



# Guardianship is Not the Only Option:

Supports for Decisions in Adulthood



Center for Public  
Representation



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# 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 other than advanced age or minority
- Has a clinically diagnosed 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 requirements 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 NOT?



- Guardianship is NOT the **only option** to consider
- Guardianship is NOT just a **piece of paper**
- Guardianship is NOT a **guarantee of safety**
- Guardianship is NOT **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 MORE!



# 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 NOT?

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



# Five Steps in Supported Decision-Making

Start the  
Conversation

Identify supporters who  
can and want to help.

Plan and  
communicate

Consider  
writing down  
and signing  
the plan

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?
  - Who 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
  - And more!



# 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.



# Resources

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



# Questions Now or Later

- **Conexiones Latinx-MA**
  - Keila Torres, 413-419-8008, [hola@conexioneslatinx-ma.com](mailto:hola@conexioneslatinx-ma.com)
- **Center for Public Representation**
  - Morgan Whitlatch, certified to practice law in Massachusetts
  - Megan Rusciano, licensed to practice law in Maryland only
  - 413-586-6024, [SDM@cpr-ma.org](mailto:SDM@cpr-ma.org)



# Thank you!

- Please complete our Participant Survey!
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