

### Guardianship is Not the Only Option:

### Supports for Decisions in Adulthood



Center for Public Representation





### Housekeeping

- We are glad you are here!
- We are recording this presentation
- Please keep your microphone off during the presentation
- Please use the chat to ask your questions
- There are no bad or wrong questions
- If any technical support is needed, please let us know





# **Today's Topics**

- What Happens at Age 18?
- What is Adult Guardianship?
- Why Think About Other Options First?
- What is Supported Decision-Making?
- What are Other Options in:
  - Education?
  - Health Care?
  - Finances?

### What happens at 18?

- In Massachusetts, people become legal adults when they turn 18
- Under the law, they get to make their own decisions, regardless of whether or not they have a disability
- Schools call this "Transfer of Rights"



## Main Legal Tools for Decision-Making in Massachusetts

- Supported Decision-Making
- Shared Educational Decision-Making Authority
- Health Care Proxy
- Durable Power of Attorney
- Delegation of Educational Decision-Making Authority
- Representative Payee
- Court-appointed Guardian or Conservator
  - Temporary Guardianship
  - Limited Guardianship
  - Conservatorship
  - Guardianship
  - Rogers Guardianship



# What is Guardianship for Adults?

- Different than guardianship of a child
- A formal legal process where a court decides an adult is "incapacitated" and that someone else (a "guardian") must be appointed to make all or some decisions for them.
- Guardianship = Court
- Different kinds in Massachusetts
  - Temporary
  - Limited Guardianship
  - Conservatorship
  - Guardianship
  - Rogers

### What does "Incapacitated" Mean?

Massachusetts law defines an *"incapacitated person"* as an individual who:

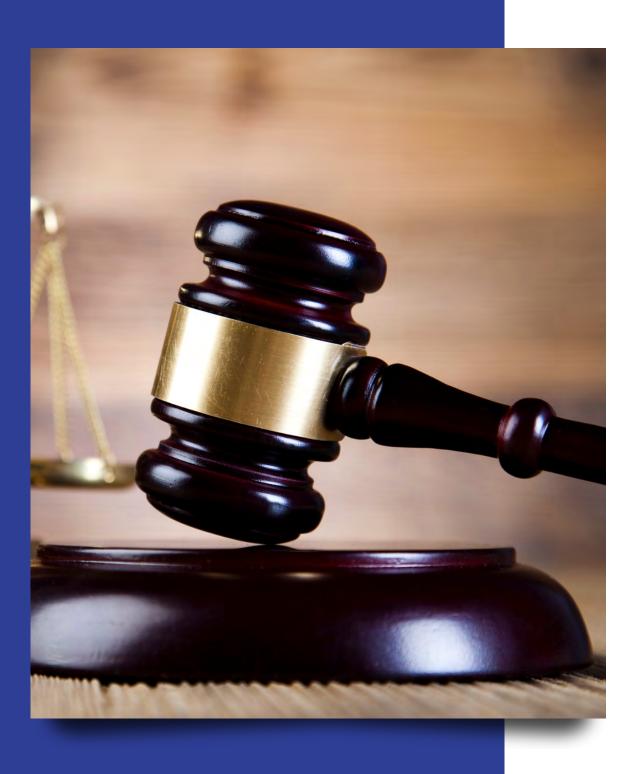
- For reasons <u>other than advanced age or minority</u>
- Has a <u>clinically diagnosed</u> condition
- That results in the inability to receive and evaluate information or make or communicate decisions
- To such an extent that the individual lacks the ability to meet essential <u>requirements</u> for physical health, safety, or self care
- Even with appropriate technological assistance Mass. Gen. Laws c. 190B § 5–101(9).

**HOWEVER – Capacity is:** 

**NOT** "All or nothing" **NOT** Based solely on IQ or diagnosis



### What is Guardianship <u>NOT</u>?

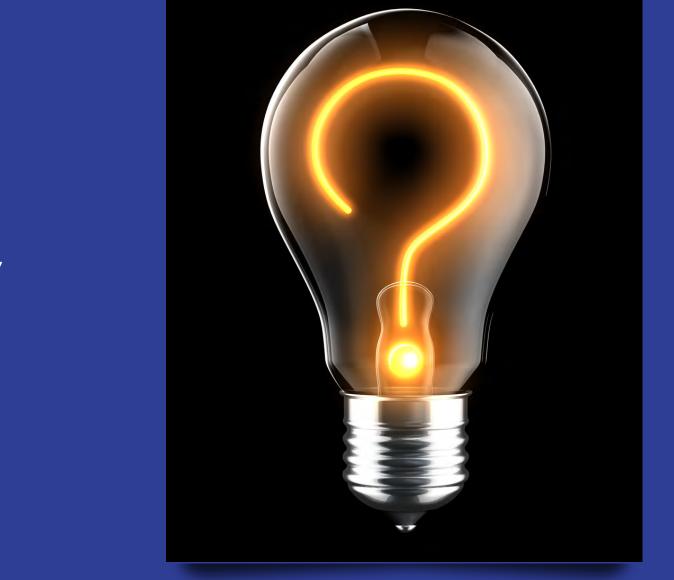


- Guardianship is  $\underline{\text{NOT}}$  the only option to consider
- Guardianship is <u>NOT</u> just a **piece of paper**
- Guardianship is <u>NOT</u> a guarantee of safety
- Guardianship is **<u>NOT</u> without downsides**

# Why Explore Other Options First?

- Guardianship takes away some or all of a person's legal rights to make important life decisions
- It's the law Least restrictive alternative doctrine
- Guardianship can be time-consuming, complex, costly
- Guardianship means **on-going court oversight**
- Guardianship is **difficult to end or change**
- Decision-making is a learned skill
- Self-determination is linked to better life outcomes





### What Are Other Options?

- Supported Decision-Making
- Shared Educational Decision–Making Authority
- Health Care Proxy
- Durable Power of Attorney
- Delegation of Educational Decision–Making Authority
- Representative Payee
- And <u>MORE</u>!





# What is Supported Decision-Making?

- People make their own decisions, with the help of others they pick and trust.
- Supporters provide guidance and assistance.
- The **person keeps** their **legal rights**.
- The person builds decision-making skills over time and learns from mistakes.
- It can be **formal or informal**.
- It is **flexible** and can change over time.
- It can be used in any state, including Massachusetts.

# What is Supported Decision-Making <u>NOT</u>?

- It is **NOT someone else** making decisions for and instead – of the person.
- It is **NOT** the person making decisions **alone**, without any help.
- It is **NOT** the person making decisions **only** if the supporters agree.
- It is **NOT "one size fits all."**



### Common Questions about Supported Decision-Making

- Is it <u>new</u>?
- <u>Who</u> can use it?
- How is <u>different</u> from substitute or surrogate decision-making?
- Is it <u>legal</u>?
- Is it <u>safe</u>?



# Five Steps in Supported<br/>Decision-MakingStart the<br/>ConversationIdentify supporters who<br/>can and want to help.Plan and<br/>communicateConsider<br/>writing down<br/>and signing<br/>the planStart<br/>writing down<br/>and signing<br/>the planStart

Share the plan with people who need to know

### Practice Tips for Supported Decision-Making

- Supporters work with the person to find out:
  - What are the person's **goals**?
  - What help does the person want and need?
  - <u>Who</u> does the person want to help?
  - How does the person want the help to be given?
  - What will it take to make their own decisions with support?
- Supports can also include:
  - Communication aids
  - Personal supports
  - Educational resources
  - Written agreements or plans
  - <u>And more</u>!





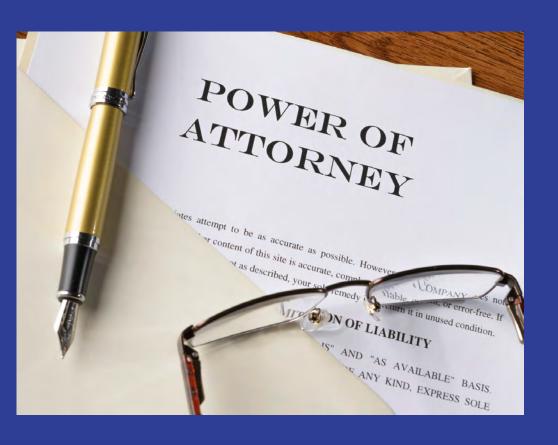
### Omar's Story of Supported Decision-Making



https://supporteddecisions.org/wp-content/uploads/2024/03/ Omar-SDM-Video-English.mp4

# Common Legal Tools to Use Along with Supported Decision-Making

- Release of Information Forms
- Health Care Proxy
- Durable Powers of Attorney





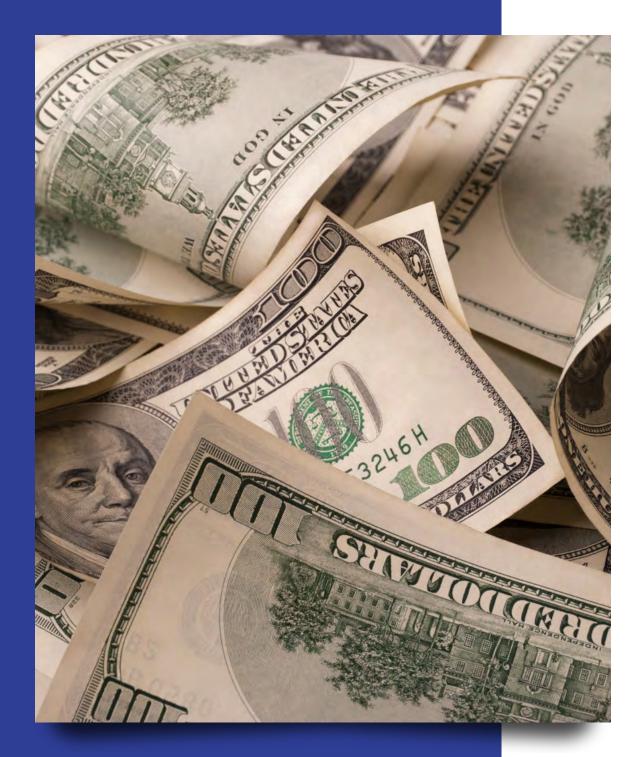
# What are Other Options in **Education?**

- Supported Decision-Making Shared Educational Decision–Making
- Delegated Educational Decision-Making

### What Other Options in Health Care?

- Supported Decision-Making
- Health Care Proxy
- MOLST/POLST





# What Are Other Options in **Finances?**

- Supported Decision-Making
- Durable Power of Attorney
- ABLE Accounts
- Joint Bank Accounts
- Representative Payees
- Trusts

 Making decisions changes your life.
Support your loved one in building capacity to make decisions over time.

"You can't make decisions based on fear and the possibility of what might happen"
– Michelle Obama

Explore alternatives first before considering guardianship.





- <u>https://supporteddecisions.org</u>
- <u>https://www.wearemass.org/supported-</u> <u>decision-making</u>
- <u>https://www.conexioneslatinx-ma.org</u>
- <u>https://www.dlc-ma.org</u>



### **Questions Now or Later**

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- Center for Public Representation
  - Morgan Whitlatch, certified to practice law in Massachusetts
  - Megan Rusciano, licensed to practice law in Maryland only
  - 413–586–6024, <u>SDM@cpr-ma.org</u>



### Thank you!

Please complete our Participant Survey!

- <u>https://forms.gle/5B87NPpmXPzx9RnEA</u>
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