

Survivors & Guardianship in Maine

A Guide for Sexual Assault Advocates

Guardianship

Guardianship is the result of a formal judicial process (in Probate Court), which gives which gives an individual's decision-making authority to someone else. It begins when a person (or the state, through the Department of Health and Human Services) files a petition for guardianship. After a hearing, the judge will issue an order establishing that guardianship is not needed, a Full Guardianship is needed, or a Limited Guardianship is needed for the individual. Full Guardianship has been described as "civil death" by disability rights advocates because an individual under guardianship is stripped of legal capacity and fundamental civil rights such as the ability to make choices about where to live, marriage, healthcare, and finances.

Levels of Guardianship

There are two levels of guardianship - Plenary (Full) or Limited. Limited Guardianship only gives decision making rights to the guardian over specific areas (e.g. financial, medical, housing). The type of guardianship and the scope (if Limited) should be listed on their Guardianship Order, which is public record and can be found at maineprobate.net.

Some important points to consider:

- There are no informal guardianships.
- No level of guardianship can remove the individual's right to vote unless specifically stated.
- Access to medical services are an "enumerated right" which means guardians generally cannot prevent individuals who receive state Developmental Services from seeking medical services.
- Plenary Guardianships are more common than Limited Guardianships.
- All individuals under guardianship have the right to contact Disability Rights Maine independently to seek advocacy.

Working with Survivors who have Intellectual Disabilities & Autism

Determining scope of guardianship

Most guardianship records are public and can be found on maineprobate.net.

Can guardians deny an individual's access to sexual assault services?

- Guardians cannot authorize a provider to violate an individual's rights. For example, staff in a group home cannot decide on behalf of the guardian to prohibit the individual from going to the police station, making phone calls, or receiving advocacy services. This would be a violation of the rights of the individual.
- Some people have behavioral plans that might restrict their permission to engage in certain activities, including telephone calls. Enforcement of these plans can be carried out by staff in a group home, but only once approved by a Regional Review Committee. There are no informal behavior management plans.
 - By statute, a behavioral support plan can NEVER restrict an individual's access to their guardian, crisis services, or advocacy from Disability Rights Maine.
 - If there are concerns that an individual is prevented from contacting the police, hospital, or sexual violence advocacy, regardless of the reason, consider a report to Adult Protective Services (APS).
- Sexual assault advocacy for recipients of Developmental Services might legally fall under the umbrella of medical services (which is an enumerated right under Maine Law at 34B-5605); contact a Disability Rights Maine advocate for more information.

What can be done if you suspect a violation of rights.

- In collaboration with the survivor (as we do with all mandated reporting), call APS to make a report. This will likely trigger an investigation.
- Call Disability Rights Maine at 207-626-2774 with the client to speak to a Developmental Services Advocate. DRM has Developmental Services Advocates in offices throughout the state.
- Not sure a rights violation has occurred? Call DRM with de-identified information to get general information.
- All individuals who receive Developmental Services are required to have case managers who are separate from guardians and home providers. Ask the individual if their case manager would be a good ally.

Supported Decision Making + New Probate Code

The current Maine Probate Code has been repealed and replaced in the most recent legislative session. These changes will take effect in July 2019.

- The new Probate Code creates several procedural protections at multiple stages in the proceedings to ensure that guardianship is not awarded until lesser restrictive measures are explored, including Supported Decision Making.
- Under the new code the court's order must specify that by clear and convincing evidence the individual's needs cannot be met through less restrictive alternatives.

About Disability Rights Maine

Disability Rights Maine (DRM) is Maine's protection & advocacy agency for people with disabilities. As a legal services agency that provides legal advocacy across multiple initiatives, DRM represents people whose rights have been violated or who have been discriminated against based on their disability. They also provide training on rights and self-advocacy and advocate for public policy reform.

The Developmental Services Advocacy (DSA) Program is a program of DRM specifically providing legally-based advocacy services to adults with intellectual disabilities and autism. DRM is contracted to receive reports made to DHHS that relate to issues around violations of rights, which is handled by the DSA program. DRM conducts a "Rights Training" where you can learn more about the rights of people with disabilities and guardians. DRM trains statewide on Supported Decision Making and alternatives to guardianship.

DRM has long advocated for a change in the laws around guardianship to promote Supported Decision Making. Decision making is a skill that can be learned and improved upon over time. The belief is that if a person has the ability to participate in the decision making process, there is a way to accommodate that person. Learn more here: supportmydecision.org.

Additional Resources

Crisis Services - Office of Aging & Disability Services, Maine DHHS

1-888-568-1112; ask for a DS Case Worker

The Developmental Services (DS) crisis system is for anyone with an intellectual disability or brain injury. DS Crisis provides assistance to individuals, families, guardians, and providers to maximize individuals' opportunities to remain in their homes and local communities during and after crisis incidents.

Adult Protective Services - Office of Aging & Disability Services, Maine DHHS

To report abuse, neglect or exploitation, call 24-hour, toll-free 1-800-624-8404

Adult Protective Services provides or arranges for services to protect incapacitated and dependent adults (age 18 and over) in danger of abuse, neglect or exploitation.



FOR EDUCATIONAL PURPOSES; NOT LEGAL ADVICE This material is presented for educational purposes only. It is not and does not take the place of legal advice in any specific situation nor is it offered as such by Disability Rights Maine or the Maine Coalition Against Sexual Assault. The material is intended to be timely as of the date written and/or originally presented. Due to the rapidly changing nature of the law, information contained in these materials or presented by the speaker may become outdated.

It is the responsibility of any individual using or relying on these materials to confirm their timeliness. Guardianship Information is not applicable after July 2019.