

Article 2.

Jurisdiction.

**§ 35B-15. Definitions.**

(a) The following definitions apply in this Article:

- (1) Emergency. – 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 of the person is necessary because no other person has authority and is willing to act on the respondent's behalf.
- (2) Home state. – 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 the adjudication of incompetence; 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 for the adjudication of incompetence.
- (3) Significant-connection state. – 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.

(b) In determining under G.S. 35B-17 and G.S. 35B-30(e) whether a respondent has a significant connection with a particular state, the court shall consider:

- (1) The location of the respondent's family and other persons required to be notified of the incompetency, guardianship, or protective proceeding.
- (2) The length of time the respondent at any time was physically present in the state and the duration of any absence.
- (3) The location of the respondent's property.
- (4) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, drivers license, social relationship, and receipt of services. (2016-72, s. 1.)

**§ 35B-16. Exclusive jurisdictional basis.**

This Article provides the exclusive jurisdictional basis for a court of this State to adjudicate incompetence, appoint a general guardian or guardian of the person, or issue a protective order for an adult. (2016-72, s. 1.)

**§ 35B-17. Jurisdiction.**

Notwithstanding the provisions of G.S. 1-75.4(1), a court of this State has jurisdiction to adjudicate incompetence, appoint a general guardian or guardian of the person, or issue a protective order for a respondent only if:

- (1) This State is the respondent's home state; or
- (2) On the date the petition for the adjudication of incompetence is filed, this State is a significant-connection state and either of the following is true:
  - a. The respondent does not have a home state, or a court of the respondent's home state has declined to exercise jurisdiction because this State is a more appropriate forum.
  - b. The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection

state, and, before the court makes the appointment or issues the order, all of the following are true:

1. A petition for an appointment or order is not filed in the respondent's home state.
  2. An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding.
  3. The court in this State concludes that it is an appropriate forum under the factors set forth in G.S. 35B-20; or
- (3) This State does not have jurisdiction under either subdivision (1) or (2) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this State is the more appropriate forum, and jurisdiction in this State is consistent with the constitutions of this State and the United States; or
- (4) The requirements for special jurisdiction under G.S. 35B-18 are met. (2016-72, s. 1.)

#### **§ 35B-18. Special jurisdiction.**

(a) A court of this State lacking jurisdiction under G.S. 35B-17 has special jurisdiction to do any of the following:

- (1) Appoint a guardian of the person in an emergency for a term not exceeding 90 days for a respondent who is physically present in this State.
- (2) Issue a protective order with respect to real or tangible personal property located in this State.
- (3) Appoint a general guardian, guardian of the person, or guardian of the estate for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to G.S. 35B-30.

(b) If a petition for the adjudication of incompetence and application for the appointment of a guardian of the person in an emergency is brought in this State and this State was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment. (2016-72, s. 1.)

#### **§ 35B-19. Exclusive and continuing jurisdiction.**

Except as otherwise provided in G.S. 35B-18, a court that has appointed a general guardian or guardian of the person or issued a protective order consistent with this Chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms. (2016-72, s. 1.)

#### **§ 35B-20. Appropriate forum.**

(a) A court of this State having jurisdiction under G.S. 35B-17 to adjudicate incompetence, appoint a general guardian or a guardian of the person, or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a court of this State declines to exercise its jurisdiction under subsection (a) of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court

considers just and proper, including the condition that a petition for the appointment of a general guardian or guardian of the person or issuance of a protective order be filed promptly in another state.

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

- (1) Any expressed preference of the respondent.
- (2) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation.
- (3) The length of time the respondent was physically present in or was a legal resident of this or another state.
- (4) The distance of the respondent from the court in each state.
- (5) The financial circumstances of the respondent's estate.
- (6) The nature and location of the evidence.
- (7) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.
- (8) The familiarity of the court of each state with the facts and issues in the proceeding.
- (9) If an appointment was made, the court's ability to monitor the conduct of the guardian or guardian of the estate. (2016-72, s. 1.)

**§ 35B-21. Jurisdiction declined by reason of conduct.**

(a) If at any time a court of this State determines that it acquired jurisdiction to adjudicate incompetence, appoint a general guardian or guardian of the person, or issue a protective order because of unjustifiable conduct, the court may do any of the following:

- (1) Decline to exercise jurisdiction.
- (2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a general guardian or guardian of the person or issuance of a protective order is filed in a court of another state having jurisdiction.
- (3) Continue to exercise jurisdiction after considering all of the following:
  - a. The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction.
  - b. Whether it is a more appropriate forum than the court of any other state under the factors set forth in G.S. 35B-20(c).
  - c. Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of G.S. 35B-17.

(b) If a court of this State determines that it acquired jurisdiction to adjudicate incompetence, appoint a general guardian or guardian of the person, or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorneys' fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court

may not assess fees, costs, or expenses of any kind against this State or a governmental subdivision, agency, or instrumentality of this State unless authorized by law other than the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. (2016-72, s. 1.)

**§ 35B-22. Notice of proceeding.**

If a petition for the adjudication of incompetence or application for the appointment of a general guardian or guardian of the person or issuance of a protective order is brought in this State and this State was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this State, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this State. (2016-72, s. 1.)

**§ 35B-23. Proceedings in more than one state.**

Except for a petition for the appointment of a guardian of the person in an emergency or issuance of a protective order limited to property located in this State under G.S. 35B-18(a)(1) or (a)(2), if a petition for the adjudication of incompetence, appointment of a general guardian or guardian of the person, or issuance of a protective order is filed in this State and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

- (1) If the court in this State has jurisdiction under G.S. 35B-17, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to G.S. 35B-17 before the appointment or issuance of the order.
- (2) If the court in this State does not have jurisdiction under G.S. 35B-17, whether at the time the petition for the adjudication of incompetence is filed or at any time before the appointment or issuance of the guardianship or protective order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this State shall dismiss the petition unless the court in the other state determines that the court in this State is a more appropriate forum. (2016-72, s. 1.)

**§ 35B-24:** Reserved for future codification purposes.

**§ 35B-25:** Reserved for future codification purposes.

**§ 35B-26:** Reserved for future codification purposes.

**§ 35B-27:** Reserved for future codification purposes.

**§ 35B-28:** Reserved for future codification purposes.

**§ 35B-29:** Reserved for future codification purposes.