

Chapter 35B.

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Article 1.

General Provisions.

§ 35B-1. Short title and legislative purpose.

(a) This Chapter may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

(b) The General Assembly of North Carolina finds that there is ambiguity in the law with respect to jurisdiction in guardianship proceedings when more than one state is involved. In order to clarify these jurisdictional concerns and provide the best possible support and protection for incapacitated adults, the Uniform Laws Commission developed the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) for consideration by the states. The majority of states have adopted UAGPPJA, and North Carolina's guardianship system would be enhanced by adopting a version of UAGPPJA.

(c) The purpose of this legislation is to provide clear direction to the courts, attorneys, guardians, and individuals about the proper jurisdiction for guardianship proceedings. This Chapter is limited in scope to jurisdiction. The established system in North Carolina for determining incompetency, appointing guardians, and managing estates as governed by Chapter 35A of the North Carolina General Statutes is not affected by this new Chapter.

(d) The public policy goals are as follows:

- (1) To ensure that jurisdiction is located in one and only one state; except when an emergency exists or where the individual owns property in multiple states;
- (2) To establish procedures for transferring guardianship from one state to another state when the incapacitated adult moves; and
- (3) To provide a uniform national system for registration and enforcement of out-of-state guardianship orders. (2016-72, s. 1.)

§ 35B-2. Definitions.

The following definitions apply in this Chapter:

- (1) Adult. – An individual who has attained 18 years of age.
- (2) Court. – For purposes of this Chapter, where the word "court" is used, it means the clerk of the superior court to the same extent that the clerk of superior court has original subject matter jurisdiction over incompetency and guardianship proceedings under Chapter 35A of the General Statutes.
- (3) General guardian. – "General guardian" has the same meaning as in G.S. 35A-1202. For purposes of this Chapter, (i) the term is limited to general guardians for adults and (ii) the general guardian shall have the same authority to act as the guardian and the guardian of the estate as set forth herein.
- (4) Guardian of the estate. – "Guardian of the estate" has the same meaning as in G.S. 35A-1202. For purposes of the Chapter, the term is limited to guardians of the estate for adults.
- (5) Guardian of the person. – "Guardian of the person" has the same meaning as in G.S. 35A-1202. For purposes of this Chapter, the term is limited to guardians of the person for adults.

- (6) Guardianship order. – An order appointing a guardian of the person or general guardian. For the purposes of this Chapter, an order appointing a guardian of the estate, general guardian, or other order related to the management of an adult's property is referred to as a protective order as defined in subdivision (14) of this section.
- (7) Guardianship proceeding. – A judicial proceeding in which an order for the appointment of a guardian of the person or general guardian is sought or has been issued pursuant to Chapter 35A of the General Statutes.
- (8) Incapacitated person. – An adult for whom a guardian of the person or general guardian has been appointed.
- (9) Incompetency order. – An order adjudicating incompetence of an adult.
- (10) Incompetency proceeding. – A judicial proceeding in which an order adjudicating a person to be an incompetent adult is sought or has been issued pursuant to Chapter 35A of the General Statutes.
- (11) Party. – The respondent, petitioner, guardian of the person, general guardian, guardian of the estate, or any other person allowed by the court to participate in an incompetency, guardianship, or protective proceeding.
- (12) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. This definition does not apply to the terms "incapacitated person" or "protected person."
- (13) Protected person. – An adult for whom a protective order or general guardianship order has been issued pursuant to Chapter 35A of the General Statutes.
- (14) Protective order. – An order appointing a guardian of the estate, general guardian, or other order related to management of an adult's property entered pursuant to Chapter 35A of the General Statutes.
- (15) Protective proceeding. – A judicial proceeding in which an order appointing a general guardian or a protective order is sought or has been issued under Chapter 35A of the General Statutes.
- (16) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (17) Respondent. – An adult for whom an adjudication of incompetence, a protective order, or a guardianship order is sought.
- (18) State. – A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States. (2016-72, s. 1.)

§ 35B-3. Proceedings governed by other law.

This Chapter does not govern the following:

- (1) Guardianship and guardianship proceedings pertaining to minors less than 18 years of age.
- (2) Protective services proceedings pertaining to disabled and older adults pursuant to Articles 6 and 6A of Chapter 108A of the General Statutes.

- (3) Domestic violence and civil no-contact proceedings under Chapters 50B and 50C of the General Statutes. (2016-72, s. 1.)

§ 35B-4. International application.

A court of this State may treat a foreign country as if it were a state for the purpose of applying this Article and Articles 2, 3, and 5 of this Chapter. (2016-72, s. 1.)

§ 35B-5. Communication between courts.

(a) A court of this State may communicate with a court in another state concerning a proceeding arising under this Chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record. (2016-72, s. 1.)

§ 35B-6. Cooperation between courts.

(a) In an incompetency, guardianship, or protective proceeding in this State, a court of this State may request the appropriate court of another state to do any of the following:

- (1) Hold an evidentiary hearing.
- (2) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state.
- (3) Order that an evaluation or assessment be made of the respondent.
- (4) Order any appropriate investigation of a person involved in a proceeding.
- (5) Forward to the court of this State a certified copy of the transcript or other record of a hearing under subdivision (1) of this section or any other proceeding, any evidence otherwise produced under subdivision (2) of this section, and any evaluation or assessment prepared in compliance with an order under subdivision (3) or (4) of this section.
- (6) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person.
- (7) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. § 160.103, as from time to time amended.

(b) If a court of another state in which an incompetency, guardianship, or protective proceeding is pending requests assistance of the kind provided in subsection (a) of this section, a court of this State has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request. (2016-72, s. 1.)

§ 35B-7. Taking testimony in another state.

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

(b) In an incompetency, guardianship, or protective proceeding, a court in this State may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this State shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule. (2016-72, s. 1.)

§ 35B-8: Reserved for future codification purposes.

§ 35B-9: Reserved for future codification purposes.

§ 35B-10: Reserved for future codification purposes.

§ 35B-11: Reserved for future codification purposes.

§ 35B-12: Reserved for future codification purposes.

§ 35B-13: Reserved for future codification purposes.

§ 35B-14: Reserved for future codification purposes.