WEST VIRGINIA CODE CHAPTER 44C ARTICLE 1

WV Legislature

§44C-1-1. Short title.

This chapter may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and is cited in this chapter as "this act".

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§44C-1-2. Definitions.

For purposes of this chapter:

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

(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under section one, article one, chapter forty-four-a of this code.

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

(4) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under article two, chapter forty-four-a of this code.

(5) "Guardianship order" means an order appointing a guardian.

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

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

(8) "Incapacitated person" means an adult for whom a guardian has been appointed.

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

(10) "Person", except in the term "incapacitated person or protected person", means 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.

(11) "Protected person", for purposes of this chapter only, means an adult for whom a protective order, as defined in this section, has been issued. "Protected person", as used in this chapter, has the meaning ascribed to it in subsection thirteen-b, section four, article one, chapter forty-four-a of this code.

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(12) "Protective order," for purposes of this chapter only and notwithstanding the meaning which the term may have outside of this chapter, means an order appointing a conservator or other order related to management of an adult's property.

(13) "Protective proceeding" means a judicial proceeding in which a protective order, as defined in this section, is sought or has been issued.

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

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

(16) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available. In determining whether a respondent has a significant connection with a particular state, the court shall consider:

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

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

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

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

(17) "State" means 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.

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§44C-1-3. International application.

A court of this state may treat a foreign country as if it were a state for the purpose of applying this act.

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§44C-1-4. Communication between courts.

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under this act. 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.

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§44C-1-5. Cooperation between courts.

(a) In a 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 subsection or any other proceeding, any evidence otherwise produced under subdivision (2) of this subsection and any evaluation or assessment prepared in compliance with an order under subdivision (3) or (4) of this subsection;

(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. Section 164.504, as amended.

(b) If a court of another state in which a 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.

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§44C-1-6. Taking testimony in another state.

(a) In a 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 a 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.

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