



New Jersey: Promoting the Use of Alternatives to Guardianship by Changing Court Rules

Background

There are many approaches to strengthening the use and practice of Supported Decision-Making (SDM) and other alternatives to guardianship. When a state law change that would recognize Supported Decision-Making was not feasible, the [New Jersey State Team](#) — part of the second cohort of the Center on Youth Voice, Youth Choice — pursued other avenues. Co-led by Disability Rights New Jersey (Disability Rights NJ) and including The Boggs Center on Developmental Disabilities, the New Jersey Council on Developmental Disabilities, and the SPAN Parent Advocacy Network, the State Team worked with partners across systems to identify opportunities for systemic reform. When a path opened to collaborate with the New Jersey Judiciary, Disability Rights NJ seized the opportunity to pursue changes that would make it easier to end overbroad or unnecessary guardianships and expand access to alternatives like Supported Decision-Making.

Implementation

In late 2021, an attorney representing a person subject to guardianship sought technical assistance from Disability Rights NJ to restore their rights. Although the guardian did not oppose termination of the guardianship, the judge was reluctant, citing safety concerns. Disability Rights NJ identified a key barrier: the lack of a clear burden-of-proof standard for restoration petitions. The law was unclear about how much evidence a person needed to present to get their guardianship terminated.

The attorney, a member of New Jersey's Judiciary Working Group on Elder Justice, brought Disability Rights NJ into the Committee that was drafting court rule changes. The Working Group proposed that when a person subject to guardianship presents prima facie evidence that the guardianship should be terminated or limited, the court may restore their rights. "Prima facie" means the evidence on its face shows the person is able to manage or partially manage their affairs. If any party or interested person objects, the burden shifts to that objector to prove by clear and convincing evidence that the guardianship should continue. The "clear and convincing" evidence standard is much higher and harder to meet than the "prima facie" one. The proposed rule also clarified that a person seeking termination or limitation has the right to a court-appointed attorney if they are not otherwise represented.



The Working Group also recommended that judges and court staff create trainings and resources on the restoration-of-rights process and on less restrictive alternatives, including SDM.

The Supreme Court of New Jersey adopted these amendments to N.J. Court Rule 4:86-7, effective January 1, 2024. The revision made New Jersey one of the few states with a clear burden-of-proof framework in restoration cases. The rule also implemented Disability Rights NJ's recommendation that a person seeking to have their guardianship terminated need only submit a single affidavit or certification – rather than multiple ones – from a physician or psychologist to support their case, thus decreasing evidence requirements.

Impact

The individual at the center of the initial case successfully had his rights restored. More broadly, the rule creates a clearer path to restoration, reduces evidentiary uncertainty, and is expected to benefit people subject to guardianship across New Jersey. Clarifying the burden of proof and a person's right to legal counsel may also make attorneys more willing to represent a person subject to guardianship in a case to restore their rights. By leveraging its relationship with one attorney, Disability Rights NJ achieved systemic change that now enhances people with disabilities' access to alternatives to guardianship, including SDM.

Disability Rights NJ continues outreach and education about the rule change. It is advocating for this information to be posted on the Judiciary's website; has provided continuing legal education for attorneys; and is planning trainings for court staff, people with disabilities, and families. Disability Rights NJ has also presented on SDM and rights restoration to the Working Group, social workers, and medical professionals from Rutgers Medical School.

As [Giancarlo Vicari](#), a Youth Ambassador from New Jersey, stated: *"It's important for people with disabilities to be able to more easily terminate their guardianships Otherwise, in the eyes of the law, their influence is negligible."*

Suggestions for Replication

- » **Think creatively about systems change.** [At least 39 states and the District of Columbia](#) have formally recognized Supported Decision-Making in their state laws. Legislation is one path, but court-rule reform and practice changes can also expand access to SDM.
- » **Review burden-of-proof standards in rights restoration cases.** Even in States where SDM has been recognized through legislation, a high burden of proof can make it harder for people to successfully terminate or limit their guardianships in favor of such alternatives. Revise standards through court rulemaking or legislation where possible.
- » **Build partnerships and cultivate allies.** Targeted technical assistance, outreach, and free trainings can create relationships that lead to systemic reform. A single attorney's request for Disability Rights NJ's help created a fruitful partnership that led to systemic change.
- » **Consider the judiciary as a partner.** Judicial collaboration can expand resources and practices that improve access to alternatives like Supported Decision-Making.

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What is the Center on Youth Voice, Youth Choice?

At the Center on Youth Voice, Youth Choice, we work with youth with IDD, families, and supporters. We share information about alternatives to guardianship. Youth with IDD lead projects about alternatives to guardianship. We believe that you have the right to make your own decisions about your life!

[Visit the Center on Youth Voice, Youth Choice website](#) to learn more about *alternatives to guardianship* and what these words mean.

[Visit the Center for Public Representation's website](#) to learn more about *supported decision-making*.

Do you have more questions about this fact sheet and guardianship?

Please email the Center on Youth Voice, Youth Choice team at **youthvoice@umb.edu**