

Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act

National Conference on Guardianship

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Palm Springs, California

Presented by

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What is the ULC?

- **Uniform Law Commission (ULC)**
 - Non-profit organization formed in 1892
 - Commissioners are volunteer attorneys appointed by the states
 - ULC drafts model state legislation on topics where uniformity among the states is desirable
 - Legislative staff based in Chicago headquarters
 - www.uniformlaws.org



49-Year History of Law Reform

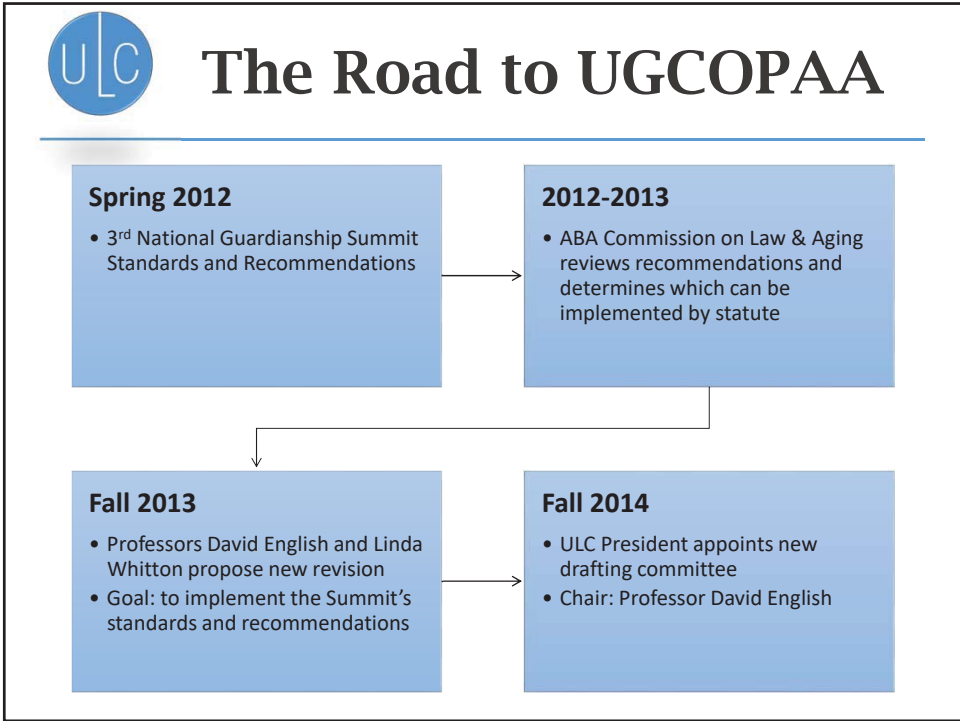
- 1969:** Uniform Probate Code (Article V on Protection of Persons Under Disability and their Property)
- 1979:** Uniform Durable Power of Attorney Act
- 1982:** Uniform Guardianship & Protective Proceedings Act (Introduces limited guardianships)
- 1997:** Revised UGPPA (More protective of an individual's legal rights; least restrictive alternative; court visitor; must take person's views into account)
- 2006:** Uniform Power of Attorney Act (Greater protection against financial abuse; encourages wider acceptance)



The Road to UGCOPAA

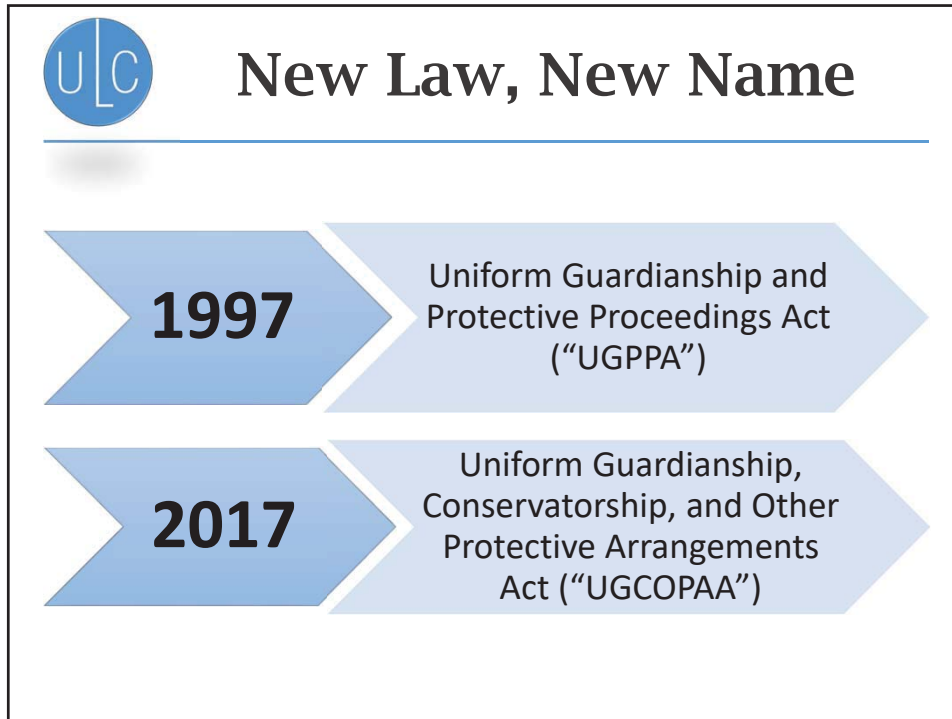
October 2011: National Guardianship Network Third National Guardianship Summit





ULC **UGCOPAA Drafting Committee**

- ✓ Prof. David English, Chair
- ✓ Prof. Nina Kohn, Reporter
- ✓ Uniform Law Commissioners from 10 States



The diagram features the ULC logo in the top left corner. Below it, the title "UGCOPAA Terminology" is centered. A horizontal line separates the title from the definitions. The definitions are as follows:

“Guardian” means a person appointed by the court to make decisions with respect to the personal affairs of an individual.

“Conservator” means a person appointed by a court to make decisions with respect to the property or financial affairs of an individual.

“Less restrictive alternative” means an approach to meeting an individual’s needs which restricts fewer rights of the individual than would the appointment of a guardian or conservator. The term includes supported decision making, appropriate technological assistance, appointment of a representative payee, and appointment of an agent by the individual, including appointment under a [power of attorney].



Why Guardianship Reform

- Most states haven't had a major revision of guardianship laws in over 20 years
- Sixteen states haven't had a revision since the Reagan administration or earlier
- Recent articles have spotlighted many holes in state systems that failed vulnerable adults and exposed them to abuse and exploitation
- People are living longer and there will be more people in a system that it's not prepared to handle



Common Issues Across States

- Caregiving
- Shortage of Guardians
- Public Guardianship
- Elder Abuse/Financial Exploitation
- Accountability and Court Monitoring
- Individual Rights
- Alternatives to Guardianship
- Lack of Data



AARP
Real Possibilities

Reform Trends

- Individuals, their family and friends are speaking up!
- Person-centered approach
- Alternatives to guardianship
- Standards and training for ALL guardians
- Increase in education and outreach
- Monitoring reforms to prevent abuse/exploitation
- More collaboration/taskforces/multidisciplinary teams (ex. WINGS)
- State courts are taking on a more active role



AARP
Real Possibilities

UGCOPAA: A Basic Overview

Focus on the Courts	<ul style="list-style-type: none">· Encourages individualized planning· Requires least restrictive environment· Increases court oversight and monitoring
Focus on the Guardian	<ul style="list-style-type: none">· Outlines clear duties and responsibilities· Prevents isolation· Gets rid of bad actors
Focus on the Individual	<ul style="list-style-type: none">· Protects legal rights· Updates terminology· Promotes independence



Seven Major Reforms

1. Person-Centered Terminology
2. Clear Decision-Making Standards
3. Least-Restrictive Alternative
4. Individual Guardianship Plans
5. Right to Social Interaction
6. Expanded Procedural Rights
7. Community Monitoring



Person-Centered Terminology

Old:

- Ward
- Alleged incapacitated person
- Incapacitated person

New:

- Adult/Minor
- Respondent
- Adult/Minor subject to guardianship/conservatorship





Clear Decision-Making Standard

Guardians are required to:

- make the decision the they “reasonably believe the adult would make if the adult were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the adult.”
- “consider the adult’s previous or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable” to determine the decision the adult would make.
- make the decision that is in the best interest of the adult if the guardian cannot determine what decision the person would make or the decision would unreasonably harm the welfare or interests of the adult.



Clear Decision-Making Standard

Conservators are required to:

- “make the decision the conservator reasonably believes the individual would make if the individual were able unless doing so would unless doing so would **fail to preserve the resources needed to maintain the individual’s well-being and lifestyle or otherwise** unreasonably harm or endanger the welfare or personal or financial interests of the individual.”
- use a best interest approach if - and only if - the conservator cannot determine what decision the individual would make or the individual’s decision would **fail to preserve resources needed to maintain the individual’s well-being and lifestyle or otherwise** would unreasonably harm or endanger the individual or the individual’s interests.”



Least-Restrictive Alternative

- Courts are not authorized to appoint a guardian or conservator if the individual's needs could be met with a less-restrictive alternative.
- Courts may treat a petition for guardianship or conservatorship as a petition for a less-restrictive alternative.
- Courts ordering guardianship or conservatorship must include findings explaining why a less-restrictive alternative is not sufficient.



Individual Guardianship & Conservatorship Plans

- Guardian or conservator must file a plan within 60 days of appointment, with copies to whomever the court directs.
- Plan must include:
 - Living arrangements, services, and supports;
 - Social and educational activities;
 - Persons with whom the adult has personal relationships and plans for facilitating visits with those persons;
 - Nature and frequency of guardian's communication with the adult;
 - Goals, including future restoration of rights;
 - Statement of proposed charges & expenses.
- Plan must be updated at least annually.



Right to Social Interaction

- Details about social interaction (who, where, how often, etc.) go into the plan.
- Without court approval, a guardian for an adult may not restrict interaction with another person unless the guardian has good cause to believe interaction poses a risk of significant physical, psychological, or financial harm.
- Restriction limited to 7 days if the person has a family or pre-existing social relationship with the adult, otherwise 60 days.



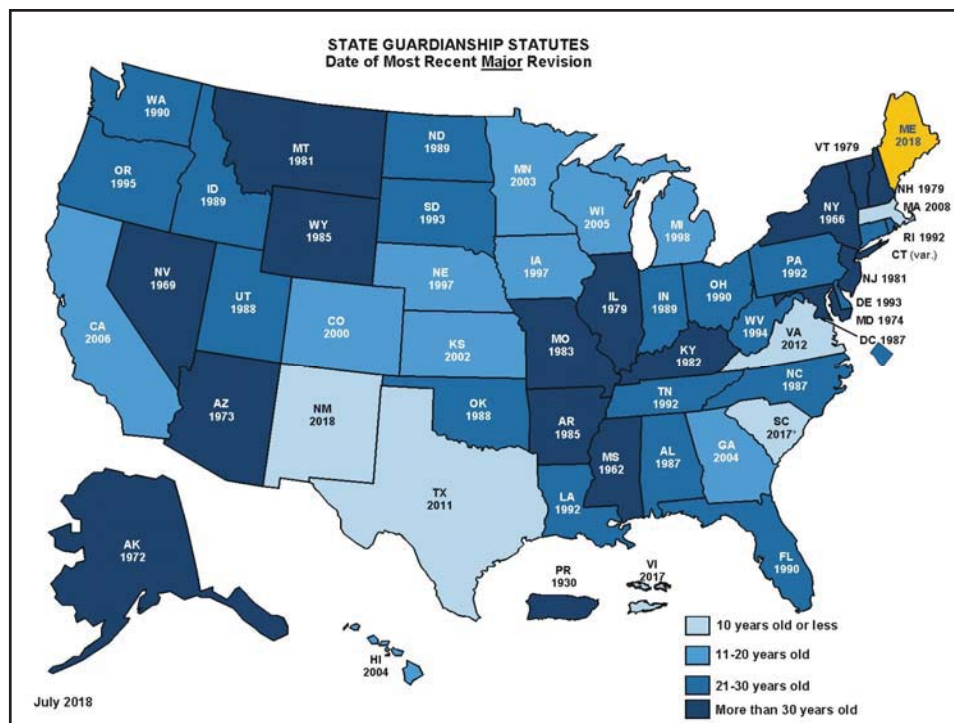
Expanded Procedural Rights

- Strengthens the requirement for the respondent to be present at the hearing.
- Requires findings *before* removal of fundamental rights (e.g. vote, marry).
- Attorney must advocate for the client's wishes.
- Plain-language notice of key rights.
- Limits guardian's ability to charge fees to oppose the individual's efforts to change terms of the appointment.
- Automatic triggers for reconsideration.



Community Monitoring

- A no-cost alternative to court monitoring of guardianship/conservatorship.
- Court appoints respondent's loved ones to serve as "eyes and ears" for the court.
- Must receive notice of all hearings, copies of plans, and notice of certain major events (e.g. change of residence, change of health, etc).
- Any person may file an informal grievance for consideration by the court.





Political Landscape

- Typically a bi-partisan issue
- Issue isn't "hot"...UNLESS there's a crisis or tragedy
- Broad issue and could be a very long process
- No one-size-fits-all solution
- Lack of data
- Policy wonks aren't necessarily on-the-ground/frontline, workers and vice versa



Potential Players

- Courts
- Court Administration
- Guardians & Conservators
- State Bar Association (elder law/family law/probate/trust)
- Senior Advocates
- Child Advocates
- Advocates for the Developmentally Disabled
- Uniform Law Commissioners





UGCOPAA in Your State

- Start now for 2019
- Gather your local stakeholders
- Review the uniform act and draft a state-specific version
- Find legislative sponsors (ideally someone from each party)
- Contact us - we love to help!

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Thank you!

