

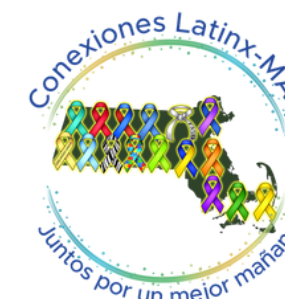


Guardianship is Not the Only Option

Supporting Decisions in Adulthood



Center for Public
Representation



WELCOME

- Presenters
 - Keila Torres, Conexiones Latinx-MA
 - Morgan Whitlatch, 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 for a child
- A formal legal process where a court decides whether an adult is “incapacitated” and, if so, whether someone else (a “guardian”) should 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 ^{Your paragraph text} 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 **all powerful**
- Guardianship is NOT a **guarantee of safety**
- Guardianship is NOT **without downsides**

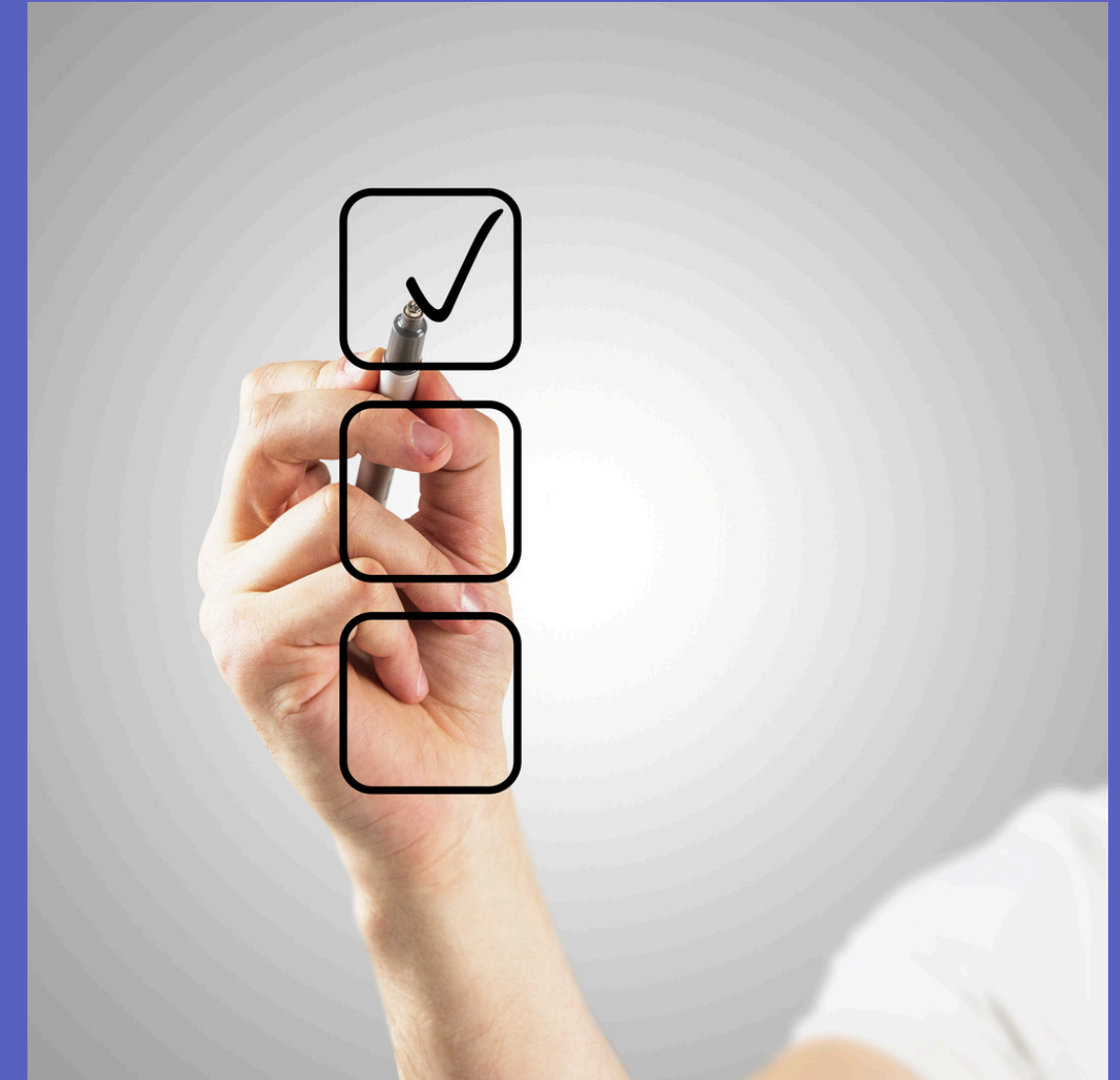
Why Explore Other Options First?

- **It's the law** – Least restrictive alternative doctrine
- Guardianship can be **time-consuming, complex, costly**
- 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.”
- It is NOT only for people with certain kinds of disabilities.




Common Questions about Supported Decision-Making

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



5 SUPPORTED DECISION-MAKING STEPS



Start the Conversation

Identify trusted supporters who are willing and able to help.

Plan and communicate.

Consider writing an SDM agreement.

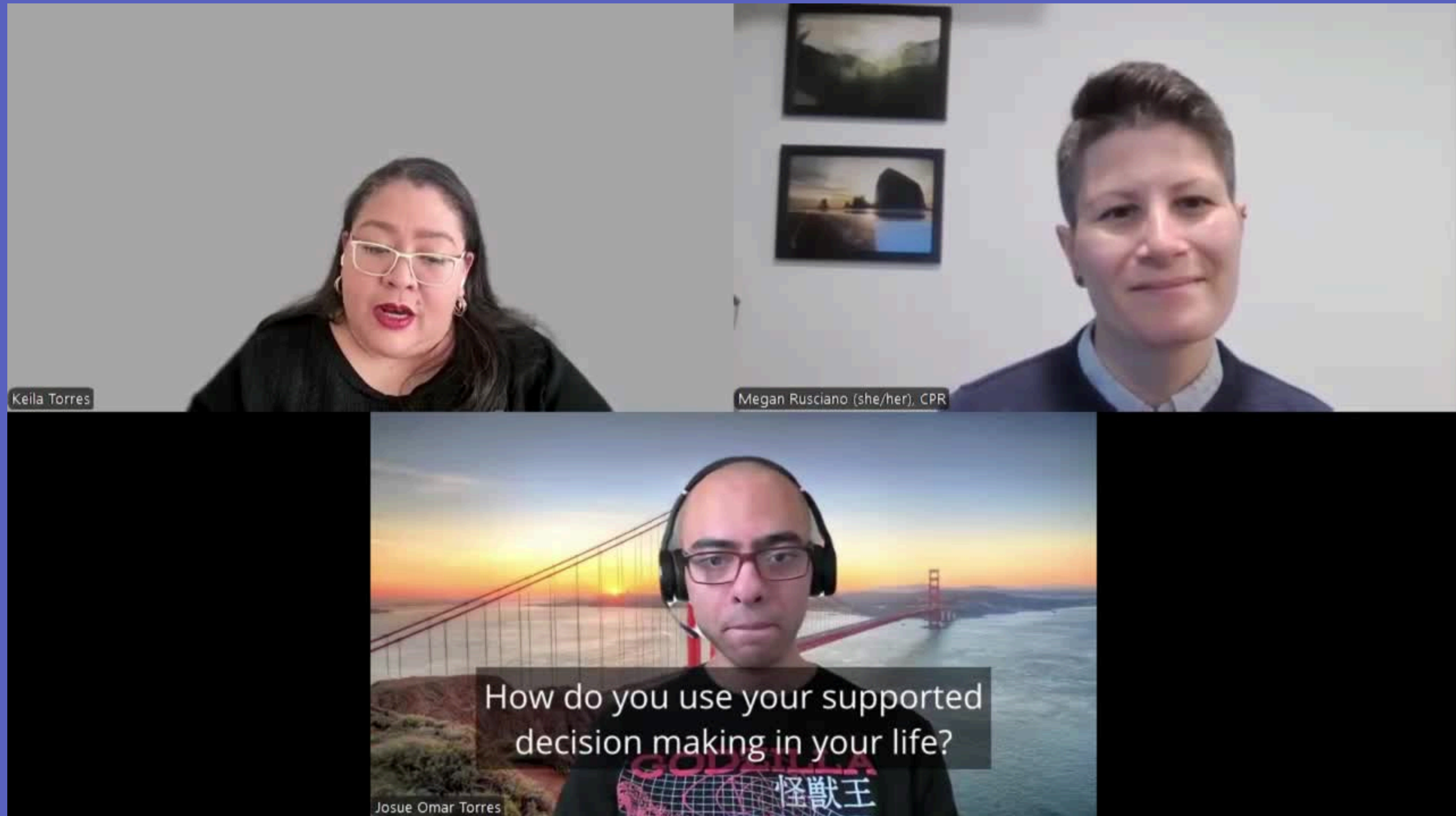
Share the agreement with people who need to know, like doctors, schools, and service providers.

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 them?
 - How does the person want the help to be given?
 - What will it take for the person to make their own decisions with support?
- Supports can also include:
 - Communication aids
 - Personal supports
 - Educational resources
 - Written agreements or plans
 - And more!



Journey of Keila & Omar



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 are Other Options in Education?

DECISION-MAKING OPTIONS FOR STUDENT*

Complete for student who has turned 18. Please indicate the decision-making option that the student or court-appointed legal guardian has selected:

- ☐ The student will make their own educational decisions.
- ☐ The student will share decision-making with their parent, caregiver, or other adult.
Individual with whom the student will share decision-making: _____
- ☐ The student has delegated decision-making to their parent, caregiver, or other adult.
Individual to whom the student has delegated decision-making: _____
- ☐ A court has appointed a legal guardian for the student who will make educational decisions.

Name of court-appointed legal guardian:

Date of determination:

What Are 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>



Handouts

- Handout 1 – Power Point
- Handout 2 – Learn About Supported Decision-Making
 - <https://tinyurl.com/mpcessea>
- Handout 3 – Learn about Adult Guardianship
 - <https://tinyurl.com/r2wvux5t>
- Handout 4 – Resources and Forms for Massachusetts Families
 - <https://tinyurl.com/5n7f7f37>
- Handout 5 – Key Words to Know in Massachusetts
 - <https://tinyurl.com/mesnredb>

Handout 6 – CPR Sample SDM Agreement Form and Instructions for Massachusetts Residents

- <https://tinyurl.com/4h8n6rcb>

Questions Now Or Later

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- **Center for Public Representation**
 - Morgan Whitlatch, certified to practice law in Massachusetts
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Thank you!

- Please complete our Participant Survey!
 - <https://forms.office.com/r/qTfvEXPvzP>
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