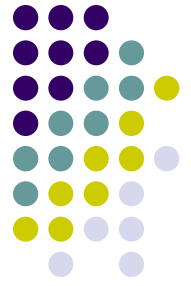


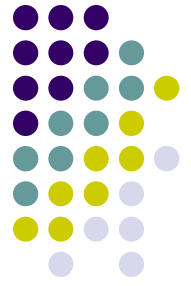
Why States Should Enact the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA or Act)



**David English, Eric Fish
Lori Stiegel, Erica Wood**

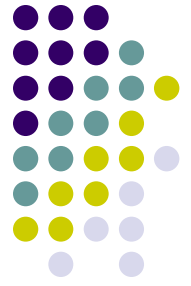
February 5, 2009

Acknowledgements



- This Webcast is supported by the American College of Trust and Estate Counsel Foundation. The ABA Commission's *Joint Campaign for Uniform Guardianship Jurisdiction* is also funded by the ABA Section of Real Property, Trust and Estate Law and the Uniform Law Foundation.

Webcast Topics



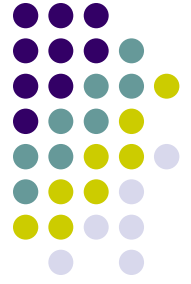
- Need for uniform jurisdiction law
- How UAGPPJA addresses key problems
- How UAGPPJA could reduce elder abuse
- Advocating for state enactment
- Q & A

Terminology



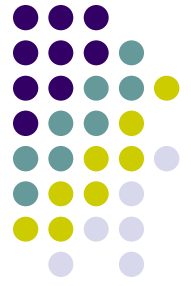
- “Guardian”: a person appointed by the court to make decisions regarding the person of an adult
- “Conservator”: a person appointed by the court to administer the property of an adult
- These slides refer to guardians/guardianship and conservators/conservatorship generically as guardians/guardianship

Problems of Multiple Jurisdictions



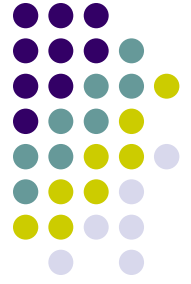
- Guardianship cases governed by state law
- 50 states = 50 different state laws
- Social mobility causes conflicts within law
- No state has the same rules for
 - Recognition
 - Transfer
 - Jurisdiction

Uniform Law Commission



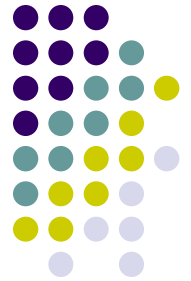
- Uniform Law Commission (ULC/NCCUSL) formed over 100 years ago to promote uniformity in the law among the several states on subjects as to which uniformity is desirable and practicable
- Promulgates uniform laws for states to enact
- The ULC Process
 - 1-2 year study cycle
 - 2 year drafting process
 - Approval by states

ULC's Previous Work on Guardianship



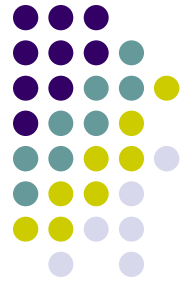
- Uniform Guardianship and Protective Proceedings Act (UGPPA) has been enacted in about 20 states
- Selected concepts in UGPPA have been enacted in substantial majority of states

Key Multi-State Problems



- Recognition: how to have authority granted in one state recognized or enforced in another state
- Transfer: how to move case from one state to another
- Initial Jurisdiction: where to begin the case when more than one possible jurisdiction

Child Custody Analogy



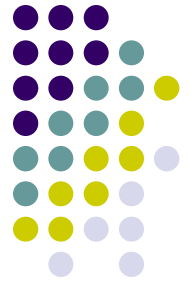
- Similar jurisdiction problems in child custody
 - If parents live in different states, both courts could have jurisdiction to enter custody orders
- Confusion and conflict reigned until the 1968 Uniform Child Custody Jurisdiction Act
- Current version is 1997 Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)
- Nearly every state has UCCJEA so courts are familiar with the basic concepts

UAGPPJA: Adults Only



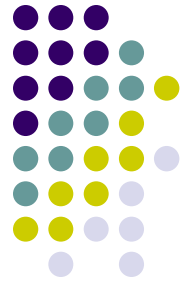
- UAGPPJA modeled after UCCJEA
- UCCJEA applies to minors and addresses jurisdictional issues
- UAGPPJA applies only to adult proceedings
- Adult guardianship is NOT about custody

UAGPPJA: General Objectives



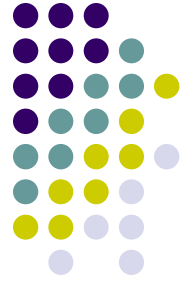
- Guardianship orders entered in one state can be recognized or enforced in another
- Established cases can be efficiently transferred from one state to another
- Initial jurisdiction to appoint a guardian fixed in the court of one and only one state

Recognition: Issues



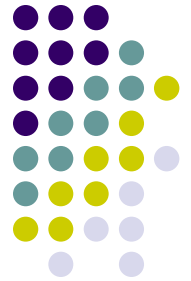
- Examples: sale of real estate or residential placement in another state
- Issue: Will guardian's authority be honored in another state?
- Issue: States may have different criteria (capacity, limited powers, rights)
- Issue: Who monitors, where report
- Issue: Need simple, low expense process

Recognition: Current Law



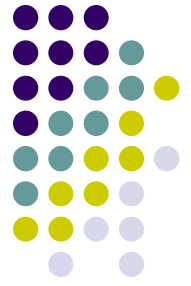
- Most states have some process to allow out-of-state conservator to transact financial matters in another state
 - Administrative filing of order
- Few states have any process to recognize the authority of an out-of-state guardian to make personal decisions

Recognition: Case



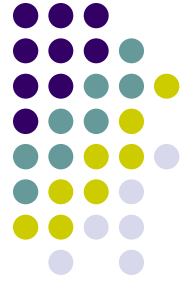
- In *Matter of Steven Prye* (2005)
- Illinois treatment case
- IL public guardian sought mental health treatment in MO
- MO not recognize IL guardian authority, and Prye could not consent to treatment
- Needed treatment was delayed

Recognition: Additional Case



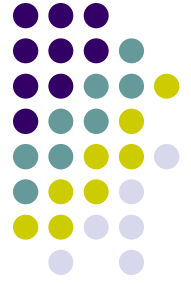
- Missy, a brain-injured adult with large personal injury settlement, had CO guardian
- Guardian placed her in CA facility
- Patient acts out, requiring action by mental health and criminal justice system
- Facility, local hospital, and mental health institution refuse recognize guardian's authority

Recognition: How UAGPPJA Addresses



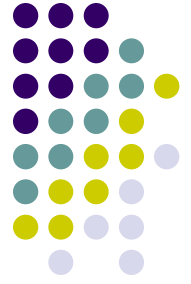
- UAGPPJA authorizes registration in a local court of a guardianship from another state.
- Provides that upon registration, the guardian may exercise in the registration state all powers authorized in the order of appointment except as prohibited under the laws of the registration state.

Transfer: Issues



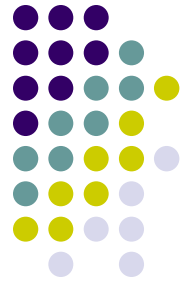
- Example: Appropriate to move individual and established guardianship to new state
- Issue: May be necessary to start over
 - Re-determine capacity
 - Re-appoint a guardian in new state
- Issue: Catch 22 - New court may not have jurisdiction until individual is moved, but can't move until new court appoints a guardian

Transfer: Current Law

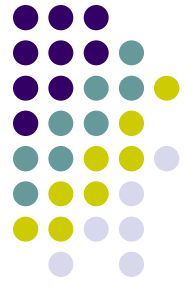


- Most states require all of the procedures for an original appointment be repeated
- Most states do not have jurisdiction until after individual has moved

Transfer: Case



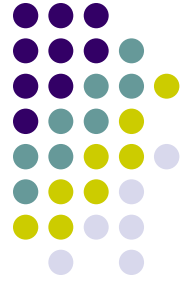
- *In re Guardianship of Jane E.P.* (2005)
- Illinois to Wisconsin
- Individual and guardian in IL
- Family wanted to move ward to WI for care
- Started new proceeding in WI
- WI dismissed because Jane not resident or present in WI
- WI Supreme Court recommended state adoption of transfer standard



Transfer: Additional Case

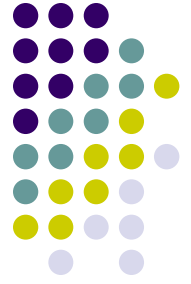
- Mother in AL was guardian for incapacitated adult son
- Guardian wanted move with son to FL
- AL judge agreed to transfer case and terminate AL guardianship as soon as FL made appointment
- FL judge refused to make appointment while AL case pending
- Stalemate

Transfer: How UAGPPJA Addresses



- To make the transfer, two court orders are necessary
 - File with court giving up the case
 - File with court receiving the case
 - Notice and opportunity for hearing in both

Transfer: How UAGPPJA Addresses



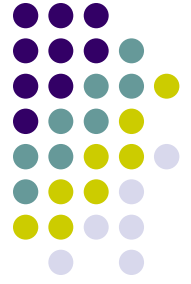
- Transferring court must find that:
 - Individual moving permanently to other state
 - No one has objected to transfer or person objecting have not established that transfer contrary to individual's interests
 - Plans for individual in new state are reasonable and sufficient

Transfer: How UAGPPJA Addresses



- Receiving court must recognize order from transferring state, including the determination of individual's incapacity and the identity of guardian appointed

Initial Jurisdiction: Issues



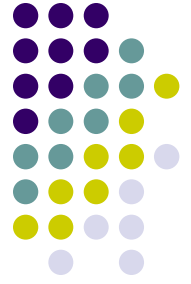
- **Example: Domicile is hard to determine**
 - When have even split of time in two states
 - When living in a nursing home
 - When unclear whether individual has capacity to form intent to change domicile
- **Issue: Few states have mechanism to determine which of several possible jurisdictions is appropriate**
- **Issue: Basing jurisdiction on physical presence invites “granny snatching” to create jurisdiction in another state**

Initial Jurisdiction: Current Law



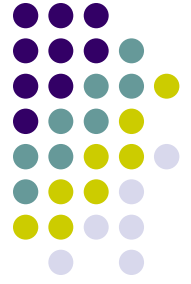
- In nearly all states, a guardian may be appointed in a state in which individual is domiciled or is physically present
- In nearly all states, a conservator may be appointed in a state in which individual is domiciled or has property
- Resulting in:
 - Extended litigation over jurisdiction
 - Incentives for “granny snatching”

Initial Jurisdiction: Case



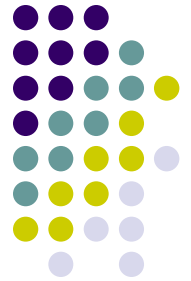
- *Matter of Glasser* (2006)
- Texas versus New Jersey
- Mother lifelong resident of NJ
- Daughter
 - “Come to TX for a visit”
 - Used NJ power of attorney to gain control of assets
 - Filed for temporary guardianship
- Two years later case resolved in NJ
 - Huge litigation expenses
 - Delay of mother’s return home

Initial Jurisdiction: Additional Case



- Mary, lifelong AL resident, injured
- Distant relatives moved her to TX and petitioned for guardianship
- Family from elsewhere sought appointment in AL
- Mary wanted live in AL but remained in TX
- Extensive litigation fees

Initial Jurisdiction: How UAGPPJA Addresses



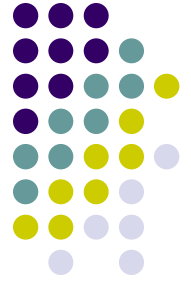
- Helps courts determine primary jurisdiction by establishing criteria to determine the individual's “home state” and “significant connection state”
 - “Home state” generally is the state in which the individual has been present for at least six months immediately before the commencement of the guardianship
 - “Significant connection state” means the state in which the individual has a significant connection, other than mere physical presence, and where substantial evidence concerning the individual is available

Initial Jurisdiction: How UAGPPJA Addresses



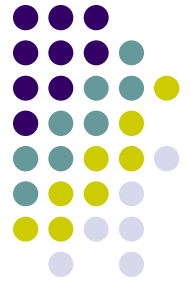
- General Rule:
 - Home state has primary jurisdiction to appoint a guardian
 - Primary jurisdiction continues to apply for up to six months following a move to another state
 - A significant connection state has jurisdiction if
 - individual does not have a home state or
 - home state declined jurisdiction because significant connection state is more appropriate forum

Initial Jurisdiction: How UAGPPJA Addresses



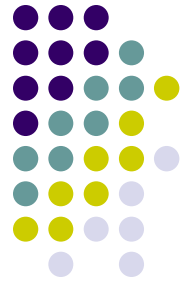
- A significant connection state also has jurisdiction if
 - no proceeding commenced in the respondent's home state or another significant connection state
 - no objection to court's jurisdiction filed, and
 - court concludes that it is a more appropriate forum than a court in another place

Initial Jurisdiction: How UAGPPJA Addresses



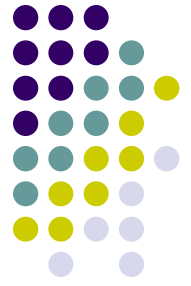
- Even if not a home state or significant connection state, a state in which individual is physically present has jurisdiction to appoint an emergency guardian if an urgency exists.
- A court where property is located has jurisdiction to appoint a conservator or enter another protective order with respect to property located in the state.

Initial Jurisdiction: How UAGPPJA Addresses



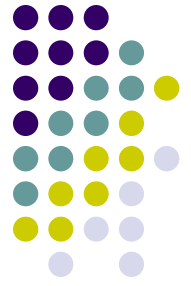
- Once appointed, guardian's authority continues until terminated.
- Jurisdiction not lost because incapacitated individual in another state for six months or longer.

Nine Ways UAGPPJA Could Reduce Elder Abuse



1. Reducing incidents of “granny snatching”
2. Enabling a court to decline jurisdiction because of and to penalize “unjustifiable conduct”
3. Requiring a court to consider elder abuse when determining appropriate forum

Nine Ways UAGPPJA Could Reduce Elder Abuse



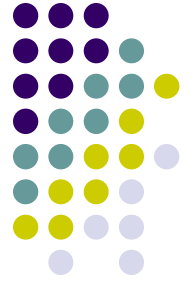
4. Facilitating monitoring of guardianships
5. Heightening a non-home state court's awareness of abuse
6. Facilitating cross-border court communication

Nine Ways UAGPPJA Could Reduce Elder Abuse



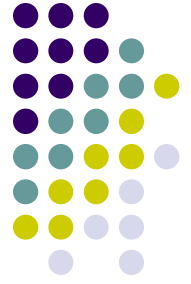
7. Enhancing a court's ability to learn about relevant criminal activity in another state
8. Establishing transfer procedures that could remove individuals from abusive situations
9. Establishing registration procedures that aid in notification and monitoring of abuse

Advocacy: Why ALL States Need UAGPPJA



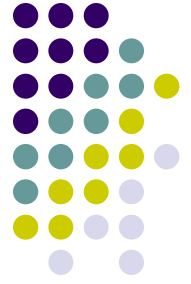
- Jurisdiction based statutes only work if all states enact and no state offers a place to forum shop
- Uniformity decreases costs for individuals and families
- Predictability of outcome

Advocacy: Identify Positives



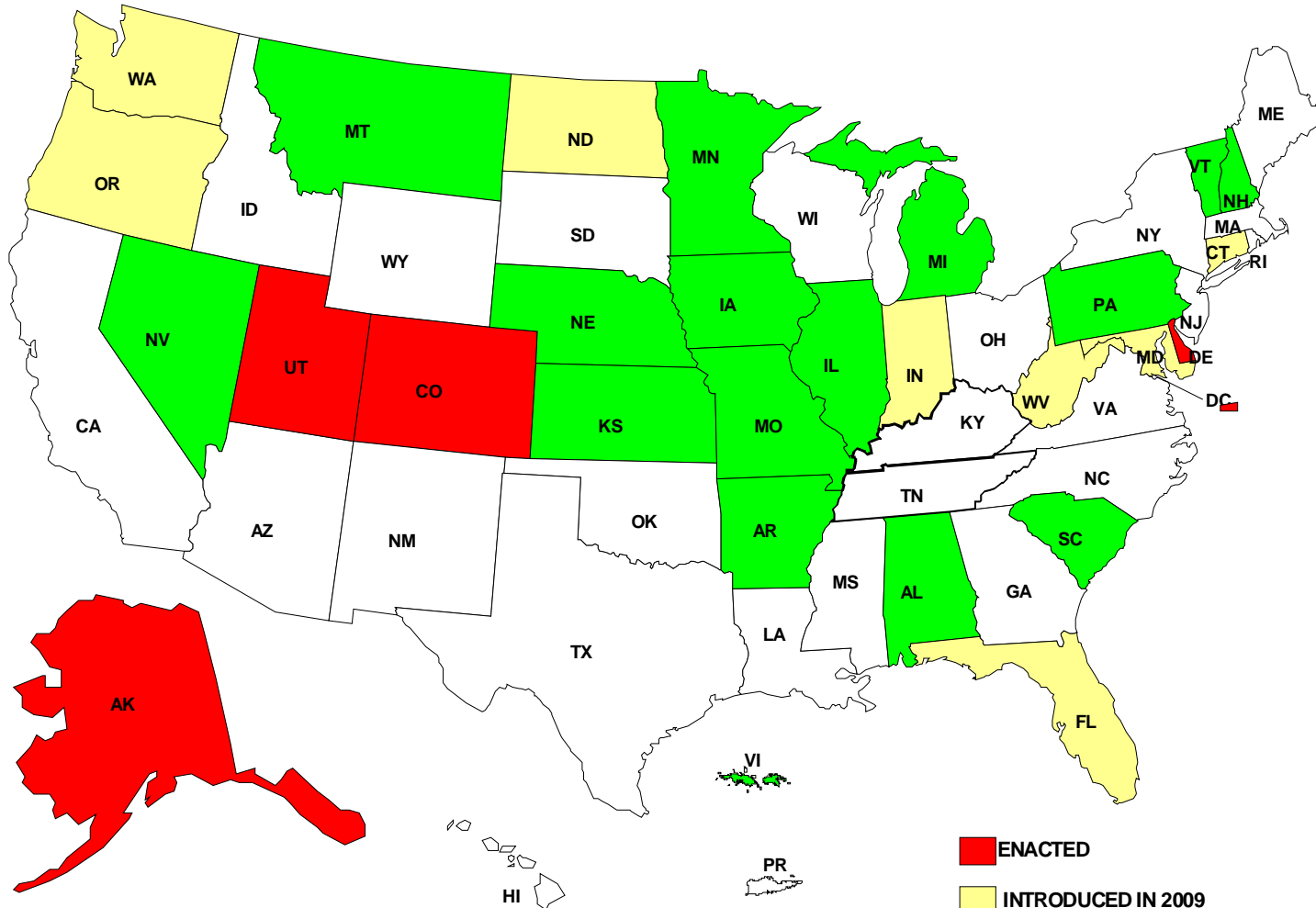
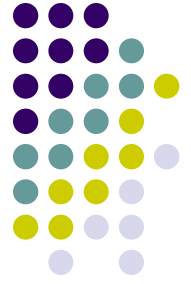
- No budget impact
 - Could save states money
 - Conserves judicial resources
- No change to substantive law
- Conserves individual's estate
- Child custody process is familiar and working

Advocacy: Progress To Date



- Enacted in 2008
 - Colorado
 - Utah
 - Delaware
 - Alaska
 - District of Columbia

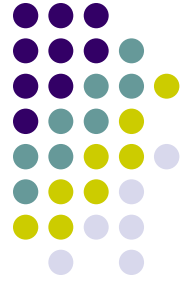
Advocacy: 2009 Legislative Plans



January 15, 2009

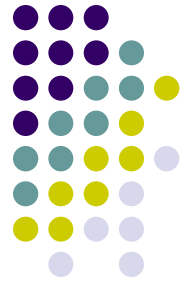


Advocacy: Key Supporters



- Connect with your Uniform Law Commissioners
- Identify allies and enlist their support
 - Bar, e.g., NAELA, elder law and probate & trust entities
 - Judiciary
 - Aging and Disability networks
 - Alzheimer's Association
 - State guardianship associations
- ULC Web site has letters of endorsement from:
 - National College of Probate Judges
 - Conference of Chief Justices
 - National Guardianship Association
 - National Academy of Elder Law Attorneys
 - Alzheimer's Association

Advocacy: Overcoming Roadblocks



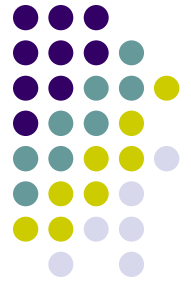
- Apathy
- Status quo is OK
- We don't do uniform laws
- Many legislators don't understand guardianship or jurisdictional issues
- Demonstrate the compelling reasons for enacting this law

Advocacy: Legislative Process



- Identify bill sponsors to get bill introduced
- Share bill summary and talking points with your legislators and opinion leaders
- Develop a media strategy
- Obtain letters of support from organizations and individuals
- Prepare for hearing
 - Develop testimony
 - Case examples from own files
 - Personal stories
 - Select appropriate witnesses

Resources



- Uniform Law Commission www.nccusl.org
 - Eric Fish (eric.fish@nccusl.org)
- ABA Commission on Law and Aging Guardianship Jurisdiction Web page: www.abanet.org/aging/guardianshipjurisdiction/
 - Charts of stories and case law, “Nine Ways...” article, Webcast archive link, and more
 - E-mail: guardianshipjurisdiction@staff.abanet.org
- National Guardianship Association www.guardianship.org