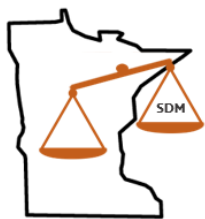


# MODERNIZING MINNESOTA'S GUARDIANSHIP STATUTE

## Moving Away from Guardianship to Supported Decision-Making



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### Issue Statement

While guardianship is an important option for people with significant cognitive challenges and high support needs, the process is burdensome, expensive, and most importantly restricts the civil liberties of individuals.<sup>10</sup> Together, we must modernize Minnesota's guardianship statute and invest in Supported Decision-Making to protect the fundamental rights of the person, increase self-determination, and improve life outcomes.

### Understanding the Basics of Guardianship

A person is considered a legal adult and their own guardian when they turn 18.<sup>11</sup> All adults have full rights and responsibilities unless guardianship is established.<sup>11</sup> Guardianship entails removing the constitutional right of a person to make their own decisions and places this power in the hands of a guardian.<sup>15</sup>

- A guardian is appointed by the court to make the personal decisions for the person subjected to guardianship, with the authority to make decisions on behalf of the person about such things as where to live, medical decisions, and education.<sup>6,13</sup> Guardianship can be awarded on a permanent, emergency, limited, or temporary substitute basis.<sup>13</sup>
- A guardian can be a family member, a professional guardian, or another third party, who is appointed by the courts.<sup>10</sup> Under Minnesota law, a [professional guardian](#) means a person acting as guardian for three or more people who are not related to the guardian by blood, adoption, or marriage.<sup>13</sup>

### The Problem: Too Much Guardianship, Too Little Self-Determination

The number of individuals under guardianship has tripled in the last twenty years.<sup>3</sup> Currently, in the United States there are approximately 1.3 million adults and over \$50 billion assets under the control of guardians.<sup>9</sup>

- In Minnesota, approximately 22,500 people are under guardianship, with over 3,000 requests for guardianship and conservatorship made every year.<sup>7</sup> Most guardianships remain in effect for the person's entire life.<sup>7</sup>

Guardians are granted broad authority to restrict the rights of people subjected to guardianship, including people with intellectual or developmental disabilities, serious mental illnesses, traumatic brain injury, and people experiencing significant cognitive decline.<sup>15</sup> When a person is placed under guardianship, their autonomy and right to make their own decisions is stripped away. Adults with disabilities who exercise higher levels of self-determination are more likely to: 1) live independently, 2) have greater financial independence, 3) be employed at higher paying jobs, and 4) be promoted more frequently in their places of employment.<sup>4</sup> There is growing recognition that overreliance on

formal systems of guardianship hinder and prevent self-determination, inclusion, and community integration, all in conflict with the intent of the Americans with Disabilities Act and other federal disability rights laws.<sup>4</sup>

## Current Policy Approach

Minnesota uses one approach to help people who have some limitations in their capacity to manage their own affairs—guardianship. Minnesota’s guardianship law is the [Uniform Guardianship and Protective Proceedings Act](#).<sup>12</sup> This law grants the court the authority to appoint a guardian to make decisions for a person subjected to guardianship, currently referred to as a “protected person”. The power, duties, and responsibilities of the guardian, including standards for substitute decision-making, and the rights of persons subjected to guardianship, are spelled out in the manual: [Conservatorship and Guardianship in Minnesota](#).<sup>6</sup> Minnesota’s Guardianship statute has not been updated in over 10 years.<sup>10</sup> As it is currently written, it fails to reflect current person-centered best practices. An update to Minnesota’s guardianship statute is long overdue.

## A Less Restrictive Policy Option: Supported Decision-Making

Supported Decision-Making (SDM) is a process for providing decision making supports to people traditionally subjected to guardianship in order to promote maximal participation in decisions related to their lives.<sup>8</sup> Click on [“supported decision-making”](#) to watch a series of videos explaining SDM.<sup>5</sup>

- SDM is dependent on the specific needs of the person. The support person helps the individual to exercise their legal capacity to the greatest extent possible.<sup>14</sup>
- People with intellectual or developmental disabilities, serious mental illnesses, traumatic brain injury, and people experiencing significant cognitive decline use trusted friends, family members, and professionals to help them think through the situations and choices they face.<sup>12</sup>
- An SDM agreement is not a contract so much as it is an authorization.<sup>4</sup> An individual authorizes one or more people to provide advice and consultation as decision-making situations arise. If at some point the relationship does not work, the supported person can choose someone else to serve in the support role<sup>4</sup>.

## Susie’s Story: From “Protected” Person to “Supported” Person

**“I CAN LIVE MY OWN LIFE THE WAY I WANT TO.”—SUSIE**

Over three years ago, Susie had her guardianship terminated in Minnesota. She is a 32-year-old woman who grew up with learning disabilities that “qualified” her for a guardian when she turned 18. Susie’s guardian was her aunt. Her aunt’s main priorities were to complete the guardianship papers, not helping her live her best life. After a mental health crisis, a social worker came into her life. Susie was diagnosed with anxiety and depression caused by her feelings of helplessness and hopelessness. Susie decided to end her guardianship and take responsibility for her own life. Fortunately for Susie, her aunt was willing to assist her in ending the guardianship. After many months, Susie became her own legal guardian and is now using supported decision-making to make her own decisions. She is now working part-time and has control of her own money. She receives support from her aunt in paying her bills. She also receives some assistance in making health care decisions. Susie’s main reasons for ending the guardianship were to have the freedom to make her own decisions, have greater independence, set up her own appointments, and to travel as she desires. All with the support of her very supportive aunt.

## Supported Decision-Making is the Way Forward

Throughout the United States, Supported Decision-Making is being adopted as a less restrictive alternative to guardianship.<sup>1</sup> Texas was the first state to pass SDM legislation, followed by Delaware, the District of Columbia, Alaska, Wisconsin, Indiana, North Dakota, Nevada, and Rhode Island<sup>14</sup> (See Figure 1).

State laws vary widely on requirements for supported decision-making agreements, including who may serve as a supporter, the role of third parties, and the scope of agreements.<sup>1</sup>

Supported Decision-Making is also being adopted around the world, with laws promoting SDM enacted in Australia, Canada, Germany, Ireland, Scotland, England, Norway, Sweden and Israel.<sup>14</sup>

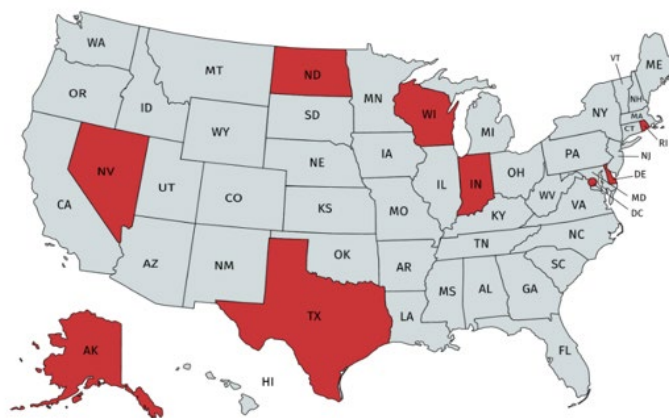


Figure 1. Map of states with SDM agreement laws.

## Resources for Supported Decision-Making

The [National Resource Center for Supported Decision-Making](#) has a wealth of resources available to guide Minnesota's transition to making supported decision-making the less restrictive alternative to guardianship, including eight different model agreements for supported decision-making. [Minnesota's Center for Excellence in Supported Decision-Making](#) has an excellent guide for families and other supporters.<sup>15</sup>

- The **Texas Model**<sup>11</sup> created the first Supported Decision-Making agreement. The document identifies the types of life decisions the supported persons wants help in making. The Texas Model makes clear that supporters do NOT make the decisions for the person. The agreement is notarized or signed by two witnesses.

The **PRACTICAL Tool**<sup>2</sup> is utilized by lawyers and others to help identify and implement the least restrictive alternative when guardianship of a person is being considered.<sup>2</sup> "PRACTICAL" is an acronym for the nine steps lawyers should follow to ensure that guardianship is used as a last resort, not as the first course of action.<sup>2</sup>

1. **P**resume guardianship is not needed.
2. **R**eason. Clearly identify the reason for concerns.
3. **A**sk if it can be caused by a temporary or reversible condition.
4. **C**ommunity. Determine if concerns can be addressed by connecting the individual to family/community resources and make accommodations.
5. **T**eam. Ask the individual if they have developed a team to help make decisions.
6. **I**dentify abilities. Identify areas of strengths and limitations in decision making.
7. **C**hallenges. Screen for and address any potential challenges presented by the identified supports and supporters.
8. **A**ppoint legal supporters consistent with person's values and preferences.
9. **L**imit any necessary guardianship petition and order.<sup>2</sup>

## Policy Recommendation

Minnesota needs to invest in Supported Decision-Making to ensure that all people have the civil right to make their decisions with support of trusted others. Supported Decision-Making ensures that people have the right to the least restrictive option before a guardian is appointed, in order to protect the fundamental rights of the person, increase self-determination, and improve life outcomes.

### Recommendations to Modernize Minnesota's Guardianship Law and Practices

- Add Supported Decision-Making to the Guardianship statute as Minnesota's least restrictive alternative to guardianship.
- Change the language of the Guardianship statute to require least restrictive efforts before granting guardianship. Require documentation in the petition for guardianship to show what least restrictive options have been attempted and why those options were not able to meet the support needs of the person. Require the court to address why less restrictive options did not work.
- Promote time-limited guardianship. Encourage the use of temporary guardianship by requiring that court orders explicitly state a defined duration of guardianship.
- Update the term "ward" and "protected person" to reflect person-first language: "Person Subject to Guardianship" and "Person Subject to Conservatorship."
- Increase financial support for Minnesota's Center for Supported Decision-Making so they can expand their education and outreach efforts.
- Require Minnesota's teachers, school social workers, and school counselors take continuing education in supported decision-making as a condition of licensure.
- Require information about supported decision-making be provided to youth and parents as part of the special education transition planning process.

To access this policy advocacy brief online go to: [sbs.mnsu.edu/social-work/policy-briefs](https://sbs.mnsu.edu/social-work/policy-briefs)

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