

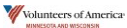
Rethinking Guardianship for Transition Age Youth: The Promise of Supported Decision Making

PACER Inspiring Possibilities Conference
October 7, 2021
Anita Raymond, LISW
Kathleen Carlson, LSW

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Objectives

- Explore reasons why families are often encouraged to seek guardianship when their child with disabilities turns eighteen and how to address concerns
- Understand the benefits and potential downsides of guardianship
- Describe supported decision making and other options for those with impaired decisional capacity



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*Introduction:
Transitioning to
Adulthood &
Current Practices*



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A Few Words About Guardianship in Minnesota



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Criteria for Legal Intervention: Guardianship

MN Stat. 524.5-102 Subd. 6: **Incapacitated Person:**

- o impaired to extent lacks sufficient understanding or capacity to make personal decisions
- and*
- o is unable to meet personal needs for medical care, nutrition, clothing, shelter, safety even with use of appropriate technological *and supported decision making assistance and*

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Criteria for Legal Intervention: Guardianship

...and

- o Identified needs cannot be met by less restrictive means, including but not limited to use of appropriate technological assistance, *supported decision making, community or residential services, or appointment of a health care agent.*

Court must make specific findings particular to the respondent why less restrictive alternatives do not work.

MN Stat. 524.5-310 (a)(2)

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Limited Guardianships for Persons Under 30

- Court may limit duration of *any* guardianship
- If the respondent is under 30 (and older than 17) the guardianship must be limited, and no longer than 72 months
- Expires automatically
- If need for long term guardianship can be filed at 29



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Legal Intervention: Conservatorship

MN Stat. 524.5-409 Subd.1(1)(2)(3)

- Person is unable to manage property & business affairs b/c of impairment in ability to receive and evaluate information or make decisions, even with use of appropriate technological assistance;
- Has property which will be wasted or dissipated unless management is provided *or*
- Money is needed for support, care, education, health, and welfare of the person or individuals entitled to the person's support *and*

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*Legal Intervention:
Conservatorship*

...and:

- Identified needs cannot be met by less restrictive means, including but not limited to use of appropriate technological assistance, supported decision making, representative payee, trusts, banking or bill paying assistance, or appt. of AIF

Court must make specific findings particular to the respondent why less restrictive alternatives do not work.

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*Guardians Can't Control Behaviors:
Practical Perspective*

consent (paper) power

not

(police) action or compliance power



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Adversarial process

- The process can be traumatic
- They may not understand what guardianship is
- They may believe they are in trouble with the court
- The process focuses on deficits and problems



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*Changing Perspectives:
Recognizing That Guardianship*

- has historically been overused
- is expensive
- may promote false sense of security
- often sought to solve problems that guardianship can't solve



Though well-intended, the protections of guardianship also remove rights and options

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Supported Decision Making: A Modern Approach to Supporting People



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An Emerging Approach

- Changing perspectives of guardianship and supporting people with disabilities
- Understanding benefits of self-determination
- Supported Decision Making: how we all make decisions



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Supported Decision Making

Assistance from one or more persons of an individual's choosing in understanding the nature and consequences of potential personal and financial decisions which enables the individual to make the decisions and, when consistent with the individual's wishes, in communicating a decision once made.

MN Statute 524.5-102, Subd. 16a



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**Supported Decision Making:
Paradigm Shift**

- “A way people can make own decisions, stay in charge of their lives while receiving help they need to do so.”
- Person making decisions *with* support of others vs. others making decisions *for* the person: “...cutting through the jargon to understand what’s going on and what you need to do...”

~ Jonathan Martinis, Esq.

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“[J]ust a fancy way of describing how we all make choices. We all need help making decisions, every single day.

~ Jonathan Martinis, Esq.



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“[J]ust a fancy way of describing how we all make

“I don’t need a guardian. I just need a little help!”

~ Jenny Hatch



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SDM Example: Making Health Care Decisions

- person makes own decisions without talking to anyone else: not SDM
- someone else makes all medical decisions for person without discussing preferences/opinions: not SDM
- *anything else - attending medical appts. together, explains healthcare choices in plain language, shares access to medical records: is SDM*

(National Resource Center on SDM Brainstorming Guide)

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SDM Example: Deciding Where to Live

- person makes own decisions without consulting friends, family, professionals: not SDM
- someone else makes all living decisions for person without considering preferences / opinions: not SDM
- *anything else – visiting possible residences together, making pro/con lists; discussing direct service needs: is SDM*

(National Resource Center on SDM Brainstorming Guide)

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Not Everyone is a Candidate for SDM



But a lot of people are!

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Person May Be a Candidate for SDM

- Recognizes needs help or support
- Has trusted others to form team
- Cooperative and/or open to trusted others' ideas
- Ideally, able to also complete HCD/POA
- (Dx. irrelevant)



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Person Likely Not a Candidate for SDM

- Does not recognize need for help/refuses
- Resistiveness cannot be overcome
- Person sabotages others' efforts (and this can't be overcome)
- No trusted supporters
- Supporters not able to act per wishes/best interests (and can't learn how to)

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But What About....?

Isn't Guardianship required when person is "incapacitated"?


- Guardianship is NOT required by MN law:
 - to receive County Services
 - to sign IEP when person turns 18
- Residential and Care Facilities cannot mandate appointment of Guardian as condition of admission



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But What About....?


- Doctors won't talk to us without guardianship?
- My adult child may be taken advantage of?
- My adult child may make bad decisions?

 MINNESOTA AND WISCONSIN

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"I don't need a guardian. I just need a little help!"
~ Jenny Hatch



 MINNESOTA AND WISCONSIN

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Supported Decision Making Resources

 MINNESOTA AND WISCONSIN

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SDM TOOLS

- Brainstorming Guide
- How to Make an SDM Agreement
- “Stoplight” Tools
- CESDM and Guardianship Information Line



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SDM Brainstorming Guide

“This tool can help people brainstorm ways that they are already using supported decision-making, and think about new ways supported decision-making could help the person with a disability learn to make her own safe, informed choices.”

Quality Trust, 2016

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How to Make a Supported Decision Making Agreement

How to Make a
Supported Decision-Making Agreement



A Guide for People with Disabilities
and their Families

American Civil
Liberties Union

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Chapter 2
Thinking about Choices

 Why do this activity?

This activity will help you think about how you make choices. You can talk about what kind of help you like and don't like. You can think about choices you have made and what you liked and didn't like when you were choosing.

This will help you think about how you want Supported Decision-Making to work.

Supported Decision-Making is different for every person! This activity will help you think about what is important to you.

 **Volunteers of America**
MINNESOTA AND WISCONSIN


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Chapter 3
Thinking about Support

Supported Decision-Making lets you get help or **support** in making your own choices. Everyone gets support in making choices every day.


Some kinds of support are:

- **Plain-language information.** This means written information is provided in simple words.




- **Information in pictures or explained.** This means getting information in pictures or by someone talking to you.
- **Research to learn more about choices.**
- **Help in knowing what choices you have.**


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- **Visits and trials.** This means trying out different choices, to see how you feel and which one you like.



- **Reminders** about important dates and times




- **Help in thinking about pros and cons.** This means making lists of the good and bad parts of different choices.

- **Having a supporter come to meetings and appointments with you.**


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- **Technological support.** This means using a phone or computer to help with choices.

- **Advice from supporters.** Even if you get advice, you are still the decider.



- **Help communicating a choice.** After you have made a choice, someone might make sure that everyone understands and respects your choice.

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| IDENTIFYING ALTERNATIVES TO GUARDIANSHIP | | | | | | | | | | | | | | |
|---|--|---|--|--|---|--|---|--|--|--|--|--|--|--|
| This tool was designed to assist with identifying a person's ability to make decisions and manage key areas of life. It is intended to assist with exploring alternative and less restrictive options to primary or full guardianship. | | | | | | | | | | | | | | |
| Name of individual: _____ | | | | | | | | | | | | | | |
| Name of person completing this form: _____ | | | | | | | | | | | | | | |
| Relationship to individual (check one): Self Family Friend Guardian Other: _____ | | | | | | | | | | | | | | |
| How long have you known the individual? _____ | | | | | | | | | | | | | | |
| <p>Step 1: Decide for each question if the answer is yes or no. If yes, put a checkmark in the GREEN column - this means the person is able to do it. If NO, put a mark in the yellow column.</p> <p>Step 2: When you have completed all the questions, explore alternative to guardianship to meet the supported decision making needs for all questions marked in the yellow column.</p> <p>Step 3: ONLY if NO alternative can be identified, then limited guardianship might be considered for those specific areas of need.</p> | | | | | | | | | | | | | | |
| <table border="1"> <tr> <th>Can you make and communicate choices in regard to employment?</th> <th>Can you make and communicate choices in regard to agency, support or job, and control?</th> <th>Can you make and communicate choices in regard to financial commitments, such as regular bills?</th> <th>Can you make and communicate choices in regard to health care?</th> <th>Can you make and communicate choices in regard to living arrangements?</th> </tr> <tr> <td style="background-color: #90EE90;"></td> <td style="background-color: #FFFF00;"></td> <td style="background-color: #FFD700;"></td> <td style="background-color: #FFD700;"></td> <td style="background-color: #FFD700;"></td> </tr> </table> | | | | | Can you make and communicate choices in regard to employment? | Can you make and communicate choices in regard to agency, support or job, and control? | Can you make and communicate choices in regard to financial commitments, such as regular bills? | Can you make and communicate choices in regard to health care? | Can you make and communicate choices in regard to living arrangements? | | | | | |
| Can you make and communicate choices in regard to employment? | Can you make and communicate choices in regard to agency, support or job, and control? | Can you make and communicate choices in regard to financial commitments, such as regular bills? | Can you make and communicate choices in regard to health care? | Can you make and communicate choices in regard to living arrangements? | | | | | | | | | | |
| | | | | | | | | | | | | | | |
| <p>DAILY LIFE & EMPLOYMENT</p> <p>Can the person make and communicate choices in regard to employment?</p> <p>Can the person make and communicate choices in regard to agency, support or job, and control?</p> <p>Can the person make and communicate choices in regard to financial commitments, such as regular bills?</p> <p>Can the person make and communicate choices in regard to health care?</p> <p>Can the person make and communicate choices in regard to living arrangements?</p> | | | | | | | | | | | | | | |
| <p>HEALTHY LIVING</p> <p>Can the person make decisions about where, when, & what to eat?</p> <p>Can the person follow a prescribed diet and/or take medicines as directed?</p> <p>Can the person understand the need to maintain personal hygiene and dress care?</p> <p>Can the person make and communicate decisions regarding medical treatment, including understanding the consequences of not taking the medication?</p> <p>Does the person exhibit health consequences associated with high risk behaviors (substance abuse, excessive, high risk sexual activities, etc.)?</p> <p>Can the person alert others and seek medical help for potential health problems?</p> <p>Is the person able to decide and direct what kind of support they need or want and accept who provides those supports?</p> | | | | | | | | | | | | | | |

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Missouri
Guardianship
Stoplight Tool

IDENTIFYING ALTERNATIVES TO GUARDIANSHIP

| 1 SOCIAL & SPIRITUALITY | | | |
|--|--|--|--|
| Can the person effectively engage resources related to faith issues such as family, friends, community, or other persons who share the risk to assist in decision-making? | | | |
| Is the person able to make appropriate decisions concerning marriage and divorce related to? | | | |
| Does the person understand concepts and performance in spiritual or religious practices? | | | |
| 2 SAFETY & SECURITY | | | |
| Does the person avoid excessive environmental changes, heights, sharp objects, hot liquid, poisonous products, etc.? | | | |
| Is the person able to recognize when someone is taking advantage of them, buying them, or doing them wrong, through financial and personal transactions? | | | |
| Does the person know who to call if they are in danger, have questions, or have trouble with parking, car, or apartment? | | | |
| 3 COMMUNITY LIVING | | | |
| Is the person able to be on their own without risk of serious harm or injury to themselves? | | | |
| Does the person understand who to contact with managing a home if it is left there maintenance, landscaping, electrical, etc.? | | | |
| Is the person able to access community resources critical to becoming a successful and healthy community member (case officer, transportation, bank, grocery store, emergency services, health, etc.)? | | | |
| 4 CITIZENSHIP & ADVOCACY | | | |
| Is the person able to understand and communicate complex or legal processes regarding legal documents (i.e., contracts, powers of attorney) or services (i.e., legal, medical, disability services)? | | | |
| Is the person able to identify someone they want to represent their interests and support if they wish decision-making? | | | |
| Does the person demonstrate the ability to consent? | | | |
| Does the person understand the consequences of making decisions that affect their health, educational, or legal? | | | |
| Is the person able to communicate agreement to share information with family members, and friends, and other legal professionals? | | | |

REV. 12/2019

Missouri
Guardianship
Stopslight Tool

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How to Make A Supported Decision Making Agreement: A Guide for People with Disabilities and Their Families

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CHARTING the LifeCourse

Tool for Exploring Decision Making Supports

This tool was designed to assist individuals and supporters with exploring decision-making support needs for each life domain.

Name of individual: _____
 Relationship to individual (circle one): Self Family Friend Guardian Other: _____
 How long have you known the individual? _____

For each question below, mark the level of support you need when making and communicating decisions and choices in this domain.

| Charting the LifeCourse life domains | I can do it alone with my support | I need support with my decision | I need someone to decide for me |
|---|--------------------------------------|---------------------------------|---------------------------------|
| DAILY LIFE & EMPLOYMENT | | | |
| Can I decide if or where I want to work? | | | |
| Can I track time and take appointments, which are personal and/or professional? | | | |
| Can I do what I need to do to keep my job? | | | |
| Can I decide if I need to work something new and how to find a job? | | | |
| Can I make big decisions about money (open bank account, make big investments)? | | | |
| Can I make monthly payments (rent, personal items, recreation)? | | | |
| Can I pay bills on time (rent, cell phone, internet)? | | | |
| Can I figure out budget to know how much money I have to spend? | | | |
| Can I make sure my bills are being paid or going to the bank? | | | |
| HEALTHY LIVING | | | |
| Can I choose where to go for the doctor or dentist? | | | |
| Can I understand what doctors, medical health centers, hospitals, specialists or other health care providers say? | | | |
| Can I make health/medical choices for my life to stay well being? | | | |
| Can I make health decisions, including when to see a doctor? | | | |
| Can I make health choices in serious situations (cancer, hip injury)? | | | |
| Can I make health choices in an emergency? | | | |
| Can I take medications as directed or follow a prescribed diet? | | | |
| Can I choose the support I take my medication? | | | |
| Can I understand the consequences if I refuse medical treatment? | | | |
| Can I learn about what and medical tests for serious health problems? | | | |
| Can I make choices about birth control or pregnancy? | | | |
| Can I understand health consequences associated with choosing high risk behaviors (drinking alcohol, smoking, high risk sexual activities, etc.)? | | | |
| Can I decide where, when, and what to eat? | | | |
| Can I understand the need for personal hygiene and dental care? | | | |

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In Summary...




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“Supported Decision Making can sound like a new, foreign idea. But most families, people with disabilities, and advocates are already using [SDM] even if they don’t call it that. In fact, most people without disabilities are also already using [SDM]!”

[SDM] means helping a person understand, make, and communicate her own decisions. This will look different for everyone.”


SDM Brainstorming Guide



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SUMMARY: Supported Decision Making

- No court involvement
- Better chance of preserving relationship
- Less expensive
- Better outcomes for person
- Can accomplish a lot of what is accomplished in guardianship
- Required by law



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Guardianship and SDM Considerations

- Impact (and hassle) of guardianship
- Benefits of self-determination/dignity of risk
- Safety & vulnerability concerns
- Modifying expectations of safety (is gship as protective as you think it is?)
- Guardianship is still an option



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CESDM

CENTER FOR EXCELLENCE
IN SUPPORTED DECISION MAKING



GUARDIANSHIP INFORMATION LINE

952-945-4174

1-844-333-1748



cesdm@voamn.org

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CESDM

CENTER FOR EXCELLENCE
IN SUPPORTED DECISION MAKING

- Phone Consultation, Advice, I&R
- Assessments
- Facilitation of Supported Decision Making & Surrogate Decision Making Legal Tools
- Petitioning for G/C, Terminations, Modifications



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New! Virtual Guardianship Info Clinic

1ST WEDNESDAYS

GUARDIANSHIP INFORMATION CLINIC

Drop in during clinic hours to meet with our social workers or attorney for educational information and to get their questions answered in real time: *no appointments, no voice mail, no phone tag, just direct access to our social service and legal team members!*

Contact:
cesdm@voamn.org



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New! Explainer Videos

Understanding Guardianship

Guardianship is a legal arrangement in which a court removes certain rights from a person, and gives these rights to a Guardian.



The guardianship process



SDM in Practice



How to Do SDM



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RESOURCES: VOA MN

•Legal Services: HCD forms and more
voamnwi.org/estate-and-elder-law

•CESDM & Protective Services: links to articles, G&C FAQ and more
voamnwi.org/cesdm

Guardianship & SDM Explained

youtube.com/playlist?list=PLKJYnxTHNgqVUVjdT6NL29vvLqSQU0I-F

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like us on
facebook 

www.facebook.com/cesdmvoamn/

<https://www.linkedin.com/groups/13961818/>



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www.voamnwi.org/pdf_files/cesdm-guide-to-supported-decision-making




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RESOURCES

National Resource Center on SDM Brainstorming Guide (and SDMA model forms)
<http://www.supporteddecisionmaking.org/sites/default/files/sdm-brainstorming-guide.pdf>

National Resource Center on Supported Decision Making
www.supporteddecisionmaking.org




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RESOURCES

How to Make an SDMA
http://www.ucdmc.ucdavis.edu/mindinstitute/centers/cedd/pdf/How%20to%20make%20a%20SDM%20agreement%20for%20people%20with%20disabilities%20and%20their%20families_ACLU.pdf

Missouri Stoplight Tool
<http://moguardianship.com/Alternatives%20to%20Guardianship%20Tool%20Revised%2011-2015.pdf>

Charting the Lifecourse
<https://www.lifecoursetools.com/lifecourse-library/exploring-the-life-domains/supported-decision-making/>




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RESOURCES

State Courts-forms and manuals:
www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship.aspx

Bill of Rights for Wards & Protected Persons:
www.revisor.mn.gov/statutes/?id=524.5-120

National Resource Center on Supported Decision Making
www.supporteddecisionmaking.org



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RESOURCES

MN Courts: Online Training

<http://www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship.aspx>




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Online Training: *Finding the Right Fit*



<https://eji.courtllms.org/>



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RESOURCES

WINGS MN: www.wingsmn.org and:
www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship/WINGS.aspx

Supported Decision-Making: What, Why, & How by Morgan Whitlatch
http://supporteddecisionmaking.org/sites/default/files/event_files/MD-Arc-2016-Convention.pdf



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SUPPORTED DECISION MAKING AGREEMENT EXAMPLES


<http://www.supporteddecisionmaking.org/sites/default/files/sample-supported-decision-making-model-agreements.pdf>



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RESOURCES

- **American Association on Intellectual and Developmental Disabilities and The Arc Joint Position Statement**
http://aaidd.org/news-policy/policy/position-statements/autonomy-decision-making-supports-and-guardianship#.WH_huOkiy70
- **National Guardianship Association SDM Position Statement**
http://guardianship.org/documents/NGA_Policy_Statement_052016.pdf



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RESOURCES






<https://www.youtube.com/playlist?list=PLKdIRbjdmxgeDSVBZhEFyrzIli9zjO3Mc>

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VIDEO RESOURCES

- **What Guardianship Means to Me**
<https://youtu.be/u6FTL7bYUAW>
- **Missouri Tool**
https://youtu.be/D_XnGrCi8L4
- **Michael, St. Thomas School of Law Clinic on WCCO**
<https://youtu.be/aclKso0vqly>



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- Annual Summit
- Quarterly newsletters with local and national news
- Community and Professional Education & Training: Guardianship, SDM, etc.

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Join our efforts to promote alternatives to guardianship and expand networks of people addressing maltreatment of vulnerable adults:

Become a WINGS MN community member!

cesdm@voamn.org
www.wingsmn.org



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We're Listening!

We want to hear your guardianship or supported decision making story!

Please contact us to tell us more about your experience.

952-945-4174

cesdm@voamn.org



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