

# Guardianship and Its Alternatives

## A Guide for the Families, Caregivers, Advocates, and Friends of People with Intellectual and Developmental Disabilities

### SELF-DETERMINATION and SUPPORTED DECISION-MAKING

**At home, at work, and within the community.**

**Self-Determination** is the freedom to live as one chooses, or to act or decide for yourself what you want or need. People with IDD have the same right to self-determination as all people and are entitled to the freedom, authority, and supports to exercise control over their lives. People with IDD must understand that they can direct and influence circumstances that are important to them. This right to self-determination exists regardless of guardianship status.

Family members, friends, and other allies play a critical role in promoting self-determination by providing supports and working collaboratively to achieve the individual's goals. Families, friends, and other allies should understand, recognize, and promote the rights and responsibilities of self-determination and respect the limitations of their own authority. Service providers, educators, and substitute decision-makers must recognize and respect the individual's right to self-determination and the limitations on their authority.

**Supported Decision-Making (SDM)** allows individuals with disabilities to make choices about their own lives with support from a team of people they choose. Individuals with disabilities select people they know and trust to be part of a support network to help them make important decisions about their own lives. Supported decision-making promotes self-determination, control, and autonomy. It fosters independence and productivity.

We ALL engage in self-determination through supported decision-making in our daily lives. We consult with family or friends, colleagues or classmates, and other experts like mechanics or mentors before we make decisions. We may seek support to decide whether to go on a date, buy a used car, change jobs, renew a lease, or undergo cataract surgery. We confer and consult with others, and then we decide on our own. All Arkansans should have the right to self-determination, whether they are disabled or not.

SDM is an alternative to guardianship. With SDM, individuals retain their legal right to make some or all decisions for themselves, with the support of trusted friends and/or family members they choose. Legal tools like Advance Directives, Powers of Attorney, and Representative Payees, among others, provide a less restrictive option.

Some people may need help with many types of decisions, and others may need help with only one or two. Some people need one-on-one support and discussion about the issue at hand, but a team approach may work best for others. The SDM model can be tailored to help people find solutions for their specific needs.

SDM is person-centered – this means SDM solutions are based on the wants and needs of the individual receiving support. SDM keeps control in the hands of the individual, providing customized assistance in specific ways and in specific situations that are useful to the individual.

## **GUARDIANSHIP**

A guardianship is a legal relationship where a person (the guardian) is given the legal right to care for another person (the ward) and/or the ward's property. There are three possible relationships:

1. Guardianship of the person
2. Guardianship of the estate
3. Guardianship of the person and the estate

### **When Is a Guardian Needed?**

The need for a guardian arises when a person is incapacitated to the extent that he/she is not capable of making decisions about their care and/or managing their assets. Incapacity is a result of the person's medical condition, adaptive behavior, and intellectual functioning. It can also be needed if the person is a minor. A court proceeding is required before a guardian can be appointed if a less restrictive option, like Supported Decision Making, has been ruled out.

The Arkansas Code Section for the statutory authority for guardianship is Arkansas Code Annotated §28-65-201-221. The assistance of an attorney is required to complete this process under normal circumstances.

**The statutory provision for guardianship requires the loss of voting privileges unless the guardianship ruling specifically includes those rights. Please speak with your attorney regarding this important matter.**

## Where Can I Find Help for Guardianship?

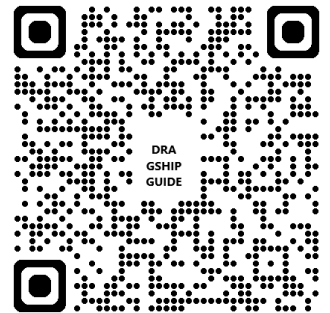
Resources available for guardianship, including information on attorneys who practice this specialty, are available at:

Arkansas Bar Association –  
Look for ARKANSASFINDALAWYER online, or call  
1-501-375-4606

Arkansas Law Help –  
Look for Family, Guardianship online, or call  
1-888-540-2941

Disability Rights Arkansas –  
Offers a free, online, downloadable guardianship resource booklet,  
or call 1-800-482-1174

Legal Aid of Arkansas –  
1-800-952-9243

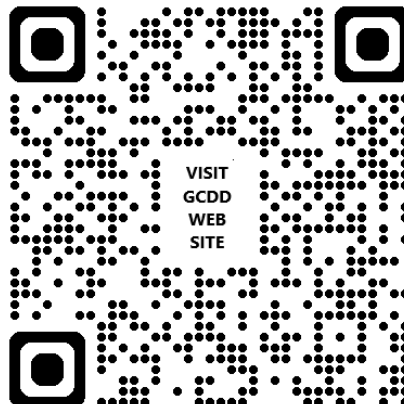


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The Governor's Council on Developmental Disabilities does not provide legal advice. We provide this guide to assist you in obtaining information about Arkansas guardianship law from a qualified professional.

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Find more information and resources on our website. Using the drop-down menu at the top, click "Resources"





Governor's Council on  
**Developmental Disabilities**  
ARKANSAS

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