



Guardianship and Alternatives

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APSI OVERVIEW

APSI Overview



- Currently serving 3,000+ adults with developmental disabilities across Ohio
 - Only statewide guardianship program
 - 70+ clients in Lake County
- Guardian of the person for individuals who do not have another person to provide this support
- Available 24/7 to provide consent
 - APSI is the guardian, not the APSI staff member

Building Blocks



Key Take-Aways



- Guardianship is not mandatory for all people with disabilities
 - But it is important to choose guardianship or an alternative
- The right solution depends on many factors
 - And can change over time
- Guardianship does not solve or prevent every problem
 - Relationships may matter more than legal authority
- Probate court appointment is required for guardianship
- There are gray areas in guardianship
 - And each court has different perspectives and processes

Timeline



- Attend more than one guardianship training!
- Before age 14
 - Think about goals and capacity during planning
- Age 14-16
 - Planning for transition, identifying services to prepare for transition
 - Start deciding on guardianship and/or alternatives
- Age 17
 - Prepare for guardianship and/or alternatives
 - Consider meeting with attorney
 - Understand probate court process (if guardianship)
 - Start executing plan
- Age 18+
 - Execute plan
 - Continue developing skills and identifying services
 - Make changes as appropriate



How We Make and Assess Decisions

COMPETENCE AND CAPACITY

Competence and Capacity



- Capacity
 - The ability to make a specific decision at a specific time
 - Can change over time
 - Depends on many factors
 - Relevant to guardianship and alternatives
- Competence
 - Legal term used in different ways
 - For guardianship “incapable of taking proper care of the person’s self or property”

Identifying Capacity



- Charting the LifeCourse
 - Tool for Exploring Decision Making Supports
 - <https://www.lifecoursetools.com/lifecourse-library/exploring-the-life-domains/supported-decision-making/>
 - Formerly the Stoplight Tool
- ABA PRACTICAL Tool
 - https://www.americanbar.org/content/dam/aba/administrative/law_aging/PRACTICALGuide.pdf
 - Not just for lawyers!

Services to Build Capacity



- Consider incorporating development of daily living skills and decision-making into service plans
 - School (IEP)
 - Vocational Rehabilitation (IPE)
 - DD Services (ISP)
- Use assistive technology to support needs



Alternatives to Guardianship

DECISION-MAKING SUPPORTS

Why Consider Alternatives?



- Ohio law requires it!
- Guardianship is the most restrictive option
 - Long term
 - Court involvement
- Alternatives can be more effective—in multiple ways
- Research shows positive connection between self-determination and better health, safety, independence, and integration

Assessing Options



- Guardianship provides important legal authority, but does not solve or prevent every problem
 - Dignity of risk
 - Everyone makes “bad” decisions at times
- Relationships are as important as legal authority
- Decision-making is a skill that can develop over time

Alternatives to Guardianship



- Informal supports
- Supported decision-making
- Releases, authorized representative
- Powers of attorney
- Trusts, payees, STABLE accounts
- Conservatorship
- Also consider less restrictive forms of guardianship, such as limited guardianship
- Note: Capacity matters for all alternatives

Supported Decision-Making



- Not a process, form, or program—it's a paradigm
- Working with a person and identifying the areas where the person needs help
 - And then finding a way to provide that help
- SDM looks different for each person

How APSI Uses Supported Decision-Making



- Guiding principles for all of our services
 - Person-centered, self-determined to the greatest extent possible
 - Least restrictive: both the service itself and the decisions we make
 - Best interest, informed consent
 - All guardians can do this!
- Current initiatives and examples
 - Guardianship to Restoration Transition
 - Targeted Decision-Making



Rights, Responsibilities, and Processes

GUARDIANSHIP

The Role of the Guardian



- Probate courts appoint guardians for adults who are not able to make decisions for themselves because of a disability
 - Must be appointed by the court
 - Parents/family members are not automatic guardians
- Guardians provide informed consent
 - Within the scope of their authority

Types of Guardians



- Guardian of the person: makes daily living decisions and provides consent
 - Living arrangements
 - Services: ISP, residential, programming, behavioral
 - Medical, psychiatric, medication
- Guardian of the estate: handles finances and property
- Guardianship may be limited
- Ward: the person under guardianship

Guardianship Duties



- Provide informed consent
- Follow court orders, local court rules, and Ohio Supreme Court guardianship rules
 - Probate Court is the “superior guardian”
 - Guardian of the estate must receive permission for expenses
- Initial and annual training
 - Unless court exempts you
- Annual plan and report with expert evaluation
- Notify the court
 - Moves, abuse/neglect, changes

Guardianship Isn't Always the Answer



- Not every person with a disability needs a guardian
 - Ask: what would a guardian do to change this situation?
- Not every decision must be made by the guardian
 - Especially minor daily decisions, like what to wear

Limitations of Guardianship



- Legal limitations
 - Guardianship authority is limited
 - Guardians are not allowed to make some very personal or invasive decisions
 - Providers may be required to follow different rules
- Practical limitations
 - Guardians can provide consent, but can't always make the person comply

Rights Under Guardianship



- Guardianship does not terminate all rights
 - Law is not always 100% clear, many strong opinions on specific issues
- Frequently asked questions
 - Voting
 - Driving
 - Marriage, relationships, and sexuality
- Due process rights in guardianship case
- DD system rules apply to county boards and providers

Guardianship Process



- Attorney optional
- File application and pay fee
- Court schedules hearing
- Service on next of kin
- Court investigator meeting
 - Notices to person
 - Investigator's report
- Court hearing
- Appointment
- Ongoing responsibilities

Probate Court



- Resources available at <https://www.lakecountyohio.gov/probate-court/>
 - Forms and Services > Adult Guardianship
 - Forms, instructions, checklists
- Clerks and other court staff cannot provide "legal advice" but can answer some common questions



RESOURCES

National Resources



- Jenny Hatch Justice Project www.jennyhatchjusticeproject.org
- National Resource Center on Supported Decision-Making
www.supporteddecisionmaking.org

Ohio Resources



- Ohio Department of Developmental Disabilities (DODD) <https://dodd.ohio.gov/wps/portal/gov/dodd/about-us/resources/dodd-toolkit-guardianship>
- Ohio DD Council <https://ddc.ohio.gov/resources-and-publications/guardianship/guardianship>
- Disability Rights Ohio <https://www.disabilityrightsohio.org/guardianship>

Questions?



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