

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1261

Chapter 81, Laws of 2009

61st Legislature
2009 Regular Session

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS
JURISDICTION ACT

EFFECTIVE DATE: 01/01/10

Passed by the House February 27, 2009
Yeas 94 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 3, 2009
Yeas 46 Nays 0

BRAD OWEN

President of the Senate

Approved April 13, 2009, 3:46 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1261** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

April 14, 2009

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1261

Passed Legislature - 2009 Regular Session

State of Washington

61st Legislature

2009 Regular Session

By House Judiciary (originally sponsored by Representatives Goodman, Moeller, Green, Williams, Pedersen, Appleton, Morrell, and Ormsby; by request of Uniform Legislation Commission)

READ FIRST TIME 02/11/09.

1 AN ACT Relating to adult guardianship and protective proceedings
2 jurisdiction; adding a new chapter to Title 11 RCW; and providing an
3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 ARTICLE 1
6 GENERAL PROVISIONS

7 NEW SECTION. **Sec. 1.** This chapter may be cited as the uniform
8 adult guardianship and protective proceedings jurisdiction act.

9 NEW SECTION. **Sec. 2.** In this chapter:

10 (1) "Adult" means an individual who has attained eighteen years of
11 age.

12 (2) "Guardian of the estate" means a person appointed by the court
13 to administer the property of an adult, and includes a conservator
14 appointed by the court in another state.

15 (3) "Guardian of the person" or "guardian" means a person appointed
16 by the court to make decisions regarding the person of an adult.

1 (4) "Guardianship order" means an order appointing a guardian of
2 the person or guardian of the estate.

3 (5) "Guardianship proceeding" means a judicial proceeding in which
4 an order for the appointment of a guardian of the person or guardian of
5 the estate is sought or has been issued.

6 (6) "Incapacitated person" means an adult for whom a guardian of
7 the person or guardian of the estate has been appointed.

8 (7) "Party" means the respondent, petitioner, guardian of the
9 person or guardian of the estate, or any other person allowed by the
10 court to participate in a guardianship or protective proceeding.

11 (8) "Person," except in the term incapacitated person or protected
12 person, means an individual, corporation, business trust, estate,
13 trust, partnership, limited liability company, association, joint
14 venture, public corporation, government or governmental subdivision,
15 agency, or instrumentality, or any other legal or commercial entity.

16 (9) "Protected person" means an adult for whom a protective order
17 has been issued.

18 (10) "Protective order" means an order appointing a guardian of the
19 estate or other order related to management of an adult's property,
20 including an order issued by a court in another state appointing a
21 conservator.

22 (11) "Protective proceeding" means a judicial proceeding in which
23 a protective order is sought or has been issued.

24 (12) "Record" means information that is inscribed on a tangible
25 medium or that is stored in an electronic or other medium and is
26 retrievable in perceivable form.

27 (13) "Respondent" means an adult for whom a protective order or the
28 appointment of a guardian of the person is sought.

29 (14) "State" means a state of the United States, the District of
30 Columbia, Puerto Rico, the United States Virgin Islands, a federally
31 recognized Indian tribe, or any territory or insular possession subject
32 to the jurisdiction of the United States.

33 NEW SECTION. **Sec. 3.** A court of this state may treat a foreign
34 country as if it were a state for the purpose of applying this chapter.

35 NEW SECTION. **Sec. 4.** (1) A court of this state may communicate
36 with a court in another state concerning a proceeding arising under

1 this chapter. The court may allow the parties to participate in the
2 communication. Except as otherwise provided in subsection (2) of this
3 section, the court shall make a record of the communication. The
4 record may be limited to the fact that the communication occurred.

5 (2) Courts may communicate concerning schedules, calendars, court
6 records, and other administrative matters without making a record.

7 NEW SECTION. **Sec. 5.** (1) In a guardianship or protective
8 proceeding in this state, a court of this state may request the
9 appropriate court of another state to do any of the following:

10 (a) Hold an evidentiary hearing;

11 (b) Order a person in that state to produce evidence or give
12 testimony pursuant to procedures of that state;

13 (c) Order that an evaluation or assessment be made of the
14 respondent;

15 (d) Order any appropriate investigation of a person involved in a
16 proceeding;

17 (e) Forward to the court of this state a certified copy of the
18 transcript or other record of a hearing under (a) of this subsection or
19 any other proceeding, any evidence otherwise produced under (b) of this
20 subsection, and any evaluation or assessment prepared in compliance
21 with an order under (c) or (d) of this subsection;

22 (f) Issue any order necessary to assure the appearance in the
23 proceeding of a person whose presence is necessary for the court to
24 make a determination, including the respondent or the incapacitated or
25 protected person;

26 (g) Issue an order authorizing the release of medical, financial,
27 criminal, or other relevant information in that state, including
28 protected health information as defined in 45 C.F.R. Sec. 164.504.

29 (2) If a court of another state in which a guardianship or
30 protective proceeding is pending requests assistance of the kind
31 provided in subsection (1) of this section, a court of this state has
32 jurisdiction for the limited purpose of granting the request or making
33 reasonable efforts to comply with the request.

34 NEW SECTION. **Sec. 6.** (1) In a guardianship or protective
35 proceeding, in addition to other procedures that may be available,
36 testimony of a witness who is located in another state may be offered

1 by deposition or other means allowable in this state for testimony
2 taken in another state. The court on its own motion may order that the
3 testimony of a witness be taken in another state and may prescribe the
4 manner in which and the terms upon which the testimony is to be taken.

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

10 (3) Documentary evidence transmitted from another state to a court
11 of this state by technological means that do not produce an original
12 writing may not be excluded from evidence on an objection based on the
13 best evidence rule.

14 **ARTICLE 2**
15 **JURISDICTION**

16 NEW SECTION. **Sec. 7.** (1) In this chapter:

17 (a) "Emergency" means a circumstance that likely will result in
18 substantial harm to a respondent's health, safety, or welfare, and for
19 which the appointment of a guardian is necessary because no other
20 person has authority and is willing to act on the respondent's behalf.

21 (b) "Home state" means the state in which the respondent was
22 physically present, including any period of temporary absence, for at
23 least six consecutive months immediately before the filing of a
24 petition for a protective order or the appointment of a guardian; or if
25 none, the state in which the respondent was physically present,
26 including any period of temporary absence, for at least six consecutive
27 months ending within the six months prior to the filing of the
28 petition.

29 (c) "Significant-connection state" means a state, other than the
30 home state, with which a respondent has a significant connection other
31 than mere physical presence and in which substantial evidence
32 concerning the respondent is available.

33 (2) In determining under sections 9 and 16(5) of this act whether
34 a respondent has a significant connection with a particular state, the
35 court shall consider:

1 (a) The location of the respondent's family and other persons
2 required to be notified of the guardianship or protective proceeding;

3 (b) The length of time the respondent at any time was physically
4 present in the state and the duration of any absence;

5 (c) The location of the respondent's property; and

6 (d) The extent to which the respondent has ties to the state such
7 as voting registration, state or local tax return filing, vehicle
8 registration, driver's license, social relationship, and receipt of
9 services.

10 NEW SECTION. **Sec. 8.** This chapter provides the exclusive
11 jurisdictional basis for a court of this state to appoint a guardian or
12 issue a protective order for an adult under chapters 11.88 and 11.92
13 RCW.

14 NEW SECTION. **Sec. 9.** A court of this state has jurisdiction to
15 appoint a guardian or issue a protective order for a respondent if:

16 (1) This state is the respondent's home state;

17 (2) On the date the petition is filed, this state is a significant-
18 connection state and:

19 (a) The respondent does not have a home state or a court of the
20 respondent's home state has declined to exercise jurisdiction because
21 this state is a more appropriate forum; or

22 (b) The respondent has a home state, a petition for an appointment
23 or order is not pending in a court of that state or another
24 significant-connection state, and, before the court makes the
25 appointment or issues the order:

26 (i) A petition for an appointment or order is not filed in the
27 respondent's home state;

28 (ii) An objection to the court's jurisdiction is not filed by a
29 person required to be notified of the proceeding; and

30 (iii) The court in this state concludes that it is an appropriate
31 forum under the factors set forth in section 12 of this act;

32 (3) This state does not have jurisdiction under either subsection
33 (1) or (2) of this section, the respondent's home state and all
34 significant-connection states have declined to exercise jurisdiction
35 because this state is the more appropriate forum, and jurisdiction in

1 this state is consistent with the constitutions of this state and the
2 United States; or

3 (4) The requirements for special jurisdiction under section 10 of
4 this act are met.

5 NEW SECTION. **Sec. 10.** (1) A court of this state lacking
6 jurisdiction under section 9 of this act has special jurisdiction to do
7 any of the following:

8 (a) In an emergency, process a petition under RCW 11.88.090 for
9 appointment of a guardian for a respondent who is physically present in
10 this state, for a term not exceeding ninety days;

11 (b) Issue a protective order with respect to a respondent's real or
12 tangible personal property located in this state if a petition for
13 appointment of a guardian or a conservator for the respondent is
14 pending or has been approved in another state;

15 (c) Appoint a guardian of the person or guardian of the estate for
16 an incapacitated or protected person for whom a provisional order to
17 transfer the proceeding from another state has been issued under
18 procedures similar to section 16 of this act.

19 (2) If a petition for the appointment of a guardian in an emergency
20 is brought in this state and this state was not the respondent's home
21 state on the date the petition was filed, the court shall dismiss the
22 proceeding at the request of the court of the home state, if any,
23 whether dismissal is requested before or after the emergency
24 appointment.

25 NEW SECTION. **Sec. 11.** Except as otherwise provided in section 10
26 of this act, a court that has appointed a guardian or issued a
27 protective order consistent with this chapter has exclusive and
28 continuing jurisdiction over the proceeding until it is terminated by
29 the court or the appointment or order expires by its own terms.

30 NEW SECTION. **Sec. 12.** (1) A court of this state having
31 jurisdiction under section 9 of this act to appoint a guardian or issue
32 a protective order may decline to exercise its jurisdiction if it
33 determines at any time that a court of another state is a more
34 appropriate forum.

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

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

9 (a) Any expressed preference of the respondent;

10 (b) Whether abuse, neglect, or exploitation of the respondent has
11 occurred or is likely to occur and which state could best protect the
12 respondent from the abuse, neglect, or exploitation;

13 (c) The length of time the respondent was physically present in or
14 was a legal resident of this or another state;

15 (d) The distance of the respondent from the court in each state;

16 (e) The financial circumstances of the respondent's estate;

17 (f) The nature and location of the evidence;

18 (g) The ability of the court in each state to decide the issue
19 expeditiously and the procedures necessary to present evidence;

20 (h) The familiarity of the court of each state with the facts and
21 issues in the proceeding; and

22 (i) If an appointment were made, the court's ability to monitor the
23 conduct of the guardian of the person or guardian of the estate.

24 NEW SECTION. **Sec. 13.** (1) If at any time a court of this state
25 determines that it acquired jurisdiction to appoint a guardian or issue
26 a protective order because of unjustifiable conduct, the court may:

27 (a) Decline to exercise jurisdiction;

28 (b) Exercise jurisdiction for the limited purpose of fashioning an
29 appropriate remedy to ensure the health, safety, and welfare of the
30 respondent or the protection of the respondent's property or prevent a
31 repetition of the unjustifiable conduct, including staying the
32 proceeding until a petition for the appointment of a guardian or
33 issuance of a protective order is filed in a court of another state
34 having jurisdiction; or

35 (c) Continue to exercise jurisdiction after considering:

36 (i) The extent to which the respondent and all persons required to

1 be notified of the proceedings have acquiesced in the exercise of the
2 court's jurisdiction;

3 (ii) Whether it is a more appropriate forum than the court of any
4 other state under the factors set forth in section 12(3) of this act;
5 and

6 (iii) Whether the court of any other state would have jurisdiction
7 under factual circumstances in substantial conformity with the
8 jurisdictional standards of section 9 of this act.

9 (2) If a court of this state determines that it acquired
10 jurisdiction to appoint a guardian or issue a protective order because
11 a party seeking to invoke its jurisdiction engaged in unjustifiable
12 conduct, it may assess against that party necessary and reasonable
13 expenses, including attorneys' fees, investigative fees, court costs,
14 communication expenses, witness fees and expenses, and travel expenses.
15 The court may not assess fees, costs, or expenses of any kind against
16 this state or a governmental subdivision, agency, or instrumentality of
17 this state unless authorized by law other than this act.

18 NEW SECTION. **Sec. 14.** If a petition for the appointment of a
19 guardian or issuance of a protective order is brought in this state and
20 this state was not the respondent's home state on the date the petition
21 was filed, in addition to complying with the notice requirements of
22 this state, notice of the petition must be given to those persons who
23 would be entitled to notice of the petition if a proceeding were
24 brought in the respondent's home state. The notice must be given in
25 the same manner as notice is required to be given in this state.

26 NEW SECTION. **Sec. 15.** Except for a petition for the appointment
27 of a guardian in an emergency or issuance of a protective order limited
28 to property located in this state under section 10(1) (a) or (b) of
29 this act, if a petition for the appointment of a guardian or issuance
30 of a protective order is filed in this state and in another state and
31 neither petition has been dismissed or withdrawn, the following rules
32 apply:

33 (1) If the court in this state has jurisdiction under section 9 of
34 this act, it may proceed with the case unless a court in another state
35 acquires jurisdiction under provisions similar to section 9 of this act
36 before the appointment or issuance of the order.

1 (2) If the court in this state does not have jurisdiction under
2 section 9 of this act, whether at the time the petition is filed or at
3 any time before the appointment or issuance of the order, the court
4 shall stay the proceeding and communicate with the court in the other
5 state. If the court in the other state has jurisdiction, the court in
6 this state shall dismiss the petition unless the court in the other
7 state determines that the court in this state is a more appropriate
8 forum.

9 **ARTICLE 3**

10 **TRANSFER OF GUARDIANSHIP**

11 NEW SECTION. **Sec. 16.** (1) A guardian of the person or guardian of
12 the estate appointed in this state may petition the court to transfer
13 the guardianship to another state.

14 (2) Notice of a petition under subsection (1) of this section must
15 be given to the persons that would be entitled to notice of a petition
16 in this state for the appointment of a guardian of the person or
17 guardian of the estate.

18 (3) On the court's own motion or on request of the guardian of the
19 person or guardian of the estate, the incapacitated or protected
20 person, or other person required to be notified of the petition, the
21 court shall hold a hearing on a petition filed pursuant to subsection
22 (1) of this section.

23 (4) The court shall issue an order provisionally granting a
24 petition to transfer a guardianship and shall direct the guardian of
25 the person or guardian of the estate to petition for guardianship in
26 the other state if the court is satisfied that the guardianship will be
27 accepted by the court in the other state and the court finds that:

28 (a) The incapacitated person is physically present in or is
29 reasonably expected to move permanently to the other state;

30 (b) An objection to the transfer has not been made or, if an
31 objection has been made, the objector has not established that the
32 transfer would be contrary to the interests of the incapacitated
33 person; and

34 (c) Plans for care and services for the incapacitated person in the
35 other state are reasonable and sufficient.

1 (5) The court shall issue a provisional order granting a petition
2 to transfer a guardianship of the estate and shall direct the guardian
3 of the estate to petition for guardianship of the estate or
4 conservatorship in the other state if the court is satisfied that the
5 guardianship of the estate will be accepted by the court of the other
6 state and the court finds that:

7 (a) The protected person is physically present in or is reasonably
8 expected to move permanently to the other state, or the protected
9 person has a significant connection to the other state considering the
10 factors in section 7(2) of this act;

11 (b) An objection to the transfer has not been made or, if an
12 objection has been made, the objector has not established that the
13 transfer would be contrary to the interests of the protected person;
14 and

15 (c) Adequate arrangements will be made for management of the
16 protected person's property.

17 (6) The court shall issue a final order confirming the transfer and
18 terminating the guardianship of the person or guardianship of the
19 estate upon its receipt of:

20 (a) A provisional order accepting the proceeding from the court to
21 which the proceeding is to be transferred which is issued under
22 provisions similar to section 17 of this act; and

23 (b) The documents required to terminate a guardianship of the
24 person or guardianship of the estate in this state.

25 NEW SECTION. **Sec. 17.** (1) To confirm transfer of a guardianship
26 or conservatorship transferred to this state under provisions similar
27 to section 16 of this act, the guardian or conservator must petition
28 the court in this state to accept the guardianship or conservatorship.
29 The petition must include a certified copy of the other state's
30 provisional order of transfer.

31 (2) Notice of a petition under subsection (1) of this section must
32 be given to those persons that would be entitled to notice if the
33 petition were a petition for the appointment of a guardian or issuance
34 of a protective order in both the transferring state and this state.
35 The notice must be given in the same manner as notice is required to be
36 given in this state.

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

5 (4) The court shall issue an order provisionally granting a
6 petition filed under subsection (1) of this section unless:

7 (a) An objection is made and the objector establishes that transfer
8 of the proceeding would be contrary to the interests of the
9 incapacitated or protected person; or

10 (b) The guardian or conservator is ineligible for appointment in
11 this state.

12 (5) The court shall issue a final order accepting the proceeding
13 and appointing the guardian or conservator as guardian of the person or
14 guardian of the estate in this state upon its receipt from the court
15 from which the proceeding is being transferred of a final order issued
16 under provisions similar to section 16 of this act transferring the
17 proceeding to this state.

18 (6) Not later than ninety days after issuance of a final order
19 accepting transfer of a guardianship or conservatorship, the court
20 shall determine whether the guardianship of the person or guardianship
21 of the estate needs to be modified to conform to the law of this state.

22 (7) In granting a petition under this section, the court shall
23 recognize a guardianship or conservatorship order from the other state,
24 including the determination of the incapacitated or protected person's
25 incapacity and the appointment of the guardian or conservator.

26 (8) The denial by a court of this state of a petition to accept a
27 guardianship or conservatorship transferred from another state does not
28 affect the ability of the guardian or conservator to seek appointment
29 as guardian or guardian of the estate in this state if the court has
30 jurisdiction to make an appointment other than by reason of the
31 provisional order of transfer.

32 **ARTICLE 4**

33 **REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES**

34 NEW SECTION. **Sec. 18.** If a guardian has been appointed in another
35 state and a petition for the appointment of a guardian is not pending
36 in this state, the guardian appointed in the other state, after giving

1 notice to the appointing court of an intent to register, may register
2 the guardianship order in this state by filing as a foreign judgment in
3 a court, in any appropriate county of this state, certified copies of
4 the order and letters of office.

5 NEW SECTION. **Sec. 19.** If a guardian of the estate or conservator
6 has been appointed in another state and a petition for a protective
7 order is not pending in this state, the guardian of the estate or
8 conservator appointed in the other state, after giving notice to the
9 appointing court of an intent to register, may register the protective
10 order in this state by filing as a foreign judgment in a court of this
11 state, in any county in which property belonging to the protected
12 person is located, certified copies of the order and letters of office
13 and of any bond.

14 NEW SECTION. **Sec. 20.** (1) Upon registration of a guardianship or
15 protective order from another state, the guardian or conservator may
16 exercise in this state all powers authorized in the order of
17 appointment except as prohibited under the laws of this state,
18 including maintaining actions and proceedings in this state and, if the
19 guardian or conservator is not a resident of this state, subject to any
20 conditions imposed upon nonresident parties.

21 (2) A court of this state may grant any relief available under this
22 act and other law of this state to enforce a registered order.

23 **ARTICLE 5**
24 **MISCELLANEOUS PROVISIONS**

25 NEW SECTION. **Sec. 21.** In applying and construing this uniform
26 act, consideration must be given to the need to promote uniformity of
27 the law with respect to its subject matter among states that enact it.

28 NEW SECTION. **Sec. 22.** This act modifies, limits, and supersedes
29 the federal electronic signatures in global and national commerce act,
30 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede
31 section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic
32 delivery of any of the notices described in section 103(b) of that act,
33 15 U.S.C. Sec. 7003(b).

1 NEW SECTION. **Sec. 23.** (1) This act applies to guardianship and
2 protective proceedings filed on or after the effective date of this
3 act.

4 (2) Sections 1 through 6 and 16 through 22 apply to proceedings
5 filed before the effective date of this act, regardless of whether a
6 guardianship or protective order has been issued.

7 NEW SECTION. **Sec. 24.** This act takes effect January 1, 2010.

8 NEW SECTION. **Sec. 25.** Article headings used in this act are not
9 any part of the law.

10 NEW__SECTION. **Sec. 26.** Sections 1 through 25 of this act
11 constitute a new chapter in Title 11 RCW.

 Passed by the House February 27, 2009.

 Passed by the Senate April 3, 2009.

 Approved by the Governor April 13, 2009.

 Filed in Office of Secretary of State April 14, 2009.