

## SIDE-BY-SIDE

### ARTICLE 5- Protection of Persons under disabilities and their property- Parts 1 and 2

<b>ARTICLE 5: EXISTING CODE LANGUAGE</b>	<b>Bill # S. 1243</b>
Article 5.Part 1.General Provisions	Article 5.Part 1.
<p><b>SECTION 62-5-101.</b> Definitions and use of terms.</p> <p>Unless otherwise apparent from the context, in this Code:</p> <p>(1) “Incapacitated person” means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property;</p> <p>(2) A “protective proceeding” is a proceeding under the provisions of Section 62-5-401 to determine if a person is an incapacitated person, or to secure the administration of the estates of incapacitated persons or minors;</p> <p>(3) A “protected person” is a minor or incapacitated person for whom a conservator has been appointed or other protective order has been made;</p> <p>(4) A “ward” is a person for whom a guardian has been appointed;</p> <p>(5) A “guardianship proceeding” is a formal proceeding under the provisions of Part 3 of Article 5 (Section 62-5-301, et seq.) to determine if a person is an incapacitated person, or to appoint a guardian for an incapacitated person.</p>	<p><b>SECTION 62-5-101.</b></p> <p>Unless otherwise apparent from the context, in this Code <u>article</u>:</p> <p>(1) <del>“Incapacitated person” means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property;</del></p> <p>(2) <del>A “protective proceeding” is a proceeding under the provisions of Section 62-5-401 to determine if a person is an incapacitated person, or to secure the administration of the estates of incapacitated persons or minors;</del></p> <p>(3) <del>A “protected person” is a minor or incapacitated person for whom a conservator has been appointed or other protective order has been made;</del></p> <p>(4) <del>A “ward” is a person for whom a guardian has been appointed;</del></p> <p>(5) <del>A “guardianship proceeding” is a formal proceeding under the provisions of Part 3 of Article 5 (Section 62-5-301, et seq.) to determine if a person is an incapacitated person, or to appoint a guardian for an incapacitated person.</del></p> <p><u>“Adult” means an individual who has attained eighteen years of age or who has been emancipated by a court of competent jurisdiction.</u></p> <p>(2) <u>“Conservator” means a person appointed by the court to manage the estate of a protected person.</u></p> <p>(3) <u>“Court” means the probate court.</u></p> <p>(4) <u>“Emergency” means circumstances that likely will result in substantial harm to a primary respondent’s health, safety, or welfare or in substantial economic loss to the primary respondent.</u></p>

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	<p>(5) <u>'Guardian' means a person appointed by the court as guardian, but excludes one who is a guardian ad litem.</u></p> <p>(6) <u>'Guardian With Limitation' is a guardian whose powers or duties have been limited by court order.</u></p> <p>(7) <u>'Guardian Without Limitation' is a guardian who has all the powers and duties conferred in section 62-5-313.</u></p> <p>(8) <u>'Guardian ad litem' is a person appointed by the court in accordance with Part 8, Article 5.</u></p> <p>(9) <u>'Guardianship order' means an order appointing a guardian or adjudicating an adult incapacitated.</u></p> <p>(10) <u>'Guardianship proceeding' means a formal proceeding under the provisions of Part 3, Article 5 (Sections 62-5-301, et seq.) to determine if an adult is an incapacitated person or in which an order for the appointment of a guardian for an adult is sought or has been issued.</u></p> <p>(11) <u>'Home state' means the state in which the primary respondent was physically present, including a period of temporary absence, for at least six consecutive months immediately before the filing of a petition for the appointment of a guardian or protective order, or if none, the state in which the primary respondent was physically present, including a period of temporary absence, for at least six consecutive months ending with the six months prior to the filing of the petition.</u></p> <p>(12) <u>'Incapacitated person' means an individual who, for reasons other than minority, has incapacity.</u></p> <p>(13) <u>'Incapacity' means the inability to receive and evaluate information or make or communicate decisions to the extent that a person, even with appropriate technological assistance, (a) is unable to provide for his physical health, safety, or self-care to the extent he needs a guardian, or (b) is unable to manage his property to the extent he needs a protective order.</u></p> <p>(14) <u>'Party' means the primary respondent, petitioner, guardian, conservator, or any other person allowed by the court or entitled under this article to participate in a guardianship proceeding or protective proceeding.</u></p> <p>(15) <u>'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture,</u></p>

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	<p><u>government or governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.</u></p> <p><u>(16) ‘Primary respondent’ means (a) an adult for whom a protective order is sought, (b) an adult for whom the appointment of a guardian is sought, (c) an adult for whom a determination of incapacity is sought, or (d) a minor for whom a protective order is sought.</u></p> <p><u>(17) ‘Protected person’ means</u></p> <p style="padding-left: 20px;"><u>(a)(i) a minor;</u></p> <p style="padding-left: 40px;"><u>(ii) an incapacitated person;</u></p> <p style="padding-left: 40px;"><u>(iii) a person who is confined, is detained by a foreign power, or has disappeared; or</u></p> <p style="padding-left: 20px;"><u>(iv) a person who is disabled and requires a court order to create and establish a special needs trust; and</u></p> <p style="padding-left: 20px;"><u>(b) for whom a conservator has been appointed or other protective order has been made.</u></p> <p><u>(18) ‘Protective order’ means an order appointing a conservator or related to the management of the property of:</u></p> <p style="padding-left: 20px;"><u>(a) an incapacitated person;</u></p> <p style="padding-left: 20px;"><u>(b) a minor;</u></p> <p style="padding-left: 20px;"><u>(c) a person who is confined, is detained by a foreign power, or has disappeared; or</u></p> <p style="padding-left: 20px;"><u>(d) a person who is disabled and requires a court order to create and establish a special needs trust for the person’s benefit.</u></p> <p><u>(19) ‘Protective proceeding’ means a judicial proceeding in which a protective order is sought or has been issued.</u></p> <p><u>(20) ‘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.</u></p> <p><u>(21) ‘Significant-connection state’ means a state, other than the home state, with which a primary respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the primary respondent is available. Determination of whether a primary respondent has a significant connection with a particular state shall include consideration of the following:</u></p> <p style="padding-left: 20px;"><u>(a) the location of the primary respondent’s family and others</u></p>

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<p><b>REPORTER’S COMMENTS</b>  Sections 62-5-101 and 62-1-201 define certain terms which are used in Article 5. This Code uses the term guardian to refer to a fiduciary who has custody of a minor or mentally incompetent adult. See Section 62-1-201(16).  Under this Code, a fiduciary appointed to manage the assets of any person under disability is referred to as a conservator. See Section 62-1-201(6).  Any person for whom a guardian has been appointed for reasons other than solely minority is referred to as a ward, and any person for whom a guardian has been appointed solely by reason of minority is referred to as a minor ward. See Section 62-5-101(4).  An incapacitated person is a person under disability for reasons other than minority. See Section 62-5-101(1). A protected person is any person under disability, including a person under disability by reason of minority, for whom a conservator has been appointed or for whose benefit any protective order has been issued. See Section 62-5-101(3).  A protective proceeding is a proceeding under Part 4 relating to the appointment of a conservator or issuance of some other protective order. See Section 62-5-101(2).</p>	<p><u>required to be notified of the guardianship proceeding or protective proceeding;</u>  <u>(b) the length of time the primary respondent at any time was physically present in the state and the duration of any absences;</u>  <u>(c) the location of the primary respondent’s property; and</u>  <u>(d) the extent to which the primary respondent has other ties to the state such as voting registration, filing of state or local tax returns, vehicle registration, driver’s license, social relationships, and receipt of services.</u>  <u>(22) ‘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.</u>  <u>(23) ‘Visitor’ is a person who has the requisite knowledge, training, or expertise to perform the duties required as the court may determine appropriate and must be an officer, employee, or special appointee of the court with no personal interest in the proceeding.</u>  <u>(24) ‘Ward’ means an adult for whom a guardian has been appointed.</u></p> <p><b>REPORTER’S COMMENTS</b>  The 2012 amendment substantially changed this section. Section 62-5-101 defines certain terms which are used in Article 5. Definitions from the South Carolina Adult Guardianship and Protective Proceedings Jurisdiction Act (Part 7) have been moved to 62-5-101. The South Carolina Adult Guardianship and Protective Proceedings Jurisdiction Act is a slightly modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) drafted by the Uniform Law Commission.  The definitions of ‘Incapacity’ and ‘Incapacitated Person’ have changed significantly. These definitions are modified versions of the definition contained in the Uniform Guardianship and Protective Proceedings Act (1997) drafted by the Uniform Law Commission. The new definition is based upon an individual’s functional capacity rather than the person’s disability. The requirement that the person be unable to make ‘responsible’ decisions is deleted, as is the requirement that the</p>

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	<p>person have an impairment by reason of a specified disability or other cause, a requirement which may have led the trier of fact to focus unduly on the nature of the respondent's disabling condition, as opposed to the respondent's actual ability to function. The revised definition is based on recommendations of the 1988 Wingspread conference on guardianship reform, the report of which should be referred to for additional background. See Guardianship: An Agenda For Reform 15 (A.B.A. 1989). See also Stephen J. Anderer, Determining Competency in Guardianship Proceedings (A.B.A. 1990). Courts seeking guidance on particular factors to consider should also consult the California Due Process in Competency Determination Act, California Probate Code Section 811.</p> <p>This Article 5 uses the term 'guardian' (5) to refer to a fiduciary who has custody of an incapacitated adult. See Section 62-1-201(16). There are two types of guardian: 'guardian without limitation' (7) and 'guardian with limitation' (6).</p> <p>Under this Article 5, a fiduciary appointed to manage the assets of a minor or incapacitated person is referred to as a 'conservator' (2).</p> <p>Any person for whom a guardian has been appointed is referred to as a 'ward' (24).</p> <p>Any person for whom a conservator has been appointed or a protective order issued is referred to as a 'Protected Person' (17). A person who may participate in a guardianship proceeding or a protective proceeding is referred to as a 'Party' (14).</p> <p>A 'Conservator' (2) is appointed pursuant to a 'Protective Order' (18) which is issued as part of a 'Protective Proceeding' (19) and which authorizes the conservator to manage the property of a 'Protected Person' (17). A protective order may be issued by the court without the appointment of a conservator. For example, under 62-5-405 the court may authorize a so-called single transaction. For this reason, Article 5 contains frequent references to the broader category of protective orders. When intended to apply only to conservatorships this Article 5 refers to conservatorship and not the broader category of protective proceedings. Article 5 applies to all types of guardianship proceedings and protective proceedings, whether full, limited, temporary or emergency.</p>

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<p><b>SECTION 62-5-102.</b> Jurisdiction of subject matter; consolidation of proceedings.</p> <p>(a) The probate court has jurisdiction over protective proceedings and guardianship proceedings.</p>	<p>In compliance with the requirement of a summons with all petitions in the probate court, the individual for whom a guardianship or protective proceeding is sought is referred to as the ‘Primary Respondent’ (16).</p> <p>The definition of ‘home state’ (11) is derived from but differs in a couple of respects from the definition of the same term in Section 102 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). First, unlike the definition in the UCCJEA, the definition clarifies that actual physical presence is necessary. The UCCJEA definition instead focuses on where the child has ‘lived’ for the prior six months. Basing the test on where someone has ‘lived’ may imply that the term ‘home state’ is similar to the concept of domicile. Domicile, in an adult guardianship context, is a vague concept that can easily lead to claims of jurisdiction by courts in more than one state. Second, under the UCCJEA, home state jurisdiction continues for six months following physical removal from the state and the state has ceased to be the actual home. Under this Act, the six-month tail is incorporated directly into the definition of home state. The place where the respondent was last physically present for six months continues as the home state for six months following physical removal from the state. This modification of the UCCJEA definition eliminates the need to refer to the six-month tail each time home state jurisdiction is mentioned in the Act.</p> <p>The definition of ‘significant-connection state’ (21) is similar to Section 201(a)(2) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). However, this definition adds a list of factors relevant to adult guardianship and protective proceedings to aid the court in deciding whether a particular place is a significant-connection state. Under Section 301(e)(1), the significant connection factors listed in the definition are to be taken into account in determining whether a conservatorship may be transferred to another state.</p> <p><b>SECTION 62-5-102.</b></p> <p><del>(a) The probate court has jurisdiction over protective proceedings and guardianship proceedings.</del></p>

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<p>(b) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.</p> <p><b>REPORTER'S COMMENTS</b> Under Section 62-5-102, the probate courts are given subject matter jurisdiction over the appointment of fiduciaries who will have custody of or manage assets of persons under disability. When proceedings relating to the appointment of a fiduciary who will have custody and proceedings relating to the appointment of a fiduciary who will manage assets are commenced in the same probate court, such proceedings may be consolidated.</p> <p><b>SECTION 62-5-103.</b> Facility of payment or delivery.</p> <p>A person under a duty to pay or deliver money or personal property to a minor or incapacitated person may perform this duty in amounts not exceeding ten thousand dollars each year, by paying or delivering the money or property to:</p> <p>(1) a person having the care and custody of the minor or incapacitated person with whom the minor or incapacitated person resides;</p> <p>(2) a guardian of the minor or incapacitated person; or</p> <p>(3) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor or for the minor under the Uniform Gifts to Minors Act and giving notice of the deposit to the minor.</p> <p>This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor or incapacitated person or a financial institution under (3) above, receiving money or property for a minor or incapacitated person, are obligated to apply the money for the benefit of the minor or incapacitated person with due regard to (i) the size of the estate, the probable duration of the minority or incapacity, and the likelihood that</p>	<p><del>(b)</del> When both guardianship <u>proceedings</u> and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.</p> <p><b>REPORTER'S COMMENTS</b> Under Section 62-5-102, when proceedings relating to the appointment of a fiduciary who will have custody and proceedings relating to the appointment of a fiduciary who will manage assets are commenced in the same court, such proceedings may be consolidated.</p> <p><b>SECTION 62-5-103.</b></p> <p><u>(1)</u> A person under a duty to pay or deliver money or personal property to a minor or incapacitated person may perform this duty in amounts not exceeding <u>an aggregate amount of ten thousand dollars</u> each year, by paying or delivering the money or property to:</p> <p><del>(1)(A)</del> a person having the care and custody of the minor or incapacitated person with whom the minor or incapacitated person resides;</p> <p><del>(2)(B)</del> a guardian of <del>the minor or an</del> incapacitated person; or</p> <p><del>(3)(C)</del> a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor or for the minor under the Uniform Gifts to Minors Act and giving notice of the deposit to the minor.</p> <p><u>(2)</u> This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or <del>proceedings that a proceeding</del> <u>proceedings</u> for appointment of a conservator of the estate of the <del>minor or incapacitated person are</del> <u>primary respondent is</u> pending. The persons, other than <del>the minor or incapacitated person or a</del> financial institution under <del>(3)(1)(C)</del> <u>(1)(C)</u> above, receiving money or property for a minor or incapacitated person, <u>serve as fiduciaries subject to fiduciary duties, and</u> are obligated to apply the money for the benefit of the minor or incapacitated person with due regard to (i) the size of the</p>

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<p>the minor or incapacitated person, at some future time, may be able fully to manage his affairs and his estate; (ii) the accustomed standard of living of the minor or incapacitated person and members of his household; and (iii) other funds or sources used for the support of the minor or incapacitated person, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's or incapacitated person's support. Money or other property received on behalf of a minor or incapacitated person may not be used by a person to discharge a legal or customary obligation of support that may exist between that person and the minor or incapacitated person. Excess sums must be preserved for future benefit of the minor or incapacitated person, and a balance not used and property received for the minor or incapacitated person must be turned over to the minor when he attains majority or to the incapacitated person when he is no longer incapacitated. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application of it.</p> <p><b>REPORTER'S COMMENTS</b>  Section 62-5-103 only applies to the property of minors. This section does not require a court order. The payment may be made directly to the minor only if he is married. The payment may be deposited in a federally insured savings account in the minor's name.</p>	<p>estate, the probable duration of the minority or incapacity, and the likelihood that the minor or incapacitated person, at some future time, may be able fully to manage his affairs and his estate; (ii) the accustomed standard of living of the minor or incapacitated person and members of his household; and (iii) other funds or <del>sources</del> <u>resources</u> used <u>or available</u> for the support of the minor or incapacitated person; <del>but</del>. <u>The persons</u> may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's or incapacitated person's support. Money or other property received on behalf of a minor or incapacitated person may not be used by a person to discharge a legal or customary obligation of support that may exist between that person and the minor or incapacitated person. Excess sums must be preserved for future benefit of the minor or incapacitated person, and <del>a</del> <u>any</u> balance not used and property received for the minor or incapacitated person must be turned over to the minor when he attains majority or to the incapacitated person when he is no longer incapacitated. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application of <del>it</del> <u>the money or personal property</u>.</p> <p><u>(3) Regardless of the amount of compensation, any employer may fulfill his duties to a minor or incapacitated employee by delivering a check to or depositing payment into an account in the name of the minor or incapacitated employee.</u></p> <p><b>REPORTER'S COMMENTS</b>  This section applies to the property of minors or incapacitated persons. This section does not require a court order. This section was amended to clarify that the \$10,000.00 limit is an aggregate amount each year. Multiple distributions in one year aggregating more than \$10,000.00 require the appointment of a conservator or other protective order.  When a minor or incapacitated person annually receives from a specific payer property or cash of \$10,000 or less, in all likelihood it will be expended for support within the year and it would be cumbersome and unnecessarily expensive to require the establishment of a conservatorship to handle the payments. This section allows the person</p>

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<p><b>SECTION 62-5-104.</b> Delegation of guardian’s powers.</p> <p>A guardian of an incapacitated person, by a properly executed power of attorney, may delegate to another person, for not more than thirty days, any of his powers regarding care and custody of the incapacitated person.</p> <p><b>REPORTER’S COMMENTS</b></p>	<p>required to transfer the property to do so in a more expeditious way.</p> <p>The person required to transfer the property has the option of making the transfer to the person having care and custody of the minor or incapacitated person, when the minor or incapacitated person resides with that person, or may instead make payments to the guardian of the minor or incapacitated person, a custodian under the Uniform Gifts to Minors Act, or to a financial institution where an interest-bearing account or certificate in only the minor’s name is located.</p> <p>The protections of this section do not apply if the person required to make the transfer knows that a conservator has been appointed or that there is a proceeding pending for the appointment of a conservator. Consequently, the fact that a guardian has been appointed does not require that payment be made to that guardian. A guardian of a minor or incapacitated person may receive payments but has no power to compel payment from a third person. Should a guardian desire such authority, the appropriate course is for the guardian to petition the court to be appointed as conservator.</p> <p>Although the person making the transfer has no duty or obligation to see that the money or property is properly applied, this section is a default statute and does not override any specific provisions in a will or trust instrument relating to monies to be paid to a minor or incapacitated person. In those cases, the duty of the person making the transfer would be dictated by the terms of the instrument.</p> <p>The section limits the use of the money or property for the benefit of the minor or incapacitated person. The money or property may not be used to discharge a legal or customary obligation of support. Only expenses reasonably incurred may be reimbursed from this money or property, with the balance being preserved for the future benefit of the minor or incapacitated person. This section is not applicable to child support payments made pursuant to a court order because child support payments are made to another for the minor’s benefit.</p> <p>While a recipient of funds is not a fiduciary in the normally understood sense of a person appointed by the court or by written instrument, a recipient under this section is subject to fiduciary obligations. Under subsection (2), the recipient may not derive any</p>

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<p>This section allows a parent or a guardian of any incapacitated person to delegate temporarily to someone else his responsibilities with respect to the person of such incapacitated person. Such delegation cannot exceed six months and is effected by means of the execution of a power of attorney.</p> <p><b>SECTION 62-5-105.</b> Director of Department of Mental Health or his designee may act as conservator.</p> <p>If a patient of a state mental health facility has no legally appointed conservator, the Director of the Department of Mental Health or his designee may receive and accept for the use and benefit of that patient a sum of money, not in excess of the sum of ten thousand dollars in one calendar year, which may be due the patient or trainee by inheritance, gift, pension, or otherwise. The director or his designee may act as conservator for the patient and his endorsement or receipt discharges the obligor for the sum received. Upon receipt of these funds the director or his designee shall use it for the proper maintenance, use, and benefit of the patient or as much of the fund as may be necessary for these purposes. In the event the patient dies leaving an unexpended balance of these funds in the hands of the director or his designee, he shall apply the balance first to the funeral expenses of the patient or trainee, and any balance remaining must be held by the director or his designee for a period of six months, and if he is not within this period, contacted by the personal representative of the deceased patient, the balance in the personal fund account must be applied to the maintenance and medical care account of the deceased patient.</p>	<p>personal benefit from the transfer and must preserve funds not used for the minor's benefit and transfer any balance to the minor upon emancipation or attainment of majority. Should the recipient misapply the funds or property transferred, the recipient, given this fiduciary role, would be liable for breach of trust.</p> <p>The person receiving the monies may consider, in appropriate cases, the purchase of an annuity or some other financial arrangement whereby payout occurs at a time subsequent to the minor's attainment of majority. But to provide more certainty for the transaction, the recipient should consider petitioning the Court under Section 62-5-405 for approval of the purchase as a protective arrangement.</p> <p><b>SECTION 62-5-104.</b></p> <p><u>A guardian of an incapacitated person, by a properly executed power of attorney, may delegate to another person, for not more than thirty days, any of his powers regarding care and custody of the incapacitated person. If a patient of a state mental health facility has no legally appointed conservator, the Director of the Department of Mental Health or his designee may receive and accept for the use and benefit of the patient assets, which may be due the patient by inheritance, gift, pension, or otherwise, with an aggregate value not exceeding ten thousand dollars in one calendar year. The director or his designee may act as conservator for the patient and his endorsement or receipt discharges the obligor for any assets received. Upon receipt, the director or his designee shall use the assets for the proper maintenance, use, and benefit of the patient or as much of the assets as may be necessary for these purposes. In the event the patient dies leaving an unexpended balance of assets in the hands of the director or his designee, the director or his designee shall apply the balance first to the funeral expenses of the patient, and any balance remaining must be held by the director or his designee for a period of six months; and if within this period, the director or his designee is not contacted by the personal representative of the deceased patient, the balance of the assets may be applied to the maintenance and medical care account of the deceased patient. The</u></p>

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	<p><u>director or his designee must, within thirty days following the death of the patient, notify the probate court in the county in which the patient last resided of the death of the patient and provide a list of any property belonging to the patient and held by the department. Upon appointment of a conservator for a patient of a state mental health facility, the director shall deliver any assets of the protected person to the conservator and provide an accounting of the management of those assets.</u></p> <p>REPORTER'S COMMENTS</p> <p>This section was formerly Section 62-5-105 before the 2012 amendment. This section addresses the receipt of assets up to an aggregate of \$10,000.00 per year by the Director of the Department of Mental Health for patients of a state mental health facility for whom no conservator has been appointed. If a conservator has been appointed, the assets must be delivered to the conservator.</p> <p>At the death of the patient, the Director may apply remaining funds to funeral expenses. The director must notify the court of the patient's death and provide a list of assets within thirty days from the date of death. If no personal representative is appointed and contacts the Director within six months of the death, the funds may be applied to the account of the deceased patient.</p> <p><b><del>SECTION 62-5-105.</del></b></p> <p><del>If a patient of a state mental health facility has no legally appointed conservator, the Director of the Department of Mental Health or his designee may receive and accept for the use and benefit of that patient a sum of money, not in excess of the sum of ten thousand dollars in one calendar year, which may be due the patient or trainee by inheritance, gift, pension, or otherwise. The director or his designee may act as conservator for the patient and his endorsement or receipt discharges the obligor for the sum received. Upon receipt of these funds the director or his designee shall use it for the proper maintenance, use, and benefit of the patient or as much of the fund as may be necessary for these</del></p>

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<p><b>SECTION 62-5-106.</b> Termination of conservatorship.</p> <p>(A) For purposes of this section, “incapacitated person” has the meaning set forth in Sections 62-5-101(1) and 62-5-401(2) and does not include a person protected only by reason of his minority.</p> <p>(B) Notwithstanding another provision of law, neither a guardianship of an incapacitated person established pursuant to Part 3 of this article or a conservatorship or other protective order for an incapacitated person established pursuant to Part 4 of this article terminates only because the ward or protected person attains the age of majority or other benchmark age.</p>	<p><del>purposes. In the event the patient dies leaving an unexpended balance of these funds in the hands of the director or his designee, he shall apply the balance first to the funeral expenses of the patient or trainee, and any balance remaining must be held by the director or his designee for a period of six months, and if he is not within this period, contacted by the personal representative of the deceased patient, the balance in the personal fund account must be applied to the maintenance and medical care account of the deceased patient.</del></p> <p><del><b>SECTION 62-5-106.</b></del></p> <p><del>(A) For purposes of this section, ‘incapacitated person’ has the meaning set forth in Sections 62-5-101(1) and 62-5-401(2) and does not include a person protected only by reason of his minority.</del></p> <p><del>(B) Notwithstanding another provision of law, neither a guardianship of an incapacitated person established pursuant to Part 3 of this article or a conservatorship or other protective order for an incapacitated person established pursuant to Part 4 of this article terminates only because the ward or protected person attains the age of majority or other benchmark age.</del></p>
<p>Article 5.Part 2. Jurisdiction</p>	<p>Article 5.Part 2.</p>
<p><b>SECTION 62-5-201.</b> Jurisdiction of family courts as to minors.</p> <p>The family courts of this State have jurisdiction over the care, custody, and control of the persons of minors.</p>	<p><del><b>SECTION 62-5-201.</b></del></p> <p><del>The family courts of this State have jurisdiction over the care, custody, and control of the persons of minors. Jurisdiction of the probate court is set forth in Section 62-1-302 and in Section 62-5-701 as to appointment of a guardian or issuance of a protective order for an adult. The probate court does not have jurisdiction over the care, custody, and control of the persons of minors, but does have jurisdiction over the property of minors.</del></p> <p>REPORTER’S COMMENTS</p> <p>The 2012 amendment to this section clarifies that the probate court has</p>

<b>ARTICLE 5: EXISTING CODE LANGUAGE</b>	<b>Bill # S. 1243</b>
	jurisdiction of guardianships and protective proceedings for adults, but only protective proceedings for a minor. The family court has jurisdiction over the person of a minor.