

JAN 20 2012

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# A BILL FOR AN ACT

RELATING TO ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS  
JURISDICTION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4   "CHAPTER

5                           UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

6   JURISDICTION ACT

7   PART I. GENERAL PROVISIONS

8           § -1 Short title. This chapter may be cited as the  
9 Uniform Adult Guardianship and Protective Proceedings  
10 Jurisdiction Act.

11          § -2 Definitions. When used in this chapter, unless the  
12 context requires otherwise:

13           "Adult" means an individual who has attained eighteen years  
14 of age.

15           "Conservator" means a person appointed by the court to  
16 administer the property of an adult, including a person  
17 appointed under chapter 551 or 560.



1 "Guardian" means a person appointed by the court to make  
2 decisions regarding the person of an adult, including a person  
3 appointed under chapter 551 or 560.

4 "Guardianship order" means an order appointing a guardian.

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

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

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

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

19 "Protected person" means an adult for whom a protective  
20 order has been issued.

21 "Protective order" means an order appointing a conservator  
22 or other order related to management of an adult's property.



1 "Protective proceeding" means a judicial proceeding in  
2 which a protective order is sought or has been issued.

3 "Record" means information that is inscribed on a tangible  
4 medium or that is stored in an electronic or other medium and is  
5 retrievable in perceivable form.

6 "Respondent" means an adult for whom a protective order or  
7 the appointment of a guardian is sought.

8 "State" means a state of the United States, the District of  
9 Columbia, Puerto Rico, the United States Virgin Islands, a  
10 federally recognized Indian tribe, or any territory or insular  
11 possession subject to the jurisdiction of the United States.

12 § -3 **International application.** A court of the State of  
13 Hawaii may treat a foreign country as if it were a state for the  
14 purpose of applying this part and parts II, III, and V.

15 § -4 **Communication between courts.** (a) A court of the  
16 State of Hawaii may communicate with a court in another state  
17 concerning a proceeding arising under this chapter. Either  
18 court may allow the parties to participate in the communication.  
19 Except as otherwise provided in subsection (b), the court shall  
20 make a record of the communication. The record may be limited  
21 to the fact that the communication occurred.



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

4 § -5 Cooperation between courts. (a) In a guardianship  
5 or protective proceeding in the State of Hawaii, the court may  
6 request the appropriate court of another state to do any of the  
7 following:

- 8 (1) Hold an evidentiary hearing;
- 9 (2) Order a person in the other state to produce evidence  
10 or give testimony pursuant to procedures of that  
11 state;
- 12 (3) Order that an evaluation or assessment be made of the  
13 respondent;
- 14 (4) Order any appropriate investigation of a person  
15 involved in a proceeding;
- 16 (5) Forward to the court of the State of Hawaii a  
17 certified copy of the transcript or other record of a  
18 hearing under paragraph (1) or any other proceeding,  
19 any evidence otherwise produced under paragraph (2),  
20 and any evaluation or assessment prepared in  
21 compliance with an order under paragraph (3) or (4);



1           (6) Issue any order necessary to assure the appearance in  
2           the proceeding of a person whose presence is necessary  
3           for the court to make a determination, including the  
4           respondent or the incapacitated or protected person;  
5           or

6           (7) Issue an order authorizing the release of medical,  
7           financial, criminal, or other relevant information in  
8           that state, including protected health information as  
9           defined in 45 Code of Federal Regulations Section  
10          160.103, as amended.

11          (b) If a court of another state in which a guardianship or  
12          protective proceeding is pending requests assistance of the kind  
13          provided in subsection (a), a court of the State of Hawaii has  
14          jurisdiction for the limited purpose of granting the request or  
15          making reasonable efforts to comply with the request.

16          § -6 **Taking testimony in another state.** (a) In a  
17          guardianship or protective proceeding, in addition to other  
18          procedures that may be available, testimony of a witness who is  
19          located in another state may be offered by deposition or other  
20          means allowable in the State of Hawaii for testimony taken in  
21          another state. The court on its own motion may order that the  
22          testimony of a witness be taken in another state and may



1 prescribe the manner in which and the terms upon which the  
2 testimony is to be taken.

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

9 (c) Documentary evidence transmitted from another state to  
10 a court of the State of Hawaii by technological means that do  
11 not produce an original writing may not be excluded from  
12 evidence on an objection based on Rule 1002 of the Hawaii rules  
13 of evidence.

14 **PART II. JURISDICTION**

15 § -7 **Definitions; significant factors.** (a) For purposes  
16 of this part:

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



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

9 "Significant-connection state" means a state, other than  
10 the home state, with which a respondent has a significant  
11 connection other than mere physical presence and in which  
12 substantial evidence concerning the respondent is available.

13 (b) In determining under sections -9 and -16(e)  
14 whether a respondent has a significant connection with a  
15 particular state, the court shall consider:

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

19 (2) The length of time the respondent at any time was  
20 physically present in the state and the duration of  
21 any absence;

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



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

5           § -8 **Exclusive basis.** This part provides the exclusive  
6           jurisdictional basis for a court of the State of Hawaii to  
7           appoint a guardian or issue a protective order for an adult.

8           § -9 **Jurisdiction.** A court of the State of Hawaii has  
9           jurisdiction to appoint a guardian or issue a protective order  
10          for a respondent if:

11          (1) The State of Hawaii is the respondent's home state;  
12          (2) On the date the petition is filed, the State of Hawaii  
13          is considered to be a significant-connection state  
14          and:

15                (A) The respondent does not have a home state or a  
16                court of the respondent's home state has declined  
17                to exercise jurisdiction because the State of  
18                Hawaii is a more appropriate forum; or

19                (B) The respondent has a home state, a petition for  
20                an appointment or order is not pending in a court  
21                of that state or another significant-connection





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state, and, before the court makes the appointment or issues the order:

- (i) A petition for an appointment or order is not filed in the respondent's home state;
- (ii) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and
- (iii) The court of the State of Hawaii concludes that it is an appropriate forum under the factors set forth in section -12;

(3) The State of Hawaii does not have jurisdiction under either paragraph (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because forum and jurisdiction is more appropriate in the State of Hawaii and would be consistent with the United States Constitution and Hawaii State Constitution; or

(4) The requirements for special jurisdiction under section -10 are met.

§ -10 **Special jurisdiction.** (a) A court of the State of Hawaii lacking jurisdiction under section -9(1) through (3) has special jurisdiction to do any of the following:

- 1           (1) Appoint a guardian in an emergency for a term not  
2           exceeding ninety days for a respondent who is  
3           physically present in the State of Hawaii;
- 4           (2) Issue a protective order with respect to real or  
5           tangible personal property located in the State of  
6           Hawaii; or
- 7           (3) Appoint a guardian or conservator for an incapacitated  
8           or protected person for whom a provisional order to  
9           transfer the proceeding from another state has been  
10          issued under procedures similar to section -16.

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

17          § -11 **Exclusive and continuing jurisdiction.** Except as  
18          otherwise provided in section -10, a court that has appointed  
19          a guardian or issued a protective order consistent with this  
20          chapter has exclusive and continuing jurisdiction over the  
21          proceeding until it is terminated by the court or the  
22          appointment or order expires by its own terms.



1           § -12 **Appropriate forum.** (a) A court of the State of  
2 Hawaii having jurisdiction under section -9 to appoint a  
3 guardian or issue a protective order may decline to exercise its  
4 jurisdiction if it determines at any time that a court of  
5 another state is a more appropriate forum.

6           (b) If a court of the State of Hawaii declines to exercise  
7 its jurisdiction under subsection (a), it shall either dismiss  
8 or stay the proceeding. The court may impose any condition the  
9 court considers just and proper, including the condition that a  
10 petition for the appointment of a guardian or issuance of a  
11 protective order be filed promptly in another state.

12           (c) In determining whether it is an appropriate forum, the  
13 court shall consider all relevant factors, including:

- 14           (1) Any expressed preference of the respondent;  
15           (2) Whether abuse, neglect, or exploitation of the  
16                 respondent has occurred or is likely to occur and  
17                 which state could best protect the respondent from the  
18                 abuse, neglect, or exploitation;  
19           (3) The length of time the respondent was physically  
20                 present in or was a legal resident of a state;  
21           (4) The distance of the respondent from the court in each  
22                 state;



- 1           (5) The financial circumstances of the respondent's
- 2           estate;
- 3           (6) The nature and location of the evidence;
- 4           (7) The ability of the court in each state to decide the
- 5           issue expeditiously and the procedures necessary to
- 6           present evidence;
- 7           (8) The familiarity of the court of each state with the
- 8           facts and issues in the proceeding; and
- 9           (9) If an appointment were made, the court's ability to
- 10          monitor the conduct of the guardian or conservator.

11          § -13 Jurisdiction declined by reason of conduct. (a)

12 If at any time a court of the State of Hawaii determines that it  
13 acquired jurisdiction to appoint a guardian or issue a  
14 protective order because of unjustifiable conduct, the court  
15 may:

- 16          (1) Decline to exercise jurisdiction;
- 17          (2) Exercise jurisdiction for the limited purpose of
- 18           fashioning an appropriate remedy to ensure the health,
- 19           safety, and welfare of the respondent or the
- 20           protection of the respondent's property or prevent a
- 21           repetition of the unjustifiable conduct, including
- 22           staying the proceeding until a petition for the



1 appointment of a guardian or issuance of a protective  
2 order is filed in a court of another state having  
3 jurisdiction; or

4 (3) Continue to exercise jurisdiction after considering:

5 (A) The extent to which the respondent and all  
6 persons required to be notified of the  
7 proceedings have acquiesced in the exercise of  
8 the court's jurisdiction;

9 (B) Whether it is a more appropriate forum than the  
10 court of any other state under the factors set  
11 forth in section -12(c); and

12 (C) Whether the court of any other state would have  
13 jurisdiction under factual circumstances in  
14 substantial conformity with the jurisdictional  
15 standards of section -9.

16 (b) If a court of the State of Hawaii determines that it  
17 acquired jurisdiction to appoint a guardian or issue a  
18 protective order because a party seeking to invoke its  
19 jurisdiction engaged in unjustifiable conduct, it may assess  
20 against that party necessary and reasonable expenses, including  
21 attorney's fees, investigative fees, court costs, communication  
22 expenses, witness fees and expenses, and travel expenses. The



1 court may not assess fees, costs, or expenses of any kind  
2 against the State of Hawaii or a governmental subdivision,  
3 agency, or instrumentality of the State of Hawaii unless  
4 authorized by law other than this chapter.

5       § -14 **Notice of proceeding.** If a petition for the  
6 appointment of a guardian or issuance of a protective order is  
7 brought in the State of Hawaii and it was not the respondent's  
8 home state on the date the petition was filed, in addition to  
9 complying with the notice requirements of the State of Hawaii,  
10 notice of the petition must be given to those persons who would  
11 be entitled to notice of the petition if a proceeding were  
12 brought in the respondent's home state. The notice must be  
13 given in the same manner as notice is required to be given in  
14 the State of Hawaii.

15       § -15 **Proceedings in more than one state.** Except for a  
16 petition for the appointment of a guardian in an emergency or  
17 issuance of a protective order limited to property located in  
18 the State of Hawaii under section -10(a)(1) or (a)(2), if a  
19 petition for the appointment of a guardian or issuance of a  
20 protective order is filed in the State of Hawaii and in another  
21 state and neither petition has been dismissed or withdrawn, the  
22 following rules apply:



1           (1) If the court of the State of Hawaii has jurisdiction  
2           under section -9, it may proceed with the case  
3           unless a court in another state acquires jurisdiction  
4           under provisions similar to section -9 before the  
5           appointment or issuance of the order; and

6           (2) If the court of the State of Hawaii does not have  
7           jurisdiction under section -9, whether at the time  
8           the petition is filed or at any time before the  
9           appointment or issuance of the order, the court shall  
10          stay the proceeding and communicate with the court in  
11          the other state. If the court in the other state has  
12          jurisdiction, the court of the State of Hawaii shall  
13          dismiss the petition unless the court in the other  
14          state determines that the court of the State of Hawaii  
15          is a more appropriate forum.

16           **PART III. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP**

17           § -16 **Transfer of guardianship or conservatorship to**  
18 **another state.** (a) A guardian or conservator appointed in the  
19 State of Hawaii may petition the court to transfer the  
20 guardianship or conservatorship to another state.

21           (b) Notice of a petition under subsection (a) must be  
22 given to the persons that would be entitled to notice of a



1 petition in the State of Hawaii for the appointment of a  
2 guardian or conservator.

3 (c) On the court's own motion or on request of the  
4 guardian or conservator, the incapacitated or protected person,  
5 or other person required to be notified of the petition, the  
6 court shall hold a hearing on a petition filed pursuant to  
7 subsection (a).

8 (d) The court shall issue an order provisionally granting  
9 a petition to transfer a guardianship and shall direct the  
10 guardian to petition for guardianship in the other state if the  
11 court is satisfied that the guardianship will be accepted by the  
12 court in the other state and the court finds that:

13 (1) The incapacitated person is physically present in or  
14 is reasonably expected to move permanently to the  
15 other state;

16 (2) An objection to the transfer has not been made or, if  
17 an objection has been made, the objector has not  
18 established that the transfer would be contrary to the  
19 interests of the incapacitated person; and

20 (3) Plans for care and services for the incapacitated  
21 person in the other state are reasonable and  
22 sufficient.





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

7 (1) The protected person is physically present in or is  
8 reasonably expected to move permanently to the other  
9 state, or the protected person has a significant  
10 connection to the other state considering the factors  
11 in section -7(b);

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

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

18 (f) The court shall issue a final order confirming the  
19 transfer and terminating the guardianship or conservatorship  
20 upon its receipt of:

21 (1) A provisional order accepting the proceeding from the  
22 court to which the proceeding is to be transferred



1           which is issued under provisions similar to section  
2           -17; and

3           (2) The documents required to terminate a guardianship or  
4           conservatorship in the State of Hawaii.

5           § -17 **Accepting guardianship or conservatorship**

6 **transferred from another state.** (a) To confirm transfer of a  
7 guardianship or conservatorship transferred to the State of  
8 Hawaii under provisions similar to section -16, the guardian  
9 or conservator must petition the court of the State of Hawaii to  
10 accept the guardianship or conservatorship. The petition must  
11 include a certified copy of the other state's provisional order  
12 of transfer.

13           (b) Notice of a petition under subsection (a) must be  
14 given to those persons that would be entitled to notice if the  
15 petition were a petition for the appointment of a guardian or  
16 issuance of a protective order in the transferring state and the  
17 State of Hawaii. The notice must be given in the same manner as  
18 notice is required to be given in the State of Hawaii.

19           (c) On the court's own motion or on request of the  
20 guardian or conservator, the incapacitated or protected person,  
21 or other person required to be notified of the proceeding, the



1 court shall hold a hearing on a petition filed pursuant to  
2 subsection (a).

3 (d) The court shall issue an order provisionally granting  
4 a petition filed under subsection (a) unless:

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

8 (2) The guardian or conservator is ineligible for  
9 appointment in the State of Hawaii.

10 (e) The court shall issue a final order accepting the  
11 proceeding and appointing the guardian or conservator as  
12 guardian or conservator in the State of Hawaii upon its receipt  
13 of a final order, issued under provisions similar to  
14 section -16, from the court where the proceeding is being  
15 transferred from.

16 (f) No later than ninety days after issuance of a final  
17 order accepting transfer of a guardianship or conservatorship,  
18 the court shall determine whether the guardianship or  
19 conservatorship needs to be modified to conform to the law of  
20 the State of Hawaii.

21 (g) In granting a petition under this section, the court  
22 shall recognize a guardianship or conservatorship order from the



1 other state, including the determination of the incapacitated or  
2 protected person's incapacity and the appointment of the  
3 guardian or conservator.

4 (h) The denial by a court of the State of Hawaii of a  
5 petition to accept a guardianship or conservatorship transferred  
6 from another state does not affect the ability of the guardian  
7 or conservator to seek appointment as guardian or conservator in  
8 the State of Hawaii under chapter 551 if the court has  
9 jurisdiction to make an appointment other than by reason of the  
10 provisional order of transfer.

11 **PART IV. REGISTRATION AND RECOGNITION OF ORDERS FROM**  
12 **OTHER STATES**

13 **§ -18 Registration of guardianship orders.** If a guardian  
14 has been appointed in another state and a petition for the  
15 appointment of a guardian is not pending in the State of Hawaii,  
16 the guardian appointed in the other state, after giving notice  
17 to the appointing court of an intent to register, may register  
18 the guardianship order in the State of Hawaii by filing as a  
19 foreign judgment in a court, in any appropriate judicial circuit  
20 of the State of Hawaii, certified copies of the order and  
21 letters of office.



1           § -19 **Registration of protective orders.** If a  
2 conservator has been appointed in another state and a petition  
3 for a protective order is not pending in the State of Hawaii,  
4 the conservator appointed in the other state, after giving  
5 notice to the appointing court of an intent to register, may  
6 register the protective order in the State of Hawaii by filing  
7 as a foreign judgment in a court of the State of Hawaii, in any  
8 judicial circuit in which property belonging to the protected  
9 person is located, certified copies of the order and letters of  
10 office and of any bond.

11           § -20 **Effect of registration.** (a) Upon registration of a  
12 guardianship or protective order from another state, the  
13 guardian or conservator may exercise in the State of Hawaii all  
14 powers authorized in the order of appointment except as  
15 prohibited under the laws of the State of Hawaii, including  
16 maintaining actions and proceedings in the State of Hawaii and,  
17 if the guardian or conservator is not a resident of Hawaii,  
18 subject to any conditions imposed upon nonresident parties.

19           (b) A court of the State of Hawaii may grant any relief  
20 available under this chapter and other law of the State of  
21 Hawaii to enforce a registered order.

22                           **PART V. MISCELLANEOUS PROVISIONS**



1           § -21 Uniformity of application and construction. In  
2 applying and construing this uniform act, consideration must be  
3 given to the need to promote uniformity of the law with respect  
4 to its subject matter among states that enact it.

5           § -22 Relation to Electronic Signatures in Global and  
6 National Commerce Act. This chapter modifies, limits, and  
7 supersedes the federal Electronic Signatures in Global and  
8 National Commerce Act, Title 15 United States Code Section 7001,  
9 et seq., but does not modify, limit, or supersede Section 101(c)  
10 of that Act, Title 15 United States Code Section 7001(c), or  
11 authorize electronic delivery of any of the notices described in  
12 Section 103(b) of that Act, Title 15 United States Code Section  
13 7003(b)."

14           SECTION 2. This Act shall apply to guardianship and  
15 protective proceedings begun on or after the effective date of  
16 this Act; provided that the new parts I, III, and IV and  
17 sections § -21 and -22 established by section 1 of this Act  
18 shall apply to proceedings begun before the effective date of  
19 this Act, regardless of whether a guardianship or protective  
20 order has been issued.



# S.B. NO. 2318

1 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: Shiranne Chun Oakland

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# S.B. NO. 2318

**Report Title:**

Uniform Adult Guardianship and Protective Proceedings  
Jurisdiction

**Description:**

Adopts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, to ensure that only one state has jurisdiction at any one time. Contains specific guidelines to specify which court has jurisdiction to appoint a guardian or conservator for an incapacitated adult. Prioritizes the states that may claim jurisdiction.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

