter on the consent calendar. A similar requirement applies when a conservator seeks to
 13 establish an out-of-state residence for a conservatee without petitioning for a transfer of the
 14 conservatorship. See Section 2353(c); Cal. R. Ct. 7.1063(f).

15 Subdivision (d) corresponds to Section 301(d) of UAGPPJA, but modifies the procedure that
 16 applies if a person objects to transfer of a conservatorship of the person. In that circumstance, the
 17 objector does not bear the burden of establishing that the transfer would be contrary to the
 18 interests of the conservatee. Rather, the requirement of paragraph (d)(2) is satisfied only if the
 19 court determines that the transfer would not be contrary to the interests of the conservatee.

20 Subdivision (e) corresponds to Section 301(e) of UAGPPJA, but modifies the procedure that
 21 applies if a person objects to transfer of a conservatorship of the estate. In that circumstance, the
 22 objector does not bear the burden of establishing that the transfer would be contrary to the
 23 interests of the conservatee. Rather, the requirement of paragraph (e)(2) is satisfied only if the
 24 court determines that the transfer would not be contrary to the interests of the conservatee.

25 Subdivision (f) provides guidance on the transfer requirements applicable to a conservatorship
 26 of the person and estate.

27 Subdivision (g) corresponds to Section 301(f) of UAGPPJA. If a conservatorship is transferred
 28 from California to another state, the conservator must continue to comply with California law
 29 until the court issues a final order confirming the transfer and terminating the conservatorship.
 30 See Section 2300 (oath & bond).

31 Staff Notes.

32 (1) Subdivisions (b) and (c) of proposed Section 2001 would implement the Commission’s
 33 decision that “California’s version of UAGPPJA should require notice of a hearing on a transfer
 34 petition, not notice of the petition ...” Minutes (Dec. 2012), p. 6.

35 (2) Under Section 301(d)(2) of UAGPPJA, if a person objects to a transfer, the court must find
 36 that “*the objector has not established* that the transfer would be contrary to the interests of the
 37 incapacitate person ...” (Emphasis added.) Section 301(e)(2) is similar.

38 In contrast, proposed Section 2001(d)(2) would require the court to determine that the transfer
 39 would not be contrary to the interests of the conservatee. Proposed Section 2001(e)(2) is similar.

40 The TEXCOM subgroup suggested this approach. See Memorandum 2012-36, Exhibit p. 35. In
 41 so doing, they explained that “New Jersey’s Act ... uses this language (‘the court determines’),
 42 which appears to be a lesser burden of proof for the objector.” See *id.*

43 The staff is inclined to follow the approach suggested by the TEXCOM subgroup, because it
 44 would be more protective of the conservatee than the UAGPPJA approach. **Is that acceptable to
 45 the Commission, or should we revise proposed Section 2001(d)(2) and (e)(2) to follow the
 46 UAGPPJA approach?**

47 (3) Like UAGPPJA Section 301(d)(3), proposed Section 2001(d)(3) would require the court to
 48 find that the plans for the conservatee in the other state are “reasonable and sufficient.” The
 49 TEXCOM subgroup suggests adding another requirement: The court would have to find that “the
 50 new residence is the least restrictive appropriate residence, as described in Section 2352.5, that is
 51 available and necessary to meet the needs of the conservatee and that is in the best interests of the
 52 conservatee.” See Memorandum 2012-36, Exhibit pp. 35-36.

1 The TEXCOM subgroup explains that this requirement “appears in Probate Code section
2 2352(e)(1) which states that a notice of change of residence shall include a declaration that the
3 change is consistent with this standard, as set forth in section 2352(b).” *Id.* at Exhibit p. 36, n.15.
4 The subgroup points out that Section 2352(b) “references only a change of residence *within*
5 California, so there is some ambiguity about its application for a change of residence *not within*
6 this state ...” *Id.* (emphasis in original).

7 The staff thinks it might be problematic for the court to have to determine the “least restrictive
8 appropriate residence” for a conservatee when that residence is located outside California. Thus,
9 we have not included such a requirement in proposed Section 2001(d)(3).

10 **Does the Commission want to add such a requirement?**

11 (4) Under UAGPPJA Section 301(f)(2), a court cannot transfer a conservatorship to another
12 state until the court receives “the documents required to terminate a ... conservatorship in this
13 state.” The TEXCOM subgroup suggests adding an express reference to the requirement of a final
14 accounting. See Memorandum 2012-36, Exhibit p. 36. The staff agrees that such a reference
15 might be helpful; we have therefore included such language in proposed Section 2001(g)(2). **Is
16 that acceptable to the Commission?**

17 **§ 2002. Accepting ~~guardianship or~~ conservatorship transferred from another state**

18 2002. (a)(1) To confirm transfer of a ~~guardianship or~~ conservatorship transferred
19 to this state under provisions similar to Section ~~301~~ 2001, the ~~guardian or~~
20 conservator must petition the court in this state to accept the ~~guardianship or~~
21 conservatorship.

22 (2) The petition must include a certified copy of the other state’s provisional
23 order of transfer.

24 (3) The first page of the petition must state that the conservatee is not a minor or
25 an adult with a developmental disability. The first page of the petition must also
26 state that the conservatee is not receiving involuntary mental health treatment and
27 there are no plans for the conservatee to receive involuntary mental health
28 treatment after transfer of the conservatorship.

29 (b) Notice of a hearing on a petition under subdivision (a) must be given to those
30 persons that would be entitled to notice if the petition were a petition for the
31 appointment of a ~~guardian or issuance of a protective order~~ conservator in both the
32 transferring state and this state. The notice must be given in the same manner as
33 notice is required to be given in this state.

34 (c)(1) ~~On the court’s own motion or on request of the guardian or conservator,~~
35 ~~the incapacitated or protected person, or other person required to be notified of the~~
36 ~~proceeding, the~~ The court shall hold a hearing on a petition filed pursuant to
37 subdivision (a).

38 (2) Before the hearing under paragraph (1), the court shall gather sufficient
39 information to permit the judge to determine whether the requirements of
40 subdivision (d) are satisfied.

41 (d) The court shall issue an order provisionally granting a petition filed under
42 subdivision (a) unless any of the following occurs:

43 (1) An objection is made and the ~~objector establishes~~ court determines that
44 transfer of the proceeding would be contrary to the interests of the ~~incapacitated or~~
45 ~~protected person; or~~ conservatee.

1 (2) ~~The guardian or~~ court determines that, under the law of the transferring state,
2 ~~the~~ conservator is ineligible for appointment in this state.

3 (3) The court determines that, under the law of this state, the conservator is
4 ineligible for appointment in this state, and the transfer petition does not identify a
5 replacement who is willing and eligible to serve in this state.

6 (4) The court determines that this chapter is inapplicable under Section 1981.

7 (e)(1) The court shall issue a final order accepting the proceeding and appointing
8 the ~~guardian or~~ conservator as ~~guardian or~~ a conservator of the person, a
9 conservator of the estate, or a conservator of the person and estate in this state
10 upon its receipt from the court from which the proceeding is being transferred of a
11 final order issued under provisions similar to Section 304 2001 transferring the
12 proceeding to this state. In appointing a conservator under this paragraph, the court
13 shall comply with Sections 1830 and 1835.

14 (2) A transfer to this state does not become effective unless and until the court
15 issues a final order under paragraph (1). A conservator may not take action in this
16 state pursuant to a transfer petition unless and until the transfer becomes effective.

17 (3) When a transfer to this state becomes effective, the conservatorship is
18 subject to the law of this state and shall thereafter be treated as a conservatorship
19 under the law of this state.

20 (4) When it issues a final order under paragraph (1), the court shall appoint a
21 court investigator under Section 1454, who shall promptly commence an
22 investigation under Section 1851.1.

23 (f)(1) Not later than [90] days after issuance of a final order accepting transfer of
24 a ~~guardianship or~~ conservatorship, the court shall determine whether the
25 ~~guardianship or~~ conservatorship needs to be modified to conform to the law of this
26 state. The court may make take any step necessary to achieve compliance with the
27 law of this state, including, but not limited to, striking or modifying any
28 conservator powers that are not permitted under the law of this state.

29 (2) At the same time that it makes the determination required by paragraph (1),
30 the court shall review the conservatorship as provided in Section 1851.1.

31 (g) In ~~granting~~ Except as otherwise provided by Sections 1851.1 and 2650,
32 Chapter 3 (commencing with Section 1860), and other law, when the court grants
33 a petition under this section, the court shall recognize a ~~guardianship or~~
34 conservatorship order from the other state, including the determination of the
35 ~~incapacitated or protected person's~~ conservatee's incapacity and the appointment
36 of the ~~guardian or~~ conservator.

37 (h) The denial by a court of this state of a petition to accept a ~~guardianship or~~
38 conservatorship transferred from another state does not affect the ability of the
39 ~~guardian or~~ conservator to seek appointment as ~~guardian or~~ conservator in this
40 state under ~~[insert statutory references to this state's ordinary procedures law for~~
41 ~~the appointment of guardian or conservator]~~ Chapter 1 (commencing with Section
42 1800) of Part 3 if the court has jurisdiction to make an appointment other than by
43 reason of the provisional order of transfer.

1 **Comment.** Section 2002 is similar to Section 302 of the Uniform Adult Guardianship and
2 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
3 conform to California terminology for the proceedings in question and reflect limitations on the
4 scope of this chapter. See Sections 1981 & Comment (scope of chapter), 1982 & Comment
5 (definitions).

6 Paragraphs (1) and (2) of subdivision (a) correspond to Section 302(a) of UAGPPJA.
7 Paragraph (3) of subdivision (a) serves to facilitate compliance with Section 1981 (scope of
8 chapter).

9 Subdivision (b) corresponds to Section 302(b) of UAGPPJA. Revisions have been made to
10 conform to California practice, under which a party is required to give notice *of a hearing* on a
11 motion or petition, not just notice *of a petition*.

12 Paragraph (1) of subdivision (c) corresponds to Section 302(c) of UAGPPJA, but a hearing
13 under subdivision (c) is mandatory in every case. If there is no opposition to a transfer petition,
14 the court may place the matter on the consent calendar.

15 Paragraph (2) of subdivision (c) directs the court to conduct a preliminary investigation before
16 provisionally granting a petition to transfer a conservatorship to California. The scope of this
17 investigation is limited because it may be difficult to obtain information about the
18 conservatorship while the conservatee, the conservator, or both are located in another state. A
19 more extensive investigation is required later. See subdivisions (e) & (f).

20 Paragraph (1) of subdivision (d) corresponds to Section 302(d)(1) of UAGPPJA, but modifies
21 the procedure that applies if a person objects to transfer of a conservatorship of the person. In that
22 circumstance, the objector does not bear the burden of establishing that the transfer would be
23 contrary to the interests of the conservatee. Rather, the requirement of paragraph (d)(1) is
24 satisfied only if the court determines that the transfer would not be contrary to the interests of the
25 conservatee.

26 Paragraphs (2) and (3) of subdivision (d) correspond to Section 302(d)(2) of UAGPPJA.
27 Revisions have been made to differentiate between: (1) a conservator who is ineligible, *under the*
28 *law of the transferring state*, to serve in California (e.g., a public guardian who, under the law of
29 another jurisdiction, is only authorized to act in that jurisdiction) and (2) a conservator who is
30 ineligible, *under California law*, to serve in California. In the former situation, paragraph (d)(2)
31 precludes the California court from provisionally granting the transfer. If the proceeding is to be
32 transferred to California, the transferring court must first replace the existing conservator with
33 one who would be authorized to act beyond the boundaries of the transferring state. In contrast, if
34 the existing conservator is ineligible due to California law, the transfer can proceed so long as the
35 transfer petition identifies a replacement who is willing and eligible to serve in California. See
36 paragraph (d)(3).

37 Paragraph (4) of subdivision (d) is necessary to reflect the limitations on the scope of this
38 chapter. See Section 1981 & Comment (scope of chapter).

39 Paragraph (1) of subdivision (e) corresponds to Section 302(e) of UAGPPJA. A second
40 sentence is included to make clear that (1) a final order accepting a proceeding and appointing the
41 conservator to serve in California must meet the same requirements as an order appointing a
42 conservator in a proceeding that originates in California, and (2) a court must provide the same
43 written information to the conservator of a transferred conservatorship that it provides to the
44 conservator of a conservatorship that originates in California.

45 Paragraph (2) of subdivision (e) makes clear that a transfer to California does not become
46 effective until the California court enters a final order accepting the conservatorship and
47 appointing the conservator in California. Absent some other source of authority (e.g., registration
48 of the conservatorship under Article 4), the conservator cannot begin to function here as such
49 until the transfer becomes effective.

50 Paragraph (3) of subdivision (e) underscores that once a conservatorship is transferred to
51 California, it is henceforth subject to California law and will be treated as a California
52 conservatorship. For example, if a conservatorship is transferred to California and the conservator
53 wishes to exercise the powers specified in Section 2356.5 (conservatee with dementia), the
54 requirements of that section must be satisfied.

1 Paragraph (4) of subdivision (e) directs the court to appoint a court investigator at the same
 2 time that it issues a final order accepting transfer of a conservatorship. The court investigator
 3 must promptly conduct an investigation similar to the investigation for establishing a new
 4 conservatorship in California. See Section 1851.1 (investigation & review of transferred
 5 conservatorship).

6 Paragraph (1) of subdivision (f) corresponds to Section 302(f) of UAGPPJA, but includes an
 7 additional sentence that expressly authorizes the court to take any steps necessary to conform a
 8 conservatorship to California law, including elimination or reduction of the conservator's powers.

9 Paragraph (2) of subdivision (f) directs the court to review the conservatorship at the same time
 10 that it determines whether the conservatorship “needs to be modified to conform to the law of this
 11 state” under paragraph (1) of subdivision (f). For details of this review process, see Section
 12 1851.1 (investigation & review of transferred conservatorship).

13 Subdivision (g) corresponds to Section 302(g) of UAGPPJA, but there are limitations on the
 14 comity accorded to the transferring court's determination of capacity and choice of conservator.
 15 See Sections 1851.1 (investigation & review of transferred conservatorship), 1860-1865
 16 (termination of conservatorship), 2650 (grounds for removal).

17 Subdivision (h) corresponds to Section 302(h) of UAGPPJA.

18 Staff Notes.

19 (1) In conjunction with proposed Section 2115 (court rules and forms), paragraph (a)(3) of
 20 proposed Section 2002 would implement the Commission's decision that the documentation
 21 required by California's version of UAGPPJA “should include a checkbox or similar feature that
 22 will permit a court to readily determine whether a conservatee ... is developmentally disabled.”
 23 Minutes (Dec. 2012), p. 5. The staff has expanded the concept to facilitate compliance with the
 24 other limitations stated in proposed Section 1981, which would make California's version of
 25 UAGPPJA inapplicable to a minor or a proceeding involving involuntary mental health treatment.

26 (2) Subdivisions (b) and (c) of proposed Section 2002 would implement the Commission's
 27 decision that “California's version of UAGPPJA should require notice of a hearing on a transfer
 28 petition, not notice of the petition ...” Minutes (Dec. 2012), p. 6.

29 (3) Under Section 302(d)(1) of UAGPPJA, if a person objects to a transfer, the court must find
 30 that “*the objector has not established* that the transfer would be contrary to the interests of the
 31 incapacitated person ...” (Emphasis added.) In contrast, proposed Section 2002(d)(1) would
 32 require the court to determine that the transfer would not be contrary to the interests of the
 33 conservatee. The TEXCOM subgroup suggested this approach. See Memorandum 2012-36,
 34 Exhibit p. 35. In so doing, they explained that “New Jersey's Act ... uses this language (‘the court
 35 determines’), which appears to be a lesser burden of proof for the objector.” See *id.*

36 The staff is inclined to follow the approach suggested by the TEXCOM subgroup, because it
 37 would be more protective of the conservatee than the UAGPPJA approach. We have used the
 38 suggested language (“the court determines”) in both paragraph (d)(1) and paragraph (d)(2). **Is
 39 that acceptable to the Commission, or should we revise proposed Section 2002(d)(1)-(2) to
 40 follow the UAGPPJA approach?**

41 (4) At the December meeting, the Commission discussed but did not resolve how to transfer a
 42 conservatorship (or similar arrangement by another name) to California under UAGPPJA when
 43 the existing out-of-state conservator is “ineligible” for appointment in California. The
 44 Commission's inclination was that “it might be appropriate to differentiate between the following
 45 situations: (1) under the laws of the transferring state, the existing conservator is not authorized to
 46 take action beyond the borders of that state, and (2) under California law, the existing conservator
 47 would not be permitted to serve as conservator.” Minutes (Dec. 2012), pp. 5-6.

48 Proposed Section 2002(d)(2)-(3) and the corresponding part of the Comment represent the
 49 staff's attempt to deal with this situation. As explained in the Comment, if the existing
 50 conservator would be ineligible to serve in California *due to the law of the transferring*
 51 *jurisdiction*, the eligibility problem would have to be cured by the court in that jurisdiction before

1 the California court could provisionally approve the transfer. In contrast, if the existing
2 conservator would be ineligible to serve in California *due to California law*, the California court
3 could provisionally approve the transfer so long as the transfer petition identifies a replacement
4 who is willing and eligible to serve in California. The underlying concept is that an eligibility
5 issue would have to be resolved by the court best-situated to make the determination: The
6 transferring court would handle ineligibility that is based on the law of the transferring state, and
7 the California court would handle ineligibility that is based on California law.

8 **Comments on this approach would be helpful.** After considering any comments, the
9 Commission should **decide whether to follow this approach for purposes of a tentative**
10 **recommendation, or pursue some other alternative.**

11 (5) Proposed Section 2002(e)(2) would implement the Commission’s decision that
12 “California’s version of UAGPPJA should expressly state that a transfer to California does not
13 become effective, and the conservator cannot begin to function here as such, until the California
14 court enters a final order accepting the transfer” Minutes (Dec. 2012), p. 7.

15 (6) Together with proposed Section 1851.1, proposed Section 2002(e)(4) & (f)(2) would
16 implement the Commission’s decision to use a bifurcated court investigation process when a
17 conservatorship is transferred to California. See Minutes (Dec. 2012), p. 6.

18 (7) Section 302(f) of UAGPPJA directs the court to determine whether the conservatorship
19 “needs to be modified to conform to the law of this state.” The court must make this
20 determination “[n]ot later than [90] days after issuance of a final order accepting transfer of a
21 conservatorship.” In its Comment to Article 3 of UAGPPJA, the ULC says: “The number ‘90’ is
22 placed in brackets to encourage states to coordinate this time limit with the time limits for other
23 required filings such as guardianship or conservatorship plans.”

24 In drafting proposed Section 2002(f)(1), the staff left the number “90” in brackets. **At some**
25 **point in this study, the Commission will need to determine whether to use 90 days or some**
26 **other length of time in this provision.** Input on this matter would be helpful.

27 (8) Proposed Section 2002(g) would implement the Commission’s decision that “[e]xisting
28 California law on ‘elective review’ of a conservatorship should apply to a conservatorship that is
29 transferred pursuant to Article 3 of UAGPPJA.” Minutes (Oct. 2012), p. 4. As described in the
30 Comment, proposed Section 2002(g) would also impose other limitations on the extent to which a
31 California court would have to defer to a transferring court’s determination of capacity or choice
32 of conservator. These limitations would implement other Commission decisions. See Minutes
33 (Oct. 2012), p. 4.

34 Article 4. Registration and Recognition of Orders from Other States

35 Background from Uniform Act

36 Article 4 is designed to facilitate the enforcement of ~~guardianship and protective~~
37 ~~conservatorship~~ orders in other states. This article does not make distinctions among the types of
38 orders that can be enforced. ~~This article is applicable whether the guardianship or conservatorship~~
39 ~~is full or limited.~~ While some states have expedited procedures for sales of real estate by
40 ~~conservators~~ a conservator of the estate appointed in ~~other states~~ another state, few states have
41 enacted statutes dealing with enforcement of ~~guardianship orders~~ an order appointing a
42 conservator of the person, such as when a care facility questions the authority of a ~~guardian~~
43 conservator of the person appointed in another state. Sometimes, these sorts of refusals
44 necessitate that the proceeding be transferred to the other state or that an entirely new petition be
45 filed, problems that could often be avoided if ~~guardianship and protective~~ conservatorship orders
46 were entitled to recognition in other states.

47 Article 4 provides for such recognition. The key concept is registration. Section 401 ~~2011~~
48 provides for registration of ~~guardianship orders~~ an order appointing a conservator of the person,
49 and Section 402 ~~2012~~ for registration of ~~protective orders~~ an order appointing a conservator of the

1 estate. Following registration of the order in the appropriate county of the other state, and after
2 giving notice to the ~~appointing~~ supervising court of the intent to register the order in the other
3 state, Section ~~403~~ 2014 authorizes the ~~guardian~~ or conservator to thereafter exercise all powers
4 authorized in the order of appointment except as prohibited under the laws of the registering state.

5 The drafters of the Act concluded that the registration of certified copies provides sufficient
6 protection and that it was not necessary to mandate the filing of authenticated copies.

7 **§ 2011. Registration of ~~guardianship order appointing conservator of person~~**

8 2011. If a ~~guardian~~ conservator of the person has been appointed in another state
9 and a petition for the appointment of a ~~guardian~~ conservator of the person is not
10 pending in this state, the ~~guardian~~ conservator of the person appointed in the other
11 state, after ~~giving notice to~~ notifying the appointing court supervising the
12 conservatorship of an intent to register, may register the ~~guardianship~~
13 conservatorship order in this state by filing as a ~~foreign judgment in a court, in any~~
14 ~~appropriate county of this state~~, certified copies of the order and letters of office,
15 together with a cover sheet approved by the Judicial Council, in the superior court
16 of any appropriate county of this state.

17 **Comment.** Section 2011 is similar to Section 401 of the Uniform Adult Guardianship and
18 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
19 conform to California terminology for the proceedings in question and reflect limitations on the
20 scope of this chapter. See Sections 1981 & Comment (scope of chapter), 1982 & Comment
21 (definitions). Revisions have also been made to clarify the proper filing procedure under
22 California law. The reference to the “appointing court” has been replaced with a reference to the
23 “court supervising the conservatorship,” because the court currently supervising a
24 conservatorship might not be the same court that originally appointed the conservator. See Article
25 3 (transfer of conservatorship).

26 For the effect of a registration under this section, see Section 2014 (effect of registration). For
27 the applicable filing fee, see Gov’t Code § 70626 (fee for miscellaneous services). For
28 recordation with a county recorder, see Section 2016 (recordation of registration documents). For
29 guidance regarding third party reliance on a conservatorship order registered under this section,
30 see Section 2015 (good faith reliance on registration).

31 **Staff Note.** Together with proposed Sections 2012 and 2013, proposed Section 2011 would
32 implement the Commission’s decisions that “[r]eferences to ‘filing as a foreign judgment’ shall
33 be fleshed out, to require the filing papers with a clerk of a superior court,” and “references to the
34 ‘appointing state’ should be adjusted to reflect the fact that the state that first created a
35 conservatorship may not be the state that currently has jurisdiction over the conservatorship.”
36 Minutes (Oct. 2012), p. 6.

37 Because this chapter would not apply to an adult with a developmental disability (see proposed
38 Section 1981(a)(1)), it would not be possible to register a conservatorship for such an adult. For
39 discussion of whether to permit such registration, see Staff Note #1 for proposed Section 1981.

40 **§ 2012. Registration of ~~protective orders order appointing conservator of estate~~**

41 2012. If a conservator of the estate has been appointed in another state and a
42 petition for a ~~protective order~~ conservatorship of the estate is not pending in this
43 state, the conservator appointed in the other state, after ~~giving notice to~~ notifying
44 the appointing court supervising the conservatorship of an intent to register, may
45 register the ~~protective conservatorship~~ order in this state by filing as a ~~foreign~~
46 ~~judgment in a court of this state, in any [county] in which property belonging to~~

1 ~~the protected person is located~~, certified copies of the order and letters of office
2 and of any bond, together with a cover sheet approved by the Judicial Council, in
3 the superior court of any county of this state in which property belonging to the
4 conservatee is located.

5 **Comment.** Section 2012 is similar to Section 402 of the Uniform Adult Guardianship and
6 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
7 conform to California terminology for the proceedings in question and reflect limitations on the
8 scope of this chapter. See Sections 1981 & Comment (scope of chapter), 1982 & Comment
9 (definitions). Revisions have also been made to clarify the proper filing procedure under
10 California law. The reference to the “appointing court” has been replaced with a reference to the
11 “court supervising the conservatorship,” because the court currently supervising a
12 conservatorship might not be the same court that originally appointed the conservator. See Article
13 3 (transfer of conservatorship).

14 For the effect of a registration under this section, see Section 2014 (effect of registration). For
15 the applicable filing fee, see Gov’t Code § 70626 (fee for miscellaneous services). For
16 recordation with a county recorder, see Section 2016 (recordation of registration documents). For
17 guidance regarding third party reliance on a conservatorship order registered under this section,
18 see Section 2015 (good faith reliance on registration).

19 **Staff Note.** Together with proposed Sections 2011 and 2013, proposed Section 2012 would
20 implement the Commission’s decisions that “[r]eferences to ‘filing as a foreign judgment’ shall
21 be fleshed out, to require the filing papers with a clerk of a superior court,” and “references to the
22 ‘appointing state’ should be adjusted to reflect the fact that the state that first created a
23 conservatorship may not be the state that currently has jurisdiction over the conservatorship.”
24 Minutes (Oct. 2012), p. 6.

25 Because this chapter would not apply to an adult with a developmental disability (see proposed
26 Section 1981(a)(1)), it would not be possible to register a conservatorship for such an adult. For
27 discussion of whether to permit such registration, see Staff Note #1 for proposed Section 1981.

28 § 2013. Registration of order appointing conservator of person and estate

29 2013. If a conservator of the person and estate has been appointed in another
30 state and a petition for a conservatorship of the person, conservatorship of the
31 estate, or conservatorship of the person and estate is not pending in this state, the
32 conservator appointed in the other state, after notifying the court supervising the
33 conservatorship of an intent to register, may register the conservatorship order in
34 this state by filing certified copies of the order and letters of office and of any
35 bond, together with a cover sheet approved by the Judicial Council, in the superior
36 court of any appropriate county of this state.

37 **Comment.** Section 2013 is included for the sake of completeness. It serves to clarify the
38 registration procedure applicable to a conservatorship of the person and estate.

39 For the effect of a registration under this section, see Section 2014 (effect of registration). For
40 the applicable filing fee, see Gov’t Code § 70626 (fee for miscellaneous services). For
41 recordation with a county recorder, see Section 2016 (recordation of registration documents). For
42 guidance regarding third party reliance on a conservatorship order registered under this section,
43 see Section 2015 (good faith reliance on registration).

44 See Section 1982 (definitions).

45 **Staff Note.** Together with proposed Sections 2011 and 2012, proposed Section 2013 would
46 implement the Commission’s decisions that “[r]eferences to ‘filing as a foreign judgment’ shall
47 be fleshed out, to require the filing papers with a clerk of a superior court,” and “references to the
48 ‘appointing state’ should be adjusted to reflect the fact that the state that first created a

1 conservatorship may not be the state that currently has jurisdiction over the conservatorship.”
2 Minutes (Oct. 2012), p. 6.

3 Because this chapter would not apply to an adult with a developmental disability (see proposed
4 Section 1981(a)(1)), it would not be possible to register a conservatorship for such an adult. For
5 discussion of whether to permit such registration, see Staff Note #1 for proposed Section 1981.

6 **§ 2014. Effect of registration**

7 2014. (a) Upon registration of a ~~guardianship or protective~~ conservatorship order
8 from another state, the ~~guardian or~~ conservator may, while the conservatee resides
9 out of this state, exercise in any county of this state all powers authorized in the
10 order of appointment except as prohibited under the laws of this state, including
11 maintaining actions and proceedings in this state and, if the ~~guardian or~~
12 conservator is not a resident of this state, subject to any conditions imposed upon
13 nonresident parties.

14 (b) A court of this state may grant any relief available under this chapter and
15 other law of this state to enforce a registered order.

16 **Comment.** Subdivision (a) of Section 2014 is similar to Section 402(a) of the Uniform Adult
17 Guardianship and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have
18 also been made to:

- 19 (1) Conform to California terminology for the proceedings in question and reflect
20 limitations on the scope of this chapter. See Sections 1981 & Comment (scope of
21 chapter), 1982 & Comment (definitions).
- 22 (2) Make clear that a registration is only effective while the conservatee resides in another
23 jurisdiction. If the conservatee becomes a California resident, the conservator cannot
24 act pursuant to a registration under Section 2011, 2012, or 2013, but can petition for
25 transfer of the conservatorship to California under Article 2.
- 26 (3) Emphasize that registration of an out-of-state conservatorship in one county is
27 sufficient; it is not necessary to register in every county in which the conservator seeks
28 to act.

29 Subdivision (b) is the same as Section 402(b) of UAGPPJA.

30 **Staff Note.** Proposed Section 2014 would implement the Commission’s decision that
31 “[r]egistration should not be used as a means of avoiding transfer.” Minutes (Oct. 2012), p. 5. As
32 directed by the Commission, the staff has attempted to “develop language to appropriately limit
33 the use of registration when a conservatee establishes residence in California.”

34 Proposed Section 2014 would also implement the Commission’s decision that “California’s
35 version of UAGPPJA should only require an out-of-state conservator to register the
36 conservatorship in one county within the state; it should not be necessary to register in every
37 county in which the conservator seeks to act.” Minutes (Dec. 2012), p. 8.

38 **§ 2015. Good faith reliance on registration**

39 2015. (a) A third person who acts in good faith reliance on a conservatorship
40 order registered under this article is not liable to any person for so acting if all of
41 the following requirements are satisfied:

- 42 (1) The conservator presents to the third person a file-stamped copy of the
43 registration documents required by Section 2011, 2012, or 2013, including, but not
44 limited to, the certified copy of the conservatorship order.

1 (2) Each of the registration documents, including, but not limited to, the
2 conservatorship order and the file-stamped cover sheet, appears on its face to be
3 valid.

4 (3) The conservator presents to the third person a form approved by the Judicial
5 Council, in which the conservator attests that the conservatee does not reside in
6 this state and the conservator promises to promptly notify the third person if the
7 conservatee becomes a resident of this state.

8 (4) The third person has not received any actual notice that the conservatee is
9 residing in this state.

10 (b) Nothing in this section is intended to create an implication that a third person
11 is liable for acting in reliance on a conservatorship order registered under this
12 article under circumstances where the requirements of subdivision (a) are not
13 satisfied. Nothing in this section affects any immunity that may otherwise exist
14 apart from this section.

15 **Comment.** Section 2015 is modeled on Section 4303 (good faith reliance on power of
16 attorney).

17 **Staff Note.** Proposed Section 2015 would implement the Commission’s decision that “[t]he
18 proposed law should include express liability protection for a third party who relies on the
19 apparent authority of a registered conservator, similar to the protection provided to a third party
20 who relies on the apparent authority of an attorney-in-fact under Probate Code Section 4303. **The
21 Commission and other interested persons should carefully consider whether proposed
22 Section 2015 is the best way to implement that decision.**

23 **§ 2016. Recordation of registration documents**

24 2016. (a) A file-stamped copy of the registration documents required by this
25 Section 2011, 2012, or 2013 may be recorded in the office of any county recorder
26 in this state.

27 (b) A county recorder may charge a reasonable fee for recordation under
28 subdivision (a).

29 **Comment.** Section 2016 makes clear that registration documents under this chapter are
30 recordable in county property records.

31 **Staff Note.** Proposed Section 2016 would implement the Commission’s decision that “[t]he
32 proposed law should make clear that registration papers are recordable in county property
33 records.” Minutes (Oct. 2012), p. 6.

34 **Article 5. Miscellaneous Provisions**

35 **§ 2111. Uniformity of application and construction**

36 2111. In applying and construing this uniform act, consideration must be given
37 to the need to promote uniformity of the law with respect to its subject matter
38 among states that enact it, consistent with the need to protect individual civil rights
39 and in accordance with due process.

40 **Comment.** Section 2111 is similar to Section 501 of the Uniform Adult Guardianship and
41 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). A clause has been added to

1 underscore the importance of protecting a conservatee’s civil rights, particularly the constitutional
 2 right of due process, which is deeply implicated in conservatorship proceedings. See U.S. Const.
 3 amend. XIV; Cal. Const. art. I, §§ 7, 15.

4 **☞ Staff Note.** Section 501 of UAGPPJA is the ULC’s standard provision on uniformity. In
 5 Connecticut UAGPPJA legislation, that provision was modified to emphasize the need to protect
 6 individual civil rights and comply with due process. Proposed Section 2111 would follow the
 7 Connecticut approach, as urged by Disability Rights California (see Third Supplement to
 8 Memorandum 2011-31, p. 13 & Exhibit pp. 10-11). The staff originally was inclined to omit the
 9 Connecticut clause as unnecessary, “because every provision in the California codes must be
 10 construed in accordance with constitutional requirements, including the right of due process.”
 11 Third Supplement to Memorandum 2011-31, p. 13. Having since researched the constitutional
 12 constraints applicable to conservatorship proceedings (see Memorandum 2012-51), we now
 13 believe that the extra clause might be a helpful reminder to respect the constitutional rights of a
 14 conservatee or proposed conservatee and take those rights into account in construing California’s
 15 version of UAGPPJA. **Does the Commission agree with that approach?**

16 § 2112. Relationship to Electronic Signatures in Global and National Commerce Act

17 2112. This chapter modifies, limits, and supersedes the federal Electronic
 18 Signatures in Global and National Commerce Act, Title 15 (commencing with
 19 Section 7001) of the United States Code, but does not modify, limit, or supersede
 20 subdivision (c) of Section 101 of that act, which is codified as subdivision (c) of
 21 Section 7001 of Title 15 of the United States Code, or authorize electronic
 22 delivery of any of the notices described in subdivision (b) of Section 103 of that
 23 act, which is codified as subdivision (b) of Section 7003 of Title 15 of the United
 24 States Code.

25 **Comment.** Section 2112 is similar to Section 502 of the Uniform Adult Guardianship and
 26 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
 27 conform to local drafting practices.

28 **☞ Staff Note.** Proposed Section 2112 is a placeholder provision, which rotely follows the text of
 29 UAGPPJA. The staff has not yet researched the meaning and effect of Section 502 of UAGPPJA
 30 and its potential implications in California. This matter might be complicated, because of
 31 interplay between the federal Electronic Signatures in Global and National Commerce Act (“E-
 32 SIGN”) and California’s version of the Uniform Electronic Transactions Act (“UETA”), Civ.
 33 Code §§ 1633.1-1633.17. See Memorandum 2012-45, p. 9. We will research this matter and
 34 report back on it later in this study.

35 § 2113. Transitional provision

36 2113. (a) This chapter applies to ~~guardianship and protective conservatorship~~
 37 proceedings begun on or after ~~[the effective date]~~ [the operative date of this
 38 chapter].

39 (b) Articles 1, 3, and 4 and Sections 501 and 502 apply to proceedings begun
 40 before ~~[the effective date]~~ [the operative date of this chapter], regardless of
 41 whether a ~~guardianship or protective conservatorship~~ order has been issued.

42 **Comment.** Section 2113 is similar to Section 504 of the Uniform Adult Guardianship and
 43 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
 44 conform to California terminology for the proceedings in question and reflect limitations on the
 45 scope of this chapter. See Sections 1981 & Comment (scope of chapter), 1982 & Comment
 46 (definitions).

Background from Uniform Act

This Act applies retroactively to ~~guardianships and~~ conservatorships in existence on the effective date. The ~~guardian or~~ conservator appointed prior to the effective operative date of the Act may petition to transfer the proceeding to another state under Article 3 and register and enforce the order in other states pursuant to Article 4. The jurisdictional provisions of Article 2 also apply to proceedings begun on or after the effective operative date. What the Act does not do is 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~~ operative at the time the appointment was made.

Staff Note. In California, the effective date of legislation is the date when the legislation is officially recognized as law of the state. The effective date is not necessarily the same as the operative date of the legislation, which is when the legislation actually becomes operative. Major pieces of legislation frequently have a delayed operative date, to afford time to prepare for implementation of the legislation. We believe that Section 504 of UAGPPJA is intended to refer to what is known as the operative date in California, not what is known as the effective date.

§ 2114. Effective Operative date

2114. This chapter ~~takes effect~~ becomes operative on *[the operative date of this chapter]*.

Comment. Section 2114 is similar to Section 505 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”), but revisions have been made to conform to California usage of the terms “effective date” and “operative date.”

Staff Note. For discussion of the distinction between an “effective date” and “an operative date” in California, see the Staff Note on proposed Section 2113. **The Commission will eventually need to decide whether to specify a delayed operative date for California’s version of UAGPPJA, and, if so, which operative date to use.** Assuming that the Commission includes a provision like proposed Section 2115, which would direct the Judicial Council to develop court rules and forms to implement California’s version of UAGPPJA, a delayed operative date of at least six months will be necessary. **Input on an appropriate operative date would be helpful.**

§ 2115. Court rules and forms

2115. (a) On or before *[the operative date of this chapter]*, the Judicial Council shall develop court rules and forms as necessary for the implementation of this chapter.

(b) The materials developed pursuant to this section shall include, but not be limited to, both of the following:

(1) A cover sheet for registration of a conservatorship under Section 2011, 2012, or 2013. The cover sheet shall explain that a proceeding may not be registered under Section 2011, 2012, or 2013 if the proceeding relates to a minor or an adult with a developmental disability. The cover sheet shall further explain that a proceeding in which a person is subjected to involuntary mental health care may not be registered under Section 2011, 2012, or 2013. The cover sheet shall require the conservator to initial each of these explanations. The cover sheet shall also include a prominent statement that the conservator of a conservatorship registered

1 under Section 2011, 2012, or 2013 is subject to the law of this state while acting in
2 this state, is required to comply with that law in every respect, including, but not
3 limited to, all applicable procedures, and is not authorized to take any action
4 prohibited by the law of this state. Directly beneath this statement, the cover sheet
5 shall include a signature box in which the conservatee attests to these matters.

6 (2) The form required by paragraph (3) of subdivision (a) of Section 2015. If the
7 Judicial Council deems it advisable, this form may be included in the civil cover
8 sheet developed under paragraph (1).

9 **Comment.** Section 2115 directs the Judicial Council to prepare any court rules and forms that
10 are necessary to implement this chapter it becomes operative. See Section 2114 (operative date).

11 **☞ Staff Notes.**

12 (1) In conjunction with proposed Section 2002(a)(3), proposed Section 2115 would implement
13 the Commission’s decision that the documentation required by California’s version of UAGPPJA
14 “should include a checkbox or similar feature that will permit a court to readily determine
15 whether a conservatee ... is developmentally disabled.” Minutes (Dec. 2012), p. 5. This section
16 would expand the concept more broadly, by directing the Judicial Council to develop court rules
17 and forms as necessary for implementation of California’s version of UAGPPJA.

18 Details of implementation are often best placed in court rules and forms, where they can be
19 adjusted more readily than if they are enacted into law. Preparation of court rules and forms is
20 beyond the Commission’s authority (see Gov’t Code §§ 8280-8298), but the Judicial Council has
21 extensive expertise in developing such materials.

22 (2) Proposed Section 2115 would also implement the following Commission decisions:

23 If an out-of-state conservatorship is registered in California under UAGPPJA, the
24 conservator must promise to comply with California law while taking action in this state.
25 California’s version of UAGPPJA should expressly require as much The conservator’s
26 promise should be in the form of an attestation, affirmation, certification, or the like, not a
27 pledge under penalty of perjury....

28 In addition to including a promise by the conservator as described above, the registration
29 documentation under California’s version of UAGPPJA should include boilerplate stating
30 that the out-of-state conservator is subject to California law, is not authorized to do anything
31 prohibited by California law, and is required to follow California procedures.

32 Minutes (Oct. 2012), p. 5.

33 **KEY CONFORMING REVISIONS**

34 **☞ Staff Note.** Section 503 of UAGPPJA provides that “[t]he following acts and parts of acts are
35 hereby repealed...” An accompanying Legislative Note states:

36 Upon enactment, the state should repeal existing provisions on subject matter jurisdiction for
37 [conservatorship] proceedings. If existing provisions address proceedings for both minors and
38 adults, the provisions should be amended to limit their application to minors. In addition, the
39 state should repeal or limit to minors any existing provisions authorizing transfer of a ...
40 conservatorship proceeding to another state and any provisions authorizing a ... conservator
41 to act in another state.

42 The staff is still in the process of determining which provisions of existing law will need to be
43 revised if UAGPPJA is enacted in California as proposed above. We will provide further
44 information on this point later in this study.

1 However, a number of key conforming revisions are shown below. Most of these revisions
2 would implement important decisions already made by the Commission.

3 **Gov't Code § 70626 (as amended by 2012 Cal. Stat. ch. 41, § 45) (amended). Fees for**
4 **miscellaneous services**

5 SEC. _____. Section 70626 of the Government Code, as amended by Section 45
6 of Chapter 41 of the Statutes of 2012, is amended to read:

7 70626. (a) The fee for each of the following services is twenty-five dollars
8 (\$25). Subject to subdivision (e), amounts collected shall be distributed to the Trial
9 Court Trust Fund under Section 68085.1.

10 (1) Issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of
11 sale, a writ of possession, a writ of prohibition, or any other writ for the
12 enforcement of any order or judgment.

13 (2) Issuing an abstract of judgment.

14 (3) Issuing a certificate of satisfaction of judgment under Section 724.100 of the
15 Code of Civil Procedure.

16 (4) Certifying a copy of any paper, record, or proceeding on file in the office of
17 the clerk of any court.

18 (5) Taking an affidavit, except in criminal cases or adoption proceedings.

19 (6) Acknowledgment of any deed or other instrument, including the certificate.

20 (7) Recording or registering any license or certificate, or issuing any certificate
21 in connection with a license, required by law, for which a charge is not otherwise
22 prescribed.

23 (8) Issuing any certificate for which the fee is not otherwise fixed.

24 (b) The fee for each of the following services is thirty dollars (\$30). Subject to
25 subdivision (e), amounts collected shall be distributed to the Trial Court Trust
26 Fund under Section 68085.1.

27 (1) Issuing an order of sale.

28 (2) Receiving and filing an abstract of judgment rendered by a judge of another
29 court and subsequent services based on it, unless the abstract of judgment is filed
30 under Section 704.750 or 708.160 of the Code of Civil Procedure.

31 (3) Filing a confession of judgment under Section 1134 of the Code of Civil
32 Procedure.

33 (4) Filing an application for renewal of judgment under Section 683.150 of the
34 Code of Civil Procedure.

35 (5) Issuing a commission to take a deposition in another state or place under
36 Section 2026.010 of the Code of Civil Procedure, or issuing a subpoena under
37 Section 2029.300 to take a deposition in this state for purposes of a proceeding
38 pending in another jurisdiction.

39 (6) Filing and entering an award under the Workers' Compensation Law
40 (Division 4 (commencing with Section 3200) of the Labor Code).

41 (7) Filing an affidavit of publication of notice of dissolution of partnership.

1 (8) Filing an appeal of a determination whether a dog is potentially dangerous or
2 vicious under Section 31622 of the Food and Agricultural Code.

3 (9) Filing an affidavit under Section 13200 of the Probate Code, together with
4 the issuance of one certified copy of the affidavit under Section 13202 of the
5 Probate Code.

6 (10) Registering a conservatorship under Article 4 (commencing with Section
7 2011) of Chapter 8 of Part 3 of Division 4 of the Probate Code.

8 ~~(10) (11)~~ Filing and indexing all papers for which a charge is not elsewhere
9 provided, other than papers filed in actions or special proceedings, official bonds,
10 or certificates of appointment.

11 (c) The fee for filing a first petition under Section 2029.600 or 2029.620 of the
12 Code of Civil Procedure, if the petitioner is not a party to the out-of-state case, is
13 eighty dollars (\$80). Amounts collected shall be distributed to the Trial Court
14 Trust Fund pursuant to Section 68085.1.

15 (d) The fee for delivering a will to the clerk of the superior court in which the
16 estate of a decedent may be administered, as required by Section 8200 of the
17 Probate Code, is fifty dollars (\$50).

18 (e) From July 1, 2011, to June 30, 2017, inclusive, ten dollars (\$10) of each fee
19 collected pursuant to subdivisions (a) and (b) shall be used by the Judicial Council
20 for the expenses of the Judicial Council in implementing and administering the
21 civil representation pilot program under Section 68651.

22 (f) This section shall become inoperative on July 1, 2017, and, as of January 1,
23 2018, is repealed, unless a later enacted statute, that becomes operative on or
24 before January 1, 2018, deletes or extends the dates on which it becomes
25 inoperative and is repealed.

26 **Comment.** Section 70626 (as amended by 2012 Cal. Stat. ch. 41, § 45) is amended to specify
27 the fee for registering a conservatorship order from another jurisdiction under California's version
28 of UAGPPJA (Section 1980 *et seq.*).

29 **Staff Note.** The process for registering another state's conservatorship order will impose an
30 administrative burden on the superior court where the order is filed. The staff has assumed that it
31 would be appropriate for the court to charge a filing fee. Under the proposed amendment of
32 Government Code Section 70626 shown above, the fee would be \$30. **The Commission and**
33 **other interested persons should consider whether that amount would be appropriate.**

34 **Gov't Code § 70626 (as amended by 2012 Cal. Stat. ch. 41, § 46) (amended). Fees for**
35 **miscellaneous services**

36 SEC. _____. Section 70626 of the Government Code, as amended by Section 46
37 of Chapter 41 of the Statutes of 2012, is amended to read:

38 70626. (a) The fee for each of the following services is fifteen dollars (\$15).
39 Amounts collected shall be distributed to the Trial Court Trust Fund under Section
40 68085.1.

41 (1) Issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of
42 sale, a writ of possession, a writ of prohibition, or any other writ for the
43 enforcement of any order or judgment.

- 1 (2) Issuing an abstract of judgment.
- 2 (3) Issuing a certificate of satisfaction of judgment under Section 724.100 of the
- 3 Code of Civil Procedure.
- 4 (4) Certifying a copy of any paper, record, or proceeding on file in the office of
- 5 the clerk of any court.
- 6 (5) Taking an affidavit, except in criminal cases or adoption proceedings.
- 7 (6) Acknowledgment of any deed or other instrument, including the certificate.
- 8 (7) Recording or registering any license or certificate, or issuing any certificate
- 9 in connection with a license, required by law, for which a charge is not otherwise
- 10 prescribed.
- 11 (8) Issuing any certificate for which the fee is not otherwise fixed.
- 12 (b) The fee for each of the following services is twenty dollars (\$20). Amounts
- 13 collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.
- 14 (1) Issuing an order of sale.
- 15 (2) Receiving and filing an abstract of judgment rendered by a judge of another
- 16 court and subsequent services based on it, unless the abstract of judgment is filed
- 17 under Section 704.750 or 708.160 of the Code of Civil Procedure.
- 18 (3) Filing a confession of judgment under Section 1134 of the Code of Civil
- 19 Procedure.
- 20 (4) Filing an application for renewal of judgment under Section 683.150 of the
- 21 Code of Civil Procedure.
- 22 (5) Issuing a commission to take a deposition in another state or place under
- 23 Section 2026.010 of the Code of Civil Procedure, or issuing a subpoena under
- 24 Section 2029.300 to take a deposition in this state for purposes of a proceeding
- 25 pending in another jurisdiction.
- 26 (6) Filing and entering an award under the Workers' Compensation Law
- 27 (Division 4 (commencing with Section 3200) of the Labor Code).
- 28 (7) Filing an affidavit of publication of notice of dissolution of partnership.
- 29 (8) Filing an appeal of a determination whether a dog is potentially dangerous or
- 30 vicious under Section 31622 of the Food and Agricultural Code.
- 31 (9) Filing an affidavit under Section 13200 of the Probate Code, together with
- 32 the issuance of one certified copy of the affidavit under Section 13202 of the
- 33 Probate Code.
- 34 (10) Registering a conservatorship under Article 4 (commencing with Section
- 35 2011) of Chapter 8 of Part 3 of Division 4 of the Probate Code.
- 36 ~~(10)~~ (11) Filing and indexing all papers for which a charge is not elsewhere
- 37 provided, other than papers filed in actions or special proceedings, official bonds,
- 38 or certificates of appointment.
- 39 (c) The fee for filing a first petition under Section 2029.600 or 2029.620 of the
- 40 Code of Civil Procedure, if the petitioner is not a party to the out-of-state case, is
- 41 eighty dollars (\$80). Amounts collected shall be distributed to the Trial Court
- 42 Trust Fund pursuant to Section 68085.1.

1 (d) The fee for delivering a will to the clerk of the superior court in which the
2 estate of a decedent may be administered, as required by Section 8200 of the
3 Probate Code, is fifty dollars (\$50).

4 (e) This section shall become operative on July 1, 2017.

5 **Comment.** Section 70626 (as amended by 2012 Cal. Stat. ch. 41, § 46) is amended to specify
6 the fee for registering a conservatorship order from another jurisdiction under California's version
7 of UAGPPJA (Section 1980 *et seq.*).

8 **Staff Note.** For discussion relevant to this proposed amendment of Government Code Section
9 70626 (as amended by 2012 Cal. Stat. ch. 41, § 46), see the Staff Note on the proposed
10 amendment of Government Code Section 70626 (as amended by 2012 Cal. Stat. ch. 41, § 45).

11 **Prob. Code § 1834 (amended). Conservator's acknowledgment of receipt**

12 SEC. _____. Section 1834 of the Probate Code is amended to read:

13 1834. (a) Before letters are issued in a conservatorship that originates in this
14 state or a conservatorship that is transferred to this state under Chapter 8
15 (commencing with Section 1980), the conservator (other than a trust company or a
16 public conservator) shall file an acknowledgment of receipt of (1) a statement of
17 duties and liabilities of the office of conservator, and (2) a copy of the
18 conservatorship information required under Section 1835. The acknowledgment
19 and the statement shall be in the form prescribed by the Judicial Council.

20 (b) The court may by local rules require the acknowledgment of receipt to
21 include the conservator's birth date and driver's license number, if any, provided
22 that the court ensures their confidentiality.

23 (c) The statement of duties and liabilities prescribed by the Judicial Council shall
24 not supersede the law on which the statement is based.

25 **Comment.** Section 1834 is amended to make clear that it applies to a conservatorship that is
26 transferred to California under California's version of UAGPPJA (Section 1980 *et seq.*), as well
27 as one that originates in California.

28 **Prob. Code § 1851.1 (added). Investigation and review of transferred conservatorship**

29 SEC. _____. Section 1851.1 is added to the Probate Code, to read:

30 1851.1. (a) When a court investigator is appointed pursuant to Section 2002, the
31 investigator shall promptly commence an investigation of the transferred
32 conservatorship.

33 (b) In conducting an investigation and preparing a report under this section, the
34 court investigator shall do all of the following:

35 (1) Comply with the requirements of Section 1851.

36 (2) Conduct an interview of the conservator.

37 (3) Conduct an interview of the conservatee's spouse or registered domestic
38 partner, if any.

39 (4) Inform the conservatee of the nature, purpose, and effect of the
40 conservatorship.

1 (5) Inform the conservatee and all other persons entitled to notice under
2 subdivision (b) of Section 2002 of the right to seek termination of the
3 conservatorship.

4 (6) Determine whether the conservatee objects to the conservator or prefers
5 another person to act as conservator.

6 (7) Inform the conservatee of the right to attend the hearing under subdivision
7 (c).

8 (8) Determine whether it appears that the conservatee is unable to attend the
9 hearing and, if able to attend, whether the conservatee is willing to attend the
10 hearing.

11 (9) Inform the conservatee of the right to be represented by legal counsel if the
12 conservatee so chooses, and to have legal counsel appointed by the court if the
13 conservatee is unable to retain legal counsel.

14 (10) Determine whether the conservatee wishes to be represented by legal
15 counsel and, if so, whether the conservatee has retained legal counsel and, if not,
16 the name of an attorney the conservatee wishes to retain.

17 (11) If the conservatee has not retained legal counsel, determine whether the
18 conservatee desires the court to appoint legal counsel.

19 (12) Determine whether the appointment of legal counsel would be helpful to
20 the resolution of the matter or is necessary to protect the interests of the
21 conservatee in any case where the conservatee does not plan to retain legal counsel
22 and has not requested the appointment of legal counsel by the court.

23 (13) Consider each of the categories specified in paragraphs (1) to (5), inclusive,
24 of subdivision (a) of Section 1821.

25 (14) Consider, to the extent practicable, whether the investigator believes the
26 conservatee suffers from any of the mental function deficits listed in subdivision
27 (a) of Section 811 that significantly impairs the conservatee's ability to understand
28 and appreciate the consequences of the conservatee's actions in connection with
29 any of the functions described in subdivision (a) or (b) of Section 1801 and
30 identify the observations that support that belief.

31 (c) The court shall review the conservatorship as provided in Section 2002. The
32 conservatee shall attend the hearing unless the conservatee's attendance is excused
33 under Section 1825. In conducting its review, the court shall make an express
34 finding on whether continuation of the conservatorship is the least restrictive
35 alternative needed for the protection of the conservatee. The court may take
36 appropriate action in response to the court investigator's report under this section.

37 (d) The court investigator's report under this section shall be confidential as
38 provided in Section 1851.

39 (e) Except as provided in paragraph (2) of subdivision (a) of Section 1850, the
40 court shall review the conservatorship again one year after the review conducted
41 pursuant to subdivision (c), and annually thereafter, in the manner specified in
42 Section 1850.

1 (f) The first time that the need for a conservatorship is contested after a transfer
 2 under Section 2002, whether in a review pursuant to this section or in a petition to
 3 terminate the conservatorship under Chapter 3 (commencing with Section 1860),
 4 the court shall presume that there is no need for a conservatorship. This
 5 presumption is rebuttable, but can only be overcome by clear and convincing
 6 evidence.

7 (g) If a duty described in this section is the same as a duty imposed pursuant to
 8 the amendments to Section 1826 or 1851 enacted by Chapter 493 of the Statutes of
 9 2006, a superior court shall not be required to perform that duty until the
 10 Legislature makes an appropriation identified for this purpose.

11 **Comment.** Section 1851.1 is added to provide guidance on the nature of the investigation and
 12 review that is required when a conservatorship is transferred to California from another state
 13 under California's version of UAGPPJA (Section 1980 *et seq.*). In conducting a review under this
 14 section, the court investigator might be able to use some evidence or other resources from the
 15 proceeding that was transferred to California, particularly if the transferring court recently
 16 conducted a review of that proceeding.

17 The court investigator's fee for conducting an investigation under this section is to be paid in
 18 the same manner as if the conservatorship was originally established in California. See Section
 19 1851.5 (assessment of conservatee for cost of conducting court investigation).

20 **Staff Note.** At the December meeting, the Commission decided that "[a]fter the court issues a
 21 final order accepting a transfer (UAGPPJA § 302(e)), a court investigator would have to conduct
 22 an investigation similar to the investigation for establishing a new conservatorship in California."
 23 Minutes (Dec. 2012), p. 6. Proposed Section 1851.1 is the staff's attempt to implement that
 24 decision, as well as the Commission's decisions regarding review of the conservatee's capacity in
 25 a transferred conservatorship (see Minutes (Oct. 2012), p. 4).

26 In drafting this section, the staff referred to Probate Code Sections 1826 (court investigation for
 27 establishment of conservatorship) and 1851 (court investigation for review of existing
 28 conservatorship), and tried to figure out which requirements to incorporate into the initial
 29 investigation and review of a transferred conservatorship. To assist the Commission and
 30 interested persons in evaluating the draft and determining whether to add, subtract, or otherwise
 31 modify any requirements, the text of Sections 1826 and 1851 is reproduced below (in italics, to
 32 help differentiate this material from the proposed legislation):

33 **§ 1826. Court investigation for establishment of conservatorship**

34 *1826. Regardless of whether the proposed conservatee attends the hearing, the court*
 35 *investigator shall do all of the following:*

36 *(a) Conduct the following interviews:*

37 *(1) The proposed conservatee personally.*

38 *(2) All petitioners and all proposed conservators who are not petitioners.*

39 *(3) The proposed conservatee's spouse or registered domestic partner and relatives within*
 40 *the first degree. If the proposed conservatee does not have a spouse, registered domestic*
 41 *partner, or relatives within the first degree, to the greatest extent possible, the proposed*
 42 *conservatee's relatives within the second degree.*

43 *(4) To the greatest extent practical and taking into account the proposed conservatee's*
 44 *wishes, the proposed conservatee's relatives within the second degree not required to be*
 45 *interviewed under paragraph (3), neighbors, and, if known, close friends.*

46 *(b) Inform the proposed conservatee of the contents of the citation, of the nature, purpose,*
 47 *and effect of the proceeding, and of the right of the proposed conservatee to oppose the*
 48 *proceeding, to attend the hearing, to have the matter of the establishment of the*

1 conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee
2 so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

3 (c) Determine whether it appears that the proposed conservatee is unable to attend the
4 hearing and, if able to attend, whether the proposed conservatee is willing to attend the
5 hearing.

6 (d) Review the allegations of the petition as to why the appointment of the conservator is
7 required and, in making his or her determination, do the following:

8 (1) Refer to the supplemental information form submitted by the petitioner and consider the
9 facts set forth in the form that address each of the categories specified in paragraphs (1) to
10 (5), inclusive, of subdivision (a) of Section 1821.

11 (2) Consider, to the extent practicable, whether he or she believes the proposed
12 conservatee suffers from any of the mental function deficits listed in subdivision (a) of Section
13 811 that significantly impairs the proposed conservatee's ability to understand and
14 appreciate the consequences of his or her actions in connection with any of the functions
15 described in subdivision (a) or (b) of Section 1801 and identify the observations that support
16 that belief.

17 (e) Determine whether the proposed conservatee wishes to contest the establishment of the
18 conservatorship.

19 (f) Determine whether the proposed conservatee objects to the proposed conservator or
20 prefers another person to act as conservator.

21 (g) Determine whether the proposed conservatee wishes to be represented by legal counsel
22 and, if so, whether the proposed conservatee has retained legal counsel and, if not, the name
23 of an attorney the proposed conservatee wishes to retain.

24 (h) Determine whether the proposed conservatee is capable of completing an affidavit of
25 voter registration.

26 (i) If the proposed conservatee has not retained legal counsel, determine whether the
27 proposed conservatee desires the court to appoint legal counsel.

28 (j) Determine whether the appointment of legal counsel would be helpful to the resolution
29 of the matter or is necessary to protect the interests of the proposed conservatee in any case
30 where the proposed conservatee does not plan to retain legal counsel and has not requested
31 the appointment of legal counsel by the court.

32 (k) Report to the court in writing, at least five days before the hearing, concerning all of the
33 foregoing, including the proposed conservatee's express communications concerning both of
34 the following:

35 (1) Representation by legal counsel.

36 (2) Whether the proposed conservatee is not willing to attend the hearing, does not wish to
37 contest the establishment of the conservatorship, and does not object to the proposed
38 conservator or prefer that another person act as conservator.

39 (l) Mail, at least five days before the hearing, a copy of the report referred to in subdivision
40 (k) to all of the following:

41 (1) The attorney, if any, for the petitioner.

42 (2) The attorney, if any, for the proposed conservatee.

43 (3) The proposed conservatee.

44 (4) The spouse, registered domestic partner, and relatives within the first degree of the
45 proposed conservatee who are required to be named in the petition for appointment of the
46 conservator, unless the court determines that the mailing will result in harm to the
47 conservatee.

48 (5) Any other persons as the court orders.

49 (m) The court investigator has discretion to release the report required by this section to
50 the public conservator, interested public agencies, and the long-term care ombudsman.

1 (n) *The report required by this section is confidential and shall be made available only to*
2 *parties, persons described in subdivision (l), persons given notice of the petition who have*
3 *requested this report or who have appeared in the proceedings, their attorneys, and the court.*
4 *The court has discretion at any other time to release the report, if it would serve the interests*
5 *of the conservatee. The clerk of the court shall provide for the limitation of the report*
6 *exclusively to persons entitled to its receipt.*

7 (o) *This section does not apply to a proposed conservatee who has personally executed the*
8 *petition for conservatorship, or one who has nominated his or her own conservator, if he or*
9 *she attends the hearing.*

10 (p) *If the court investigator has performed an investigation within the preceding six months*
11 *and furnished a report thereon to the court, the court may order, upon good cause shown,*
12 *that another investigation is not necessary or that a more limited investigation may be*
13 *performed.*

14 (q) *Any investigation by the court investigator related to a temporary conservatorship also*
15 *may be a part of the investigation for the general petition for conservatorship, but the court*
16 *investigator shall make a second visit to the proposed conservatee and the report required by*
17 *this section shall include the effect of the temporary conservatorship on the proposed*
18 *conservatee.*

19 (r) *The Judicial Council shall, on or before January 1, 2009, adopt rules of court and*
20 *Judicial Council forms as necessary to implement an expedited procedure to authorize, by*
21 *court order, a proposed conservatee's health care provider to disclose confidential medical*
22 *information about the proposed conservatee to a court investigator pursuant to federal*
23 *medical information privacy regulations promulgated under the Health Insurance Portability*
24 *and Accountability Act of 1996.*

25 (s) *A superior court shall not be required to perform any duties imposed pursuant to the*
26 *amendments to this section enacted by Chapter 493 of the Statutes 2006 until the Legislature*
27 *makes an appropriation identified for this purpose.*

28 **§ 1851. Court investigation for review of existing conservatorship**

29 1851. (a) *When court review is required pursuant to Section 1850, the court investigator*
30 *shall, without prior notice to the conservator except as ordered by the court for necessity or*
31 *to prevent harm to the conservatee, visit the conservatee. The court investigator shall inform*
32 *the conservatee personally that the conservatee is under a conservatorship and shall give the*
33 *name of the conservator to the conservatee. The court investigator shall determine whether*
34 *the conservatee wishes to petition the court for termination of the conservatorship, whether*
35 *the conservatee is still in need of the conservatorship, whether the present conservator is*
36 *acting in the best interests of the conservatee, and whether the conservatee is capable of*
37 *completing an affidavit of voter registration. In determining whether the conservator is acting*
38 *in the best interests of the conservatee, the court investigator's evaluation shall include an*
39 *examination of the conservatee's placement, the quality of care, including physical and*
40 *mental treatment, and the conservatee's finances. To the extent practicable, the investigator*
41 *shall review the accounting with a conservatee who has sufficient capacity. To the greatest*
42 *extent possible, the court investigator shall interview individuals set forth in subdivision (a)*
43 *of Section 1826, in order to determine if the conservator is acting in the best interests of the*
44 *conservatee. If the court has made an order under Chapter 4 (commencing with Section*
45 *1870), the court investigator shall determine whether the present condition of the conservatee*
46 *is such that the terms of the order should be modified or the order revoked. Upon request of*
47 *the court investigator, the conservator shall make available to the court investigator during*
48 *the investigation for inspection and copying all books and records, including receipts and*
49 *any expenditures, of the conservatorship.*

50 (b)(1) *The findings of the court investigator, including the facts upon which the findings are*
51 *based, shall be certified in writing to the court not less than 15 days prior to the date of*
52 *review. A copy of the report shall be mailed to the conservator and to the attorneys of record*

1 for the conservator and conservatee at the same time it is certified to the court. A copy of the
2 report, modified as set forth in paragraph (2), also shall be mailed to the conservatee's
3 spouse or registered domestic partner, the conservatee's relatives in the first degree, and if
4 there are no such relatives, to the next closest relative, unless the court determines that the
5 mailing will result in harm to the conservatee.

6 (2) Confidential medical information and confidential information from the California Law
7 Enforcement Telecommunications System shall be in a separate attachment to the report and
8 shall not be provided in copies sent to the conservatee's spouse or registered domestic
9 partner, the conservatee's relatives in the first degree, and if there are no such relatives, to
10 the next closest relative.

11 (c) In the case of a limited conservatee, the court investigator shall make a
12 recommendation regarding the continuation or termination of the limited conservatorship.

13 (d) The court investigator may personally visit the conservator and other persons as may
14 be necessary to determine whether the present conservator is acting in the best interests of
15 the conservatee.

16 (e) The report required by this section shall be confidential and shall be made available
17 only to parties, persons described in subdivision (b), persons given notice of the petition who
18 have requested the report or who have appeared in the proceeding, their attorneys, and the
19 court. The court shall have discretion at any other time to release the report if it would serve
20 the interests of the conservatee. The clerk of the court shall make provision for limiting
21 disclosure of the report exclusively to persons entitled thereto under this section.

22 (f) The amendments made to this section by the act adding this subdivision shall become
23 operative on July 1, 2007.

24 (g) A superior court shall not be required to perform any duties imposed pursuant to the
25 amendments to this section enacted by Chapter 493 of the Statutes 2006 until the Legislature
26 makes an appropriation identified for this purpose.

27 **Prob. Code § 2250 (amended). Petition for appointment of temporary guardian or**
28 **temporary conservator**

29 SEC. _____. Section 2250 of the Probate Code is amended to read:

30 2250. (a) On or after the filing of a petition for appointment of a guardian or
31 conservator, or under the circumstances specified in Section 1994 and subject to
32 the limitations of that section, any person entitled to petition for appointment of
33 the guardian or conservator may file a petition for appointment of:

34 (1) A temporary guardian of the person or estate or both.

35 (2) A temporary conservator of the person or estate or both.

36 (b) The petition shall state facts which establish good cause for appointment of
37 the temporary guardian or temporary conservator. The court, upon that petition or
38 other showing as it may require, may appoint a temporary guardian of the person
39 or estate or both, or a temporary conservator of the person or estate or both, to
40 serve ~~pending the final determination of the court upon the petition for the~~
41 ~~appointment of the guardian or conservator until the temporary guardianship or~~
42 temporary conservatorship terminates under Section 2257.

43 (c) If the petitioner is a private professional conservator under Section ~~2341~~
44 2340 or licensed under the Professional Fiduciaries Act, Chapter 6 (commencing
45 with Section 6500) of Division 3 of the Business and Professions Code, the

1 petition for appointment of a temporary conservator shall include both of the
2 following:

3 (1) A statement of the petitioner's registration or license information.

4 (2) A statement explaining who engaged the petitioner or how the petitioner was
5 engaged to file the petition for appointment of a temporary conservator and what
6 prior relationship the petitioner had with the proposed conservatee or the proposed
7 conservatee's family or friends, unless that information is included in a general
8 petition for appointment of a ~~general~~ conservator filed at the same time by the
9 person who filed the petition for appointment of a temporary conservator.

10 (d) If the petition is filed by a party other than the proposed conservatee, the
11 petition shall include a declaration of due diligence showing both of the following:

12 (1) Either the efforts to find the proposed conservatee's relatives named in the
13 general petition for appointment of a ~~general~~ conservator or why it was not
14 feasible to contact any of them. If the petition for a temporary conservator is filed
15 under Section 1994 and there is no general petition for appointment of a
16 conservator, this requirement may be satisfied by showing the efforts to find the
17 relatives required to be named in a general petition for appointment of a
18 conservator or why it was not feasible to contact any of them.

19 (2) Either the preferences of the proposed conservatee concerning the
20 appointment of a temporary conservator and the appointment of the proposed
21 temporary conservator or why it was not feasible to ascertain those preferences.

22 (e) Unless the court for good cause otherwise orders, at least five court days
23 before the hearing on the petition, notice of the hearing shall be given as follows:

24 (1) Notice of the hearing shall be personally delivered to the proposed ward if he
25 or she is 12 years of age or older, to the parent or parents of the proposed ward,
26 and to any person having a valid visitation order with the proposed ward that was
27 effective at the time of the filing of the petition. Notice of the hearing shall not be
28 delivered to the proposed ward if he or she is under 12 years of age. In a
29 proceeding for temporary guardianship of the person, evidence that a custodial
30 parent has died or become incapacitated, and that the petitioner is the nominee of
31 the custodial parent, may constitute good cause for the court to order that this
32 notice not be delivered.

33 (2) Notice of the hearing shall be personally delivered to the proposed
34 conservatee, and notice of the hearing shall be served on the persons required to be
35 named in the petition for appointment of conservator. If the petition states that the
36 petitioner and the proposed conservator have no prior relationship with the
37 proposed conservatee and has not been nominated by a family member, friend, or
38 other person with a relationship to the proposed conservatee, notice of hearing
39 shall be served on the public guardian of the county in which the petition is filed.

40 (3) A copy of the petition for temporary appointment shall be served with the
41 notice of hearing.

42 (f) If a temporary guardianship is granted ex parte and the hearing on the general
43 guardianship petition is not to be held within 30 days of the granting of the

1 temporary guardianship, the court shall set a hearing within 30 days to reconsider
2 the temporary guardianship. Notice of the hearing for reconsideration of the
3 temporary guardianship shall be provided pursuant to Section 1511, except that the
4 court may for good cause shorten the time for the notice of the hearing.

5 (g) Visitation orders with the proposed ward granted prior to the filing of a
6 petition for temporary guardianship shall remain in effect, unless for good cause
7 the court orders otherwise.

8 (h)(1) If a temporary conservatorship is granted *ex parte*, and a petition to
9 terminate the temporary conservatorship is filed more than 15 days before the first
10 hearing on the general petition for appointment of a conservator, or there is no
11 general petition for appointment of a conservator, the court shall set a hearing
12 within 15 days of the filing of the petition for termination of the temporary
13 conservatorship to reconsider the temporary conservatorship. Unless the court
14 otherwise orders, notice of the hearing on the petition to terminate the temporary
15 conservatorship shall be given at least 10 days prior to the hearing.

16 (2) If a petition to terminate the temporary conservatorship is filed within 15
17 days before the first hearing on the general petition for appointment of a
18 conservator, the court shall set the hearing at the same time that the hearing on the
19 general petition is set. Unless the court otherwise orders, notice of the hearing on
20 the petition to terminate the temporary conservatorship pursuant to this section
21 shall be given at least five court days prior to the hearing.

22 (i) If the court suspends powers of the guardian or conservator under Section
23 2334 or 2654 or under any other provision of this division, the court may appoint a
24 temporary guardian or conservator to exercise those powers until the powers are
25 restored to the guardian or conservator or a new guardian or conservator is
26 appointed.

27 (j) If for any reason a vacancy occurs in the office of guardian or conservator,
28 the court, on a petition filed under subdivision (a) or on its own motion, may
29 appoint a temporary guardian or conservator to exercise the powers of the
30 guardian or conservator until a new guardian or conservator is appointed.

31 (k) On or before January 1, 2008, the Judicial Council shall adopt a rule of court
32 that establishes uniform standards for good cause exceptions to the notice required
33 by subdivision (e), limiting those exceptions to only cases when waiver of the
34 notice is essential to protect the proposed conservatee or ward, or the estate of the
35 proposed conservatee or ward, from substantial harm.

36 (l) A superior court shall not be required to perform any duties imposed pursuant
37 to the amendments to this section enacted by Chapter 493 of the Statutes 2006
38 until the Legislature makes an appropriation identified for this purpose.

39 **Comment.** Subdivisions (a), (b), (d), and (h) of Section 2250 are amended to reflect the
40 enactment of California's version of UAGPPJA (Section 1980 *et seq.*), particularly Section 1994
41 (special jurisdiction). Under some of the circumstances addressed in that section, it might be
42 sufficient to appoint a temporary conservator, without ever appointing a conservator on a more
43 permanent basis. The amendment of Section 2250 accounts for that possibility.

1 Subdivision (c) is amended to correct a cross-reference. Subdivision (c) is also amended for
2 consistency of terminology, as is subdivision (d). *Compare* former subdivision (c) (referring to “a
3 petition for appointment of a general conservator”) and former subdivision (d) (same) with
4 subdivision (h) (referring repeatedly to “the general petition for appointment of a conservator”
5 and “the general petition”).

6 For further guidance on the notice requirements of subdivision (e), see Cal. R. Ct. 7.1062.

7 **☞ Staff Note.** For discussion of this conforming revision and why it might be appropriate, see
8 the Staff Note on proposed Section 1994.

9 **Prob. Code § 2300 (amended). Oath and bond**

10 SEC. _____. Section 2300 of the Probate Code is amended to read:

11 2300. Before the appointment of a guardian or conservator is effective,
12 including, but not limited to, the appointment of a conservator under Section 2002,
13 the guardian or conservator shall:

14 (a) Take an oath to perform the duties of the office according to law, ~~which.~~ The
15 oath obligates the guardian or conservator to comply with the law of this state, as
16 well as other applicable law, at all times, in any location within or without the
17 state. If the conservator petitions for transfer of the conservatorship to another
18 state pursuant to Section 2001, the conservator shall continue to comply with the
19 law of this state until the court issues a final order confirming the transfer and
20 terminating the conservatorship pursuant to Section 2001. The oath shall be
21 attached to or endorsed upon the letters.

22 (b) File the required bond if a bond is required.

23 **Comment.** Section 2300 is amended to reflect the enactment of California’s version of
24 UAGPPJA (Section 1980 *et seq.*), particularly Article 3 (transfer of conservatorship) and Article
25 4 (registration and recognition of orders from other states).

26 **☞ Staff Note.** The above amendment would implement the Commission’s decisions to:

- 27 • “[M]ake clear that when a conservatorship (or similar arrangement by another name) is
28 transferred to California, the conservator must ... take the same oath as other California
29 conservators” Minutes (Dec. 2012), p. 7.
- 30 • “[M]ake explicit that when a conservatorship is being transferred from California to
31 another state, the conservator must continue to comply with California law until the
32 California court supervising the conservatorship issues a final order confirming the transfer
33 and terminating the California proceeding.” Minutes (Dec. 2012), p. 8.
- 34 • Make clear that a California conservator “must comply with California law throughout the
35 duration of the conservatorship, even while taking action in another state pursuant to a
36 UAGPPJA registration.” Minutes (Oct. 2012), pp. 5-6.

37 **Prob. Code § 2650 (amended). Grounds for removal**

38 SEC. _____. Section 2650 of the Probate Code is amended to read:

39 2650. A guardian or conservator may be removed for any of the following
40 causes:

41 (a) Failure to use ordinary care and diligence in the management of the estate.

42 (b) Failure to file an inventory or an account within the time allowed by law or
43 by court order.

- 1 (c) Continued failure to perform duties or incapacity to perform duties suitably.
2 (d) Conviction of a felony, whether before or after appointment as guardian or
3 conservator.
4 (e) Gross immorality.
5 (f) Having such an interest adverse to the faithful performance of duties that
6 there is an unreasonable risk that the guardian or conservator will fail faithfully to
7 perform duties.
8 (g) In the case of a guardian of the person or a conservator of the person, acting
9 in violation of any provision of Section 2356.
10 (h) In the case of a guardian of the estate or a conservator of the estate,
11 insolvency or bankruptcy of the guardian or conservator.
12 (i) In the case of a conservator appointed by a court in another jurisdiction,
13 removal because that person would not have been appointed in this state despite
14 being eligible to serve under the law of this state.
15 ~~(i)~~ (j) In any other case in which the court in its discretion determines that
16 removal is in the best interests of the ward or conservatee; but, in considering the
17 best interests of the ward, if the guardian was nominated under Section 1500 or
18 1501, the court shall take that fact into consideration.

19 **Comment.** Section 2650 is amended to reflect the enactment of California’s version of
20 UAGPPJA (Section 1980 *et seq.*).

21 **Staff Note.** The above amendment of Section 2650 would implement the Commission’s
22 decision that “Probate Code Section 2650 should be amended to provide that a conservatee who
23 was appointed by another jurisdiction may be removed by the court if that person would not have
24 been appointed under California law.” Minutes (Oct. 2012), p. 4. However, the above amendment
25 would not implement the following additional decision:

26 There should be some form of stay on the exercise of a conservator’s powers during the
27 pendency of a proceeding to remove a conservator for the cause [described in proposed
28 subdivision (i) above]. The stay should be subject to an appropriate exception for
29 emergencies. If existing conservatorship law does not adequately address those issues, the
30 staff will develop language to do so and present it to the Commission for consideration.

31 Minutes (Oct. 2012), p. 4. The staff wants to give that matter further thought before attempting to
32 draft appropriate language. We will address this point later in this study.