



Alternatives to Guardianship

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<http://www.ruralinstitute.umt.edu/transition/>

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MONTANA TRANSITION RESOURCES
ruralinstitute.umt.edu/transition

Rural Institute

For Inclusive Communities



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Takeaways from today:

- How we arrived at the use of less restrictive options
 - Globally and Montana-specific
- What is available in Montana: Alternatives to Guardianship Toolkit

History

- Guardianship laws separate for all 50 states and District of Columbia
 - Uniform Law Commission (ULC) 1982: reduce inconsistencies among state law; model acts states may enact or not or borrow from when revising provisions.
- Montana is an Independent Rights State
 - Constitution of Montana -- Article II -- DECLARATION OF RIGHTS
 - Section 4. "Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws."
- 2008 "It's Not All or Nothing, Customized Options to Maximize Independence"
 - Collaboration between: Rural Institute for Inclusive Communities, Parents Let's Unite for Kids, and Disability Rights Montana
 - Based upon the work of Marsha Katz, Rural Institute
- United Nations Convention on the Rights of Persons with Disabilities
 - Article 12 – Equal recognition before the law
 - 2. "States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life."

Freedom! I am finally 18!



I am my own boss!

History

- 2011 Third National Guardianship Summit – University of Utah
 - Mix of professional and family guardians, judges, attorneys, court managers, aging and disability advocates, adult protective services staff and others to make recommendations on standards for guardian performance and decision-making. Organized by the National Guardianship Network (NGN).
 - Uniform Adult Guardianship Protective Proceedings Jurisdiction Act (UAGPPJA); looked at and forwarded consideration for amending of 70 standards and recommendations
 - Item of significance: adoption of “person-centered” planning
 - A key recommendation: WINGS, Working Interdisciplinary Networks of Guardianship Stakeholders; coordinated state court – community partnerships
 - States/territories with WINGS or similar reform groups: AL, AK, DC, FL, GA, ID, IN, MA, MD, MN, MS, MO, MT, NY, NC, OH, OR, PA, TX, UT, VA, WA, WV, WI, Guam (Nov. 17)
 - Montana: first state to legislatively create a WINGS
 - 65th Legislature HB70; First meeting 3/18



Acts

Guardianship, Conservatorship, and Other Protective Arrangements Act

Description

The Uniform Guardianship, Conservatorship, and other Protective Arrangements Act (UGCOPAA) is a comprehensive guardianship statute for the twenty-first century. It was drafted with extensive input from experienced guardianship judges and organizations that advocate for guardianship reform. UGCOPAA promotes person-centered planning to incorporate an individual's preferences and values into a guardianship order, and requires courts to order the least-restrictive means necessary for protection of persons who are unable to fully care for themselves.

View Final Act

- [Final Act - No Comments \(DOC\)](#)

Legislative Information Kit

- [Legislative Fact Sheet](#)
- [Download an Enactment Kit](#)
- [NGA Resolution](#)

Staff Contact

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Enactment Status Map



Legislative Tracking

2018 Introductions & Enactments

State	Bill	Sponsor	Status
Maine	LD 123	Moonen	Enacted
New Mexico	SB 19	White	Introduced

7

Drafting History

Origin: Completed by the Uniform Law Commission in 2017
Committee/Resources: [Guardianship, Conservatorship, and Other Protective Arrangements Act](#)

Supported Decision-Making Jonathan Martinis

National Resource Center for Supported Decision-Making
EVERYONE has the Right To Make Choices

Stories of Supported Decision-Making Share Your Story

JOIN
Supported
Decision-
Making
Interactive!

ABOUT IN YOUR STATE LIBRARY EDUCATION WEBINARS/PRESENTATIONS CONTACT US



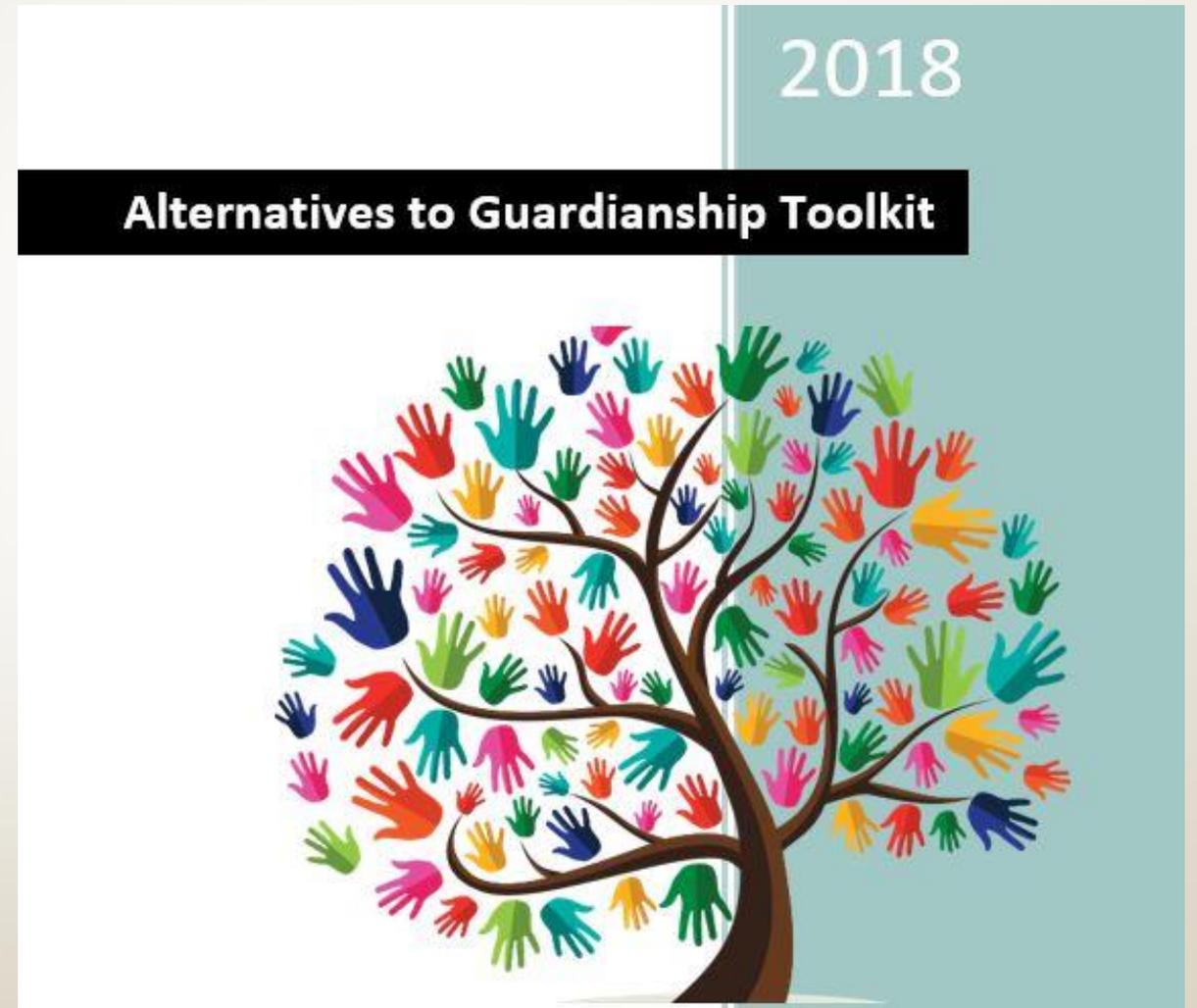
Supported Decision-Making In Your State

WELCOME TO THE NATIONAL RESOURCE CENTER FOR SUPPORTED DECISION-MAKING

Here, you'll find information about the **Right to Make Choices** – the right we all have to make our own decisions and direct our own lives.

Where are we now?

Education on Options and
Alternatives available
around Guardianship in
Montana



- What is Guardianship? Conservatorship?
 - Nationally, Montana
 - Court process where an individual is deemed incapacitated; termination of an individual's rights
- Things to consider:
 - Spectrum of solutions based upon what is needed by the individual
 - Is there is a less restrictive form of intervention available which is consistent with the person's welfare and safety needs?

ALTERNATIVES TO FULL GUARDIANSHIP

Least Restrictive Alternative

Individual retains full independence and full decision making power.

Community Resources/unpaid Supports:

- *increased support from family and friends
- *advocacy forms
- *community/agency support: DHHS programs, caseworks; Meals on Wheels

Money Management strategies:

- *Representative Payee
- *Bill payments services- online autopay
- *Joint checking accounts

Middle Ground

Individual retains some, but not all. Control over decisions in their life. Limited court involvement.

Common Legal Arrangements:

- *Health care directives
- *Special Needs Trust
- *Power of Attorney

Limited or Temporary Guardianship:

*Limited or temporary guardianship for medical, or financial, or residential.

** Tailored to an individual's needs based on what is requested in court.

Most Restrictive Alternative:

A guardian has full decision-making control over all areas of a an individual's life. Requires a court order.

FULL GUARDIANSHIP



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Download the Manual

[Download the Alternatives to Guardianship manual in Microsoft Word format](#)

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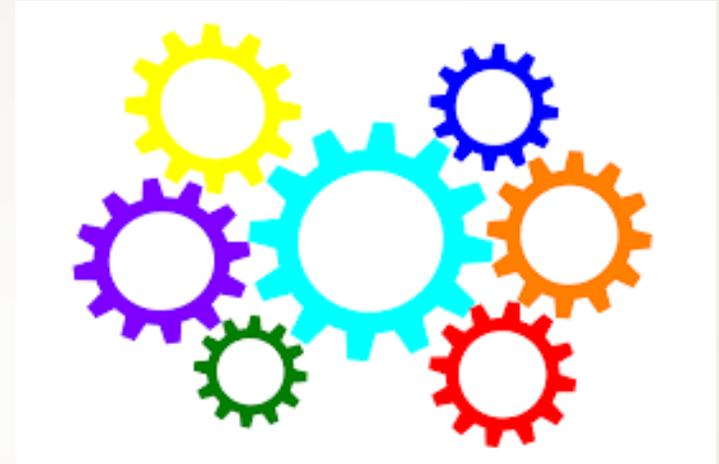
Are Families and Individuals Aware They Have Options?

- Not all-or-nothing
- Referrals from school, medical
- Capacity is fluid
- Opportunities to learn
- Growth - Change over time



- Individual





How is the individual considered?
Connected to?
Separate?



Why?

- “Alternatives to guardianship, including supported decision-making, should always be identified and considered whenever possible prior to the commencement of guardianship proceedings” (National Guardianship Association)
- “Research has consistently shown that people with disabilities who exercise greater self-determination have improved employment and quality of life, are better problem solvers, and are better able to resist and avoid abuse”
- Montana Code Annotated Section 72-5-306: “Guardianship for an incapacitated person may be used only as is necessary to promote and protect the well-being of the person. The guardianship **must be designed to encourage the development of maximum self-reliance and independence in the person and may be ordered only to the extent** that the person's actual mental and physical limitations **require it.**” (2017b, para. 1)

When?

- Start early with a conversation about what supports will be needed and how to provide them in the least restrictive way possible.
- Allows time to develop the tools, and most importantly allows time for the individual being supported to understand the tools and how they will be used.
- Time may be needed for the individual to develop a signature and receive training in what to sign, when to sign, and how to respond to pressure about signing a document.
- For youth, the tools will not go into effect until they become an adult at age 18 and can legally sign the document(s).

National Center on Secondary Education and Transition

Research to Practice Brief, Self-Determination: Supporting Successful Transition

http://www.ncset.org/publications/researchtopractice/NCSETResearchBrief_2.1.pdf

Preparing for the “Nexts” in Life

- Getting to Know the Individual Being Supported
 - Skills-Strengths
 - Concerns-Fears
- Growth
 - Opportunity to develop skills
 - Adjustments based upon needs of the individual
 - Growth Clause- Jonathan Martinis
 - My agent and I will review this [Power of Attorney/Advanced Directive/Plan] to see if it should be changed or cancelled at least every _____. However, unless my agent and I change the [Power of Attorney/Advanced Directive/Plan], I cancel it, my agent resigns, or either I or my agent dies, the [Power of Attorney/Advanced Directive/Plan] will continue. (Martinis, 2016)
- PRACTICAL Tool
 - [Http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool.html](http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool.html)

REASON. Clearly identify the reasons for concern.

Consider whether the individual can meet some or all of the following needs:*

Money Management:

- Managing accounts, assets, and benefits
- Recognizing exploitation

Health Care:

- Making decisions about medical treatment
- Taking medications as needed
- Maintaining hygiene and diet
- Avoiding high-risk behaviors

Relationships:

- Behaving appropriately with friends, family, and workers
- Making safe decisions about sexual relationships

Community Living:

- Living independently
- Maintaining habitable conditions
- Accessing community resources

Personal Decision-Making:

- Understanding legal documents (contracts, lease, powers of attorney)
- Communicating wishes
- Understanding legal consequences of behavior

Employment:

- Looking for, gaining, and retaining employment

Personal Safety:

- Avoiding common dangers
- Recognizing and avoiding abuse
- Knowing what to do in an emergency

*Adapted from University of Missouri Kansas City, Institute for Human Development, "MO Guardianship: Understanding Your Options & Alternatives," <http://moguardianship.com>.

Supported Decision-Making: What is it?

- Supported Decision-Making is an alternative to guardianship. Supported Decision-Making is a process rooted in the belief that all people have the right to make choices and decisions about their own lives.
- As a tool, it is not specific to one form or one recognized process; it is key that the individual directly impacted by the choice or decision is enabled based upon their needs, wants and preferences.
- In Supported Decision-Making, individuals use people of their choosing, such as friends, a family member or professional, to assist them in understanding information, the impact of choices, and what options need to be considered in making a decision.

Welcome Message

<http://supporteddecisionmaking.com/sites/default/files/NRC-SDM-Welcome-message.pdf>

Supported Decision-Making

- How do you make big decisions in your life?
- Voluntary
- Customized
- Team, one person, go-to people topic-specific
- Understand information provided, help if needed in communicating choices
- Goal: individual retains control of their life and choices to the maximum extent.
- Develop a plan and share with need-to-know people

Supported Decision-Making Model Agreements

<http://www.supporteddecisionmaking.org/node/390>

Brainstorming Guide

<http://www.supporteddecisionmaking.org/sites/default/files/sdm-brainstorming-guide.pdf>

Supported Decision-Making Teams: Setting the Wheels in Motion

<http://www.supporteddecisionmaking.org/sites/default/files/Supported-Decision-Making-Teams-Setting-the-Wheels-in-Motion.pdf>

- What do I have to decide?
- What I am worried about?



- Do I need more information?
- Do I need to look something up?
- Do I need to talk to someone with specific knowledge?



- Did I find a barrier I had not planned on?
- Did I consider all possibilities?



- What is my plan?
- Do I need anyone to help with pieces of my plan?
 - Did I tell them what I need?

Education

- Nothing added or done
 - Educational Advocacy Form
 - Educational Power of Attorney
 - Limited Guardianship-Education
- Post-Secondary Education



CONSENT TO AUTHORIZE ADVOCACY AND
RELEASE OF INFORMATION

I, (full name), hereby authorize (X) School District to release and exchange information with my advocate, (full name), which pertains to my school program and placement. I am also requesting that my advocate be invited to any and all meetings about me, and I do not want any decisions made without (his/her) input. I do not wish to discuss issues or concerns about my school day or program without my advocate present. If the school or district has any documents I need to sign, my advocate must sign first with me present, before I will sign. This authorization, unless otherwise revoked by me, will remain in effect for the durations of the time I receive special education services and until my twenty-fifth birthday. My advocate has read through this paper with me prior to my signing to make sure I understood and want this agreement.

(Full legal Name)

Medical

- Nothing added
- Supported Decision-Making; Assistive Technology; Designated Caregiver
 - HIPPA Release with Supported Decision-Making - “and for decision-making purposes”
 - Medical Advocacy Form
 - Medical Power of Attorney
 - Advanced Directives; Montana Mental Health Advanced Directives

Health Care Transition Resource!

<http://www.gottransition.org/youthfamilies/index.cfm>



DESIGNATION FOR PATIENT ADVOCATE FOR CARE, CUSTODY, AND MEDICAL TREATMENT DECISIONS

I am (full name) and I live at (street address) in (City), (State). I want (full name of advocate), my advocate, to help me if I am sick and if I need to go to the doctor.

My advocate read this paper to me before I signed the paper and I understood what they told me about this paper.

If I am sick, my advocate should take me to the doctor. If (he/she) is not at my house when I become sick, please call (her/him) at (contact #) to go the doctor's office. I would like the doctor to talk to (her/him) about what is the matter with me.

I would like the doctor to ask my advocate what we have decided the doctor should do. I would like the doctor to do what the advocate tells the doctor to do in regards to my treatment.

Sometimes a doctor says that I need to have a shot or some other care. Sometime the doctor says I need to take pills or medicine. My advocate and I will talk about it and decide if I should have the shot, or take a pill, or some other medicine. My advocate will also help me decide what other care I should have, but (she/he) will talk to me about what care I need.

If I am very sick, I might need to go to a hospital. My advocate will help me decide if I need to go to the hospital. I would like all the people at the hospital to speak with my advocate and myself about what the people at the hospital should do for me. I would like my advocate to assist me to decide about my care at the hospital even if I am unable to understand what the doctor says about me. This is very important since I want the people at the hospital to try very hard to care for me if I am sick. If I need to have an operation because am very sick, I would like to have the people at the hospital talk to my advocate. My advocate will say "yes" or "no" and that is what the people at the hospital are to do.

I would like my advocate to be considered my designated lay caregiver in agreement with Title 50, Chapter 5.

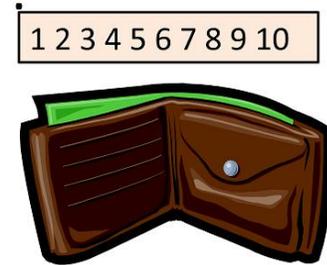
I understand that I want my advocate to help decide what care I need, and I want people to listen to (her/him) about my care.

If my advocate is not happy with my doctor, then (she/he) is able to get another doctor to take care of me.

(Full Legal Name)

Financial

- Financial Literacy
- Opportunity to earn money; choice
- Minimal Support; SDM; cards
 - Additional support; joint signature
 - Representative Payee
 - Financial Power of Attorney
 - Trusts
 - Conservatorship
- ABLE (Achieving a Better Life Experience) Accounts
 - Agent Authorization/Power of Attorney



Accessing Supports with Other Service Providers

UM Rural Institute 2018

Sample Language Appendix C

CONSENT TO AUTHORIZE ADVOCACY AND RELEASE OF INFORMATION

I, _____
authorize (name of agency or organization) to release/exchange information with (my friend/advocate, or could list specific person) which pertains to my (services, programs and living situation). I also wish that (my friend/advocate, same as above) be invited to any and all meetings about me, and I do not want any decisions made without his/her input. If (agency or organization) has any documents I need to sign, (my friend/advocate, same as above) should receive copies and have time to go over them with me before I am asked to sign. This authorization, unless otherwise revoked by me, is intended to remain in effect for the duration of time I receive services, etc. or until I revoke this authorization, whichever comes first.

(name)

(date)

Additional Components:

- Power of Attorney
- Notarizing, Sharing of Forms
- Respect
- End-of-Life Decisions
- Undoing Guardianship - "Restoration of Rights"

Questions?

