



GUARDIANSHIP: FACTS, MYTHS, AND RESOURCES

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Guardianship Facts

Restriction Levels



Too often, full guardianship is the default option for individuals needing decision-making assistance. This is the most restrictive option, and many are unaware of their other choices. There are alternative approaches to guardianship that are flexible and can adapt to the changing needs an individual may experience. No matter what the individual's preferences, abilities, and communication style, there is an option that will work for them.

GUARDIANSHIP OPTIONS

Least Restrictive

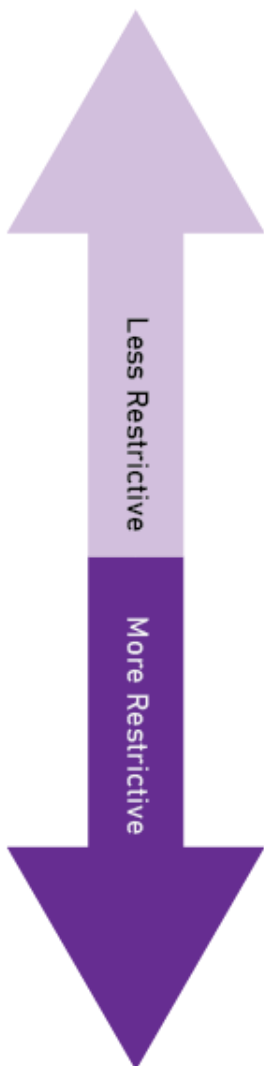
Individual retains full independence and full decision-making power and can access support as needed.

- Supported Decision Making
- Advocacy Forms
- Online or bill payment service
- HIPAA Release Form

More Restrictive

A guardian is limited in which areas they act as the decision maker for the individual or serves for a specific amount of time. The order is tailored by the court.

- Limited or temporary Guardianship
- Voluntary Conservatorship



Less Restrictive

Individual retains some, but not all, control over decisions. A representative is designated to make decisions “for” an individual in specific areas.

- Power of Attorney/Durable Power of Attorney
- Representative Payee
- Healthcare or Advanced Directives
- Special Needs Trust

Most Restrictive

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

- Full Guardianship
- Full Conservatorship

What approach is the best fit?

Before deciding on an approach, you should ask these questions:

What are their current skills and strengths?

What are their present feelings, beliefs, and wishes regarding the matter to be decided?

What are the concerns and fears of those who provide support or assistance?

What are their values, and how would they influence their decision, such as cultural, moral, or political?

What is the least restrictive form of decision-making assistance that considers the person's welfare, safety, and opportunity for skill development and growth?

What is Guardianship?



Guardianship is a legal process in which the court determines that an individual does not have the capacity to make decisions either generally or in specific areas. The court then will appoint a guardian. Establishing and changing a guardianship requires going to court and can be expensive. Guardianship should be used only as a last resort method and considered only after all other lesser restrictive alternatives have been explored.

A guardianship is not necessarily intended to be forever. The objective – no matter how unlikely it may seem – is to restore the person to complete decision-making capacity and to close the guardianship as expeditiously as possible.

Definition from K.S.A 59-3050 to 59-3097.

DEFINITIONS

Guardian - a person appointed by the court to make legal decisions affecting a ward's personal health, safety, and welfare.

Ward - a person for whom the court has appointed a guardian.

Conservator - a person appointed by the court to make legal decisions affecting a conservatee's finances and estate (personal and real property).

Conservatee - a person for whom the court has appointed a conservator.

What are the responsibilities of a guardian?

A guardian makes legal decisions on behalf of the ward, including accessing and monitoring supports and services for physical, psychological, and emotional care. The guardian provides informed consent and communicates with service providers, including case managers, facility staff, and medical providers. A guardian advocates for and protects a ward's personal, civil, and human rights.

What are the responsibilities of a conservator?

A conservator makes legal decisions on behalf of the conservatee, manages a conservatee's financial affairs, and advocates for and protects the conservatee's personal, civil, and human rights.

Why consider alternatives to guardianship or conservatorship?

There are many reasons to consider less restrictive options. For example, people who can make their own decisions become more independent, have successful employment, and are more integrated into their communities (Jameson et al., 2015). As individuals develop new skills, adjustments to decision-making supports can be made without going to court.

Myths and Facts About Guardianship

MYTH: A GUARDIAN IS REQUIRED FOR ALL VULNERABLE ADULTS AND ELDERLY PEOPLE

Adults can be labeled as “vulnerable” for many different reasons. Age and vulnerability does not determine one’s ability or right to make their own decisions. When an adult reaches a point where they cannot make the decisions for themselves, they may benefit from a guardian.

MYTH: SUPPORT PERSON OR GUARDIAN = DECISION MAKER

The concept of providing support or serving as a guardian is shifting. In the past, family members, support staff, guardians, or others might make all of the decisions for, and about, a person who needed assistance.

Those who support individuals or serve as guardians are responsible for making decisions based on the individual’s choice. Instead of “What do I think is best for this person?” the question becomes, “How would this person make this decision?”

Someone may struggle to make decisions but not lack capacity.

MYTH: GUARDIANSHIP WILL PROTECT PEOPLE WITH INTELLECTUAL DEVELOPMENTAL DISABILITY (IDD) FROM FINANCIAL, PHYSICAL, AND OTHER ABUSE

Having a guardian does not stop a person from giving others money, engaging in risky behaviors, getting arrested, being injured, or otherwise being taken advantage of.

MYTH: IF A PERSON CAN'T COMMUNICATE WITHOUT SUPPORT, THEY NEED A GUARDIAN.

If a person uses an alternative form of communication that does not automatically mean they need a guardian. It is important that the individual doesn't lose their right to advocate for themselves because it's 'easier' for another person to communicate on their behalf.

Use a person-centered planning approach to identify how the individual prefers to communicate and use those communication methods in the decision-making process.

MYTH: GUARDIANSHIP LAWS ARE UPDATED WHEN LAWS FOR INDIVIDUALS WITH DISABILITIES ARE UPDATED.

Unfortunately, guardianship laws have not progressed at the same pace as civil rights for individuals with disabilities.

Every state has different guardianship laws. Find out what alternative approaches are supported in your state, and how the state views guardianship. Every state can have different protocols, requirements, and available resources. Look at Kansas laws here:

www.supporteddecisionmaking.org/in-your-state/kansas/



Just Remember...



Many of us may find that at one point or another in our lives, we will need assistance with making certain decisions. We all do that now – it is called supported decision-making.

Sometimes the situations that we find ourselves in, require something more formal rather than informal. Pre-planning and thinking about who you would like to have help you make decisions when you need help is important pre-planning.

This document is meant to help answers questions you or your loved ones might have about the continuum of supported decision-making.

Considerations for National Standards



Uniform Law Commission
Recommended National Standards



National Guardianship Association
Encouraging the highest levels of integrity and
competence through guardianship education



National Resource Center
National resource center for Supported Decision-
Making

Reporting Abuse or Neglect

*If you suspect someone has been the victim of abuse,
neglect, or financial exploitation, please contact the
Kansas Protection Reporting Center at **1-800-922-5330***



Resources

Kansas Guardianship Program - The Kansas Guardianship program is a volunteer-based model that provides guardianship or conservatorship services for vulnerable adults. [Legal Guardianship for Adults with Disabilities - KSGP \(ksgprog.org\)](#)

Kansas Guardianship Law - How to apply for guardianship in Kansas. [59-3075 \(ksrevisor.org\)](#)

Supported Decision-Making Tools for Supported Decision-Making [supporteddecisionmaking.org](#): Resources, guides, and tools for anyone looking for information about guardianship and alternative options.

The Right to Make Choices: International Laws and Decision-Making by People with Disabilities: Easy Read Edition PDF: A publication of the Autistic Self Advocacy Network (ASAN), this document explains Supported Decision-Making and some alternatives to guardianship. Includes a glossary of terms related to guardianship.

Charting the LifeCourse [www.lifecoursetools.com/](#) The Charting the LifeCourse framework was created by families to help individuals of all abilities and ages and their families develop a vision for a good life and identify how to find or develop supports.

PRACTICAL Tool for Lawyers: Steps in Supported Decision-Making: This American Bar Association publication helps lawyers identify and implement decision-making options that are less restrictive than guardianship.

Kansas Aging and Disability Resource Center – Where to start if needing assistance making informed choices about long-term support and services. Call to talk about your options. [Resource Centers \(k4ad.org\)](#)

Kansas Judicial Council - The Judicial Council works to improve the administration of justice in Kansas by continuously studying the judicial system and related areas of law, by recommending changes when they are appropriate, and by preparing publications that further this mission.

Self-Determination: Supporting Successful Transition (PDF): A research brief from the National Center on Secondary Education and Transition about self-determination. Includes tips for families and professionals on how to promote self-determination in youth with disabilities.

Overview of Kansas Statutes: Kansas | National Resource Center [supporteddecisionmaking.org](#):

Basic Instructional Program and the related guardian and conservator reporting forms may be found on the Kansas Judicial Council website: <https://www.kansasjudicialcouncil.org/legal-forms/guardianship-conservatorship>

Montana’s Fact Sheet: Baldry, Theresa, et al. “Fact Sheet: Least Restrictive Approaches to Supporting Individuals as Decision Makers.” University of Montana, 2019, Least Restrictive Approaches to Supporting Individuals as Decision Makers [umt.edu](#)

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