

## You-Ah-Gap-Jah: Take the Granny and Run

Last week, two bills were introduced in the NC House pertaining to adult guardianship\* – [H817](#) and [H883](#). The first proposes the adoption of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) by creating a new Chapter 35B. The second directs the Legislative Research Commission to study UAGPPJA and recommend whether NC should adopt the act.

So just what is UAGPPJA? (Pronounced, “You-Ah-Gap-Jah”)

UAGPPJA is a uniform law pertaining to adult guardianship adopted by the [Uniform Law Commission](#) (ULC). NC is one of a [handful of states](#) that have not enacted UAGPPJA. It is intended, in part, to reduce inefficiencies, conflicts between courts, and “granny snatching.” The proposed legislation pertains to three main issues related to a court’s jurisdiction:

- Determining the most appropriate state for an **initial filing**.
- **Transfer** of cases from state to state.
- **Registration** of orders in states other than the state of primary jurisdiction.

Take the (fictional) case of Dottie. She’s an older widow who lived her entire life in Texas. She has two kids, Eddie and Linda. Eddie, who lives nearby, has noticed a decline in Dottie’s health. She’s drinks a lot and has become forgetful and combative.

Linda lives in NC. While visiting Dottie in Texas, Linda decides to take Dottie back to NC. Once they are back in NC, Linda files to have her mother adjudicated incompetent and to be appointed her mother’s guardian before the clerk of superior court. Eddie files a similar petition in Texas. Both courts determine Dottie is incompetent. The Texas court appoints Eddie as her guardian, and the NC court appoints Linda.

- **Initial Filing of the Case**

Dottie’s case highlights the problem of granny snatching - someone uproots an older adult, moves them to another state, and seeks to be appointed as his or her guardian. The older adult is in an unfamiliar place away from family and other evidence material to the guardianship proceeding.

Even if Linda’s actions were a nefarious granny snatching, the court in both states, neither of which has adopted UAGPPJA, properly exercised jurisdiction over the case. The Texas court exercised jurisdiction since Dottie is domiciled there. The NC clerk had jurisdiction since Dottie was personally served while present in NC. [G.S. 1-75.4\(1\)\(a\)](#); [G.S. 35A-1109](#); [G.S. 35A-1211](#).

UAGPPJA seeks to prevent the possibility of dual appointments like those in Dottie’s case, and as a result also prevent granny snatching, dueling courts, and duplicative costs and legal fees, by

creating a process by which only one state's court can properly exercise jurisdiction. It does this by setting out a three-tiered hierarchy:

1. Jurisdictional priority is first given to the respondent's home state, which is the state where the respondent was physically present for six months immediately preceding the filing of the petition. [H817, G.S. 35B-10](#); [H817, G.S. 35B-8\(a\)\(2\)](#).
2. Next, if there is no home state, priority goes to the state which the respondent has a significant connection to. [H817, G.S. 35B-10](#).
3. Finally, the last priority goes to another state if there is no home state or significant connection state or those states have declined to exercise jurisdiction. [H817, G.S. 35B-10](#).

In Dottie's case, UAGPPJA requires the non-home state court to stay the proceeding and communicate with the home state court. [H817, G.S. 35B-16](#). As Dottie's home state, Texas has jurisdiction to act under UAGPPJA over NC. *Id.* After communicating with the Texas court, the NC clerk would dismiss the NC proceeding unless the Texas court determines that NC is the more appropriate forum. *Id.*

- **Transfer of the Case between States**

What if Dottie was adjudicated incompetent in Texas, Eddie was appointed guardian, they later move to NC to live with Linda, and want to transfer the guardianship to NC? Chapter 35A currently sets forth a procedure for transferring Dottie's out of state *incompetency* adjudication into NC. [G.S. 35A-1113](#). It does not set forth a similar procedure for transferring the existing *guardianship* appointment into NC.

Chapter 35A also does not set forth a procedure for the NC clerk to transfer the matter out of NC. So, if after moving and transferring the case to NC, Dottie then decides to move back to Texas, it is not clear whether and how the clerk could transfer the case there.

UAGPPJA as proposed in Chapter 35B sets forth a new process for transferring a case to and from NC. For example, to transfer Dottie's case back to Texas from NC:

1. Eddie as Dottie's guardian files a petition for transfer before the clerk in NC.
2. The clerk holds a hearing upon request of the parties or the clerk's own motion and if appropriate enters a provisional order transferring the case to Texas.
3. Eddie files a petition in Texas to transfer the case to Texas.
4. The Texas court holds a hearing upon request of the parties or the court's own motion and if appropriate enters a provisional order receiving the case from NC.
5. Eddie files the Texas provisional order accepting transfer with the NC clerk.
6. The NC clerk enters a final order terminating the case.
7. Eddie files the order terminating the case in Texas and the Texas court files an order converting the provisional order accepting the case into a final order.

[H 817, G.S. 35B-17; H 817, G.S. 35B-18.](#)

- **Registration of Out of State Orders**

Registration is a mechanism used to allow the enforcement of guardianship orders from other states in NC. For example, if Dottie's guardianship is transferred back to Texas, but Dottie still owns property in NC, at some point Eddie may want to dispose of that property as Dottie's guardian. NC law does not currently provide for registration of out of state orders, but the clerk may appoint an ancillary guardian for Dottie to dispose of the property located in NC. [G.S. 35A-1280\(a\) and \(c\)](#). If appointed by the clerk, the ancillary guardian would have all the powers, duties and responsibilities over Dottie's estate in NC as any other guardian appointed in NC. [G.S. 35A-1280\(b\)](#).

However, if Eddie wanted to authorize medical treatment for Dottie in NC under a Texas guardianship order, and a provider in NC did not recognize the out of state order, there is currently no mechanism by which an out of state order for a guardian of the person may be registered in NC.

Under UAGPPJA, out of state guardianship orders of both the person and the estate may be registered in NC. Pursuant to a properly registered order, the guardian may exercise the authority and powers afforded to them in the original state's order unless the powers may not legally be exercised in NC. UAGPPJA provides that an out of state guardianship order may be registered in NC in the same way a foreign judgment is currently registered in NC. [H 817, G.S. 35B-19; H 817, G.S. 35B-20](#); H 817, 35B-21.

\*As a side note, it is unclear whether UAGPPJA as proposed in Chapter 35B applies to incompetency proceedings under Chapter 35A. As drafted, the bill applies to proceedings seeking an order for the appointment of a guardian of the person or of the estate. [H 817, G.S. 35B-2\(5\); H 817, G.S. 35B-2\(11\)](#). Under the existing Chapter 35A, incompetency and guardianship proceedings are two separate proceedings. The guardianship proceeding, under which an order for the appointment of a guardian is sought, is an estate proceeding initiated by the filing of an application for the appointment of a guardian. [G.S. 35A-1210](#). The incompetency proceeding is treated as a separate special proceeding initiated by filing of a petition for adjudication of incompetence. [G.S. 35A-1105](#). It is not clear whether the tiered-priority for initial filings and the process for transfer of the case would apply to both proceedings. If, for example, after a guardianship case is transferred from NC, a ward sought restoration, which must be filed in the original incompetency proceeding, would the ward do so in the new state where the guardianship was transferred or NC?