



Guardianship is Not the Only Option:

Supporting Decisions in Adulthood



Center for Public
Representation



WELCOME

- **Presenters**
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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”) needs to 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 in Massachusetts?

The 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” or based solely on 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 can be **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 different from substitute or surrogate decision-making?
- Is it legal?
- Is it safe?



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:
 - Behavioral and mental health support
 - Communication aids
 - Personal supports
 - Educational resources
 - Written agreements or plans
 - And more!

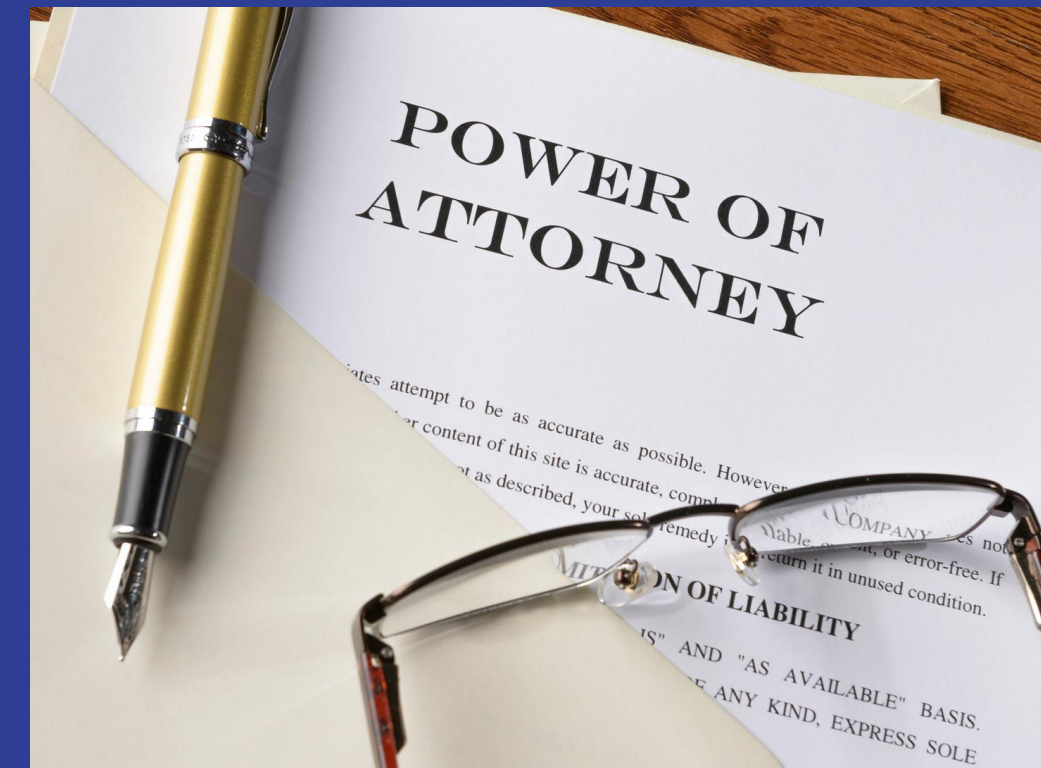




Mike's Perspective on Supported Decision-Making

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

Massachusetts IEP Form

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 Other Options in Health Care?

- Supported Decision-Making
- Health Care Proxy
 - Can include wishes and instructions for mental health care
- MOLST/POLST



What Are Other Options in Finances?



- Supported Decision-Making
- Banking and Credit Options
 - Direct deposit
 - Automatic bill payment
 - Credit monitoring/freezes
 - Joint bank accounts
- Durable Powers of Attorney
- ABLE Accounts
- Joint Bank Accounts
- Representative Payees
- Trusts

Resources (1 of 3)

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



Resources (2 of 3)

Handouts:

1. PowerPoint Slide Deck

- <https://tinyurl.com/324mdwrp>

2. Key Words to Know in Massachusetts

- <https://tinyurl.com/mesnredb>

3. Learn about Guardianship

- <https://tinyurl.com/r2wvux5t>

4. Learn about Supported Decision-Making

- <https://tinyurl.com/mpcessea>

5. Q&A about SDM for Parents, Family Members, and Supporters in Massachusetts

- <https://tinyurl.com/2zmuyhsr>



Resources (3 of 3)

Handouts (continued):

6. Getting Started with SDM in Massachusetts

- <https://tinyurl.com/yut7p4ep>

7. Resources and Forms for Massachusetts Residents

- <https://tinyurl.com/5n7f7f37>

8. Sample SDM Agreement Form and Instructions for Massachusetts Residents

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



Questions Now or Later

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