



Guardianship and Other Alternatives

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Overview



- APSI Background
- Decision-Making Processes
- The Role and Limitations of Guardianship
- Alternatives to Guardianship
- Tips for Families
- Resources
- Questions



APSI BACKGROUND

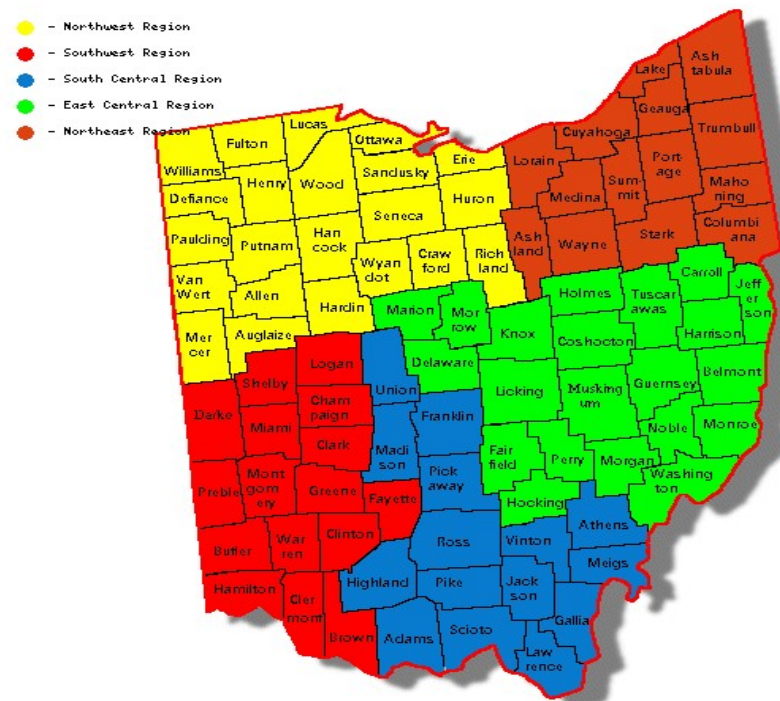
Background



- APSI provides guardianship and other protective services to adults with developmental disabilities
 - Guardian of the person only
- Guardian of last resort
- About 3,300 clients, representing almost every county
 - Only statewide guardianship program
- Available 24/7 to provide consent
 - APSI is the guardian, not the APSI staff member

Organization

- 9 offices in 5 regions
- 75 PSRs:
protective service
representatives
 - Average caseload
45-60 individuals
- Medical specialists provide
support on complex issues
and after hours



Source: diymaps.net (c)

By the Numbers: July 2019-June 2020



- 21,775 in-person visits
- 3,347 annual guardian plans and reports
- 364 long-term moves
- 8,024 after-hours calls
- 12,668 medical informed consents
- 7,398 service informed consents
- 500,000+ miles traveled



DECISION-MAKING PROCESSES

Important Take-Aways



- Guardianship is not mandatory for all people with disabilities
- The right solution depends on many factors
 - And can change over time
- Guardianship does not solve or prevent every problem
- Probate court appointment is required for guardianship
- There are gray areas in guardianship
 - And each court has different perspectives and processes

Competence and Capacity



- Guardianship is based on a finding of incompetence
 - “so mentally impaired . . . that the person is incapable of taking proper care of the person’s self or property . . .”
 - Legal determination by the probate court based on expert evaluation by physician or psychologist
 - Different from other legal definitions of competence
- Capacity is the ability to understand and make a specific decision at a specific time
 - May vary based on the issue to be decided, or based on fluctuations in the person’s condition (even day to day)
 - Relevant to guardianship AND alternatives

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

Helpful Resources



- Charting the LifeCourse: Tool for Exploring Decision Making Supports
 - <https://kcdd.org/images/documents/CtLC-Stoplight-Tool-for-Exploring-Decision-Making-Supports.pdf>
 - Formerly the Stoplight Tool
- ABA PRACTICAL Tool
 - https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool/
 - Not just for lawyers!



THE ROLE AND LIMITATIONS OF 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
 - Guardians can only decide what the probate court allows
 - Example: guardian of the person or guardian of the estate
 - Can be limited to medical or mental health or other specific issues
 - 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

Note re Paid Service Providers



- Courts have various perspectives and processes
- Rule 66.04(D): "shall not issue letters of guardianship to any direct service provider to serve as a guardian for a ward for whom the provider provides direct services, unless otherwise authorized by law."
- Rule 66.09(G): "Except as provided in Sup.R. 66.04(D), a guardian shall not provide any direct services to a ward, unless otherwise approved by the court."

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



ALTERNATIVES TO GUARDIANSHIP

Why Consider Alternatives?



- 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

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
- Current initiatives
 - Guardianship to Restoration Transition
 - Targeted Decision-Making



TIPS FOR FAMILIES

Services



- 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

Probate Courts



- Every probate court has different processes
- Some have online resources and forms/packets
 - Some have online records
 - Search [county] probate court for website
- Some have designated guardianship staff
 - Clerks and other staff cannot provide "legal advice"
- Issues to explore:
 - Forms
 - Timing (when to file, hearing)
 - Education
 - Reporting
 - Direct services
 - Background checks (BCI, FBI)
 - Co-Guardians

Guardianship Process



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

Do You Need an Attorney?



- Issues to consider:
 - Filling out forms
 - Appearing at hearing
 - Service of next of kin
 - Potential for conflict (especially between divorced parents)
 - Guardian of estate
 - Financial considerations
 - Reporting to the court



RESOURCES

Resources



- Ohio Department of Developmental Disabilities (DODD) <https://dodd.ohio.gov/wps/portal/gov/dodd/about-us/resources/dodd-toolkit-guardianship>
- National Resource Center on Supported Decision-Making www.supporteddecisionmaking.org
- Jenny Hatch Justice Project www.jennyhatchjusticeproject.org
- Ohio DD Council <https://ddc.ohio.gov/guardianship-estate-planning>
- Disability Rights Ohio <https://www.disabilityrightsohio.org/guardianship>

Questions?



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