



## PLAIN LANGUAGE SERIES

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

#### **Background**

States across the US are working to encourage people to think about alternatives to guardianship. Alternatives to guardianship are tools you can use to avoid guardianship. Using an alternative to guardianship means you do not have a guardian making decisions for you. One example of an alternative to guardianship is supported decision-making. Supported decision-making is a way of making decisions for yourself, with some help. Alternatives to guardianship, like supported decision-making, give people more control over their own lives.

The New Jersey State Team is part of the Center on Youth Voice, Youth Choice (CYVYC). The [New Jersey State Team](#) wanted more people to be able to use alternatives to guardianship. To do that, the New Jersey State Team decided to work with the courts in New Jersey. Courts make decisions about who needs a guardian and when guardianships should end. The New Jersey State Team wanted the courts to change their rules to make it easier to end guardianships when they are not needed.

#### **What Happened in New Jersey?**

In 2021, a lawyer asked for help from Disability Rights NJ. The lawyer was working with a person who wanted to stop being under guardianship. Let's call that person John. If his guardianship stopped, John would get his rights back, like his right to make decisions for himself. Getting his rights back is called *rights restoration*.

John's guardian was ok with the judge ending the guardianship. But the judge was unsure. The judge thought John would be unsafe without a guardian. The New Jersey law did not say how much evidence a person needed to have and show to a judge to end their guardianship.

#### **What Did the Members of the New Jersey State Team Do to Help?**

Disability Rights New Jersey recognized that this was a problem. In court cases, there are *standards of proof*. A *standard of proof* means the amount of evidence someone

needs to show a judge to win their case. The problem was New Jersey law did not say what the *standard of proof* was for a judge to end or limit a guardianship. For example, did John need to show the judge a lot of proof – called *clear and convincing evidence* – that he would be safe without a guardian? Or was it enough for John to show the judge some evidence – called *prima facie evidence* – that he can manage his life and property, with or without alternatives to guardianship? Should it make a difference to the judge that John's guardian was okay with John's guardianship ending? New Jersey law did not clearly answer these questions.

If a person with a disability wanted to end their guardianship, Disability Rights New Jersey wanted that process to be easier.

#### **Who is part of the New Jersey State Team?**

- Disability Rights New Jersey (Disability Rights NJ)
- The Boggs Center on Developmental Disabilities
- New Jersey Council on Developmental Disabilities
- SPAN Parent Advocacy Network

They wanted people with disabilities to only have to show *prima facie* evidence to a judge to end their guardianships.

With the lawyer's help, Disability Rights New Jersey joined New Jersey's Judiciary Working Group on Elder Justice. That group was working on changing the court rules that told judges what to do in guardianship cases. By being a part of that group, Disability Rights New Jersey could help change those rules.

Because of that group and the New Jersey State Team, there is now a new state court rule for how *standards of proof* work in *rights restoration* cases like John's. Here are examples of how the new rule works:

**Example 1:** *John wants to stop his guardianship. He shows the court some proof (prima facie evidence) that he can manage his life and property by using alternatives to guardianship, like supported decision-making. John's guardian does not disagree. Nobody else tells the judge they disagree. The judge can stop the guardianship.*

**Example 2:** *John wants to stop his guardianship. He shows the court some proof (prima facie evidence) that he can manage his life and property by using alternatives to guardianship, like supported decision-making. John's guardian does not disagree. But someone else – say John's sister, Michelle – does disagree. Michelle tells the judge she thinks John still needs a guardian. Michelle must now show the judge a lot more proof (clear and convincing evidence) of why the guardianship should continue. She must show a lot more proof for why the alternatives John wants won't work. If she cannot show a lot of proof of that, then the judge can end the guardianship.*

The new rule also changed a few other things. Under the new rule:

» The person who no longer wants a guardian (like John) has a right to get an attorney. That means that, if John did not already have an attorney when he came to court to stop his guardianship, then the judge would find an attorney for him.



» To start the court review, the person who no longer wants a guardian (like John) only needs to show the one official note from a medical doctor or psychologist that supports ending the guardianship. Under the old rule, John would have to have more than one note from a medical doctor or psychologist to ask for his guardianship to be stopped.

The New Jersey Judiciary Working Group on Elder Justice also recommended trainings be created for judges and other people who work at the court. These trainings will help them learn about how *rights restoration* cases and alternatives to guardianship, like supported decision-making, work.

The Supreme Court of New Jersey adopted this new rule. The new rule is called an amendment, because it changed a court rule (N.J. Court Rule 4:86-7). Starting on January 1, 2024, this rule applies to *rights restoration* cases.

New Jersey is one of the few states where there a clear burden of proof in *rights restoration* cases.

## What Does this Mean for New Jersey?

John got the judge to stop his guardianship. Now, John does not have a guardian. He got his rights back.

Under the new rule, it will now be easier for people with disabilities in New Jersey to stop their guardianships. The court path for how they can do that is clearer. They now know how much proof they need to show a judge to get their guardianship limited or ended. They now have the right to have an attorney help them, even if they cannot hire one themselves.

Disability Rights NJ and the New Jersey State Team have helped change the system. They have made it easier for other people in New Jersey to use alternatives to guardianship.

Disability Rights NJ helps teach people about this rule change:

- » They are advocating to get information on the Judiciary's website.
- » They are planning to train court staff, people with disabilities, and families.
- » They have presented on supported decision-making and *rights restoration* to the Judiciary Working Group, social workers, and medical professionals from Rutgers Medical School.

Giancarlo Vicari, a Youth Ambassador from New Jersey, said: *"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."*

## How Can Other States Do What New Jersey Did?

**Be creative!** There are many ways to change the system. One way is by changing state laws. At least 39 states and Washington, DC, have included supported decision-making in their state laws. Another way is to do what New Jersey did and change how things work in the courts. Your state can help more people get alternatives to guardianship in different ways.

**Look at burden-of-proof standards in *rights restoration* cases.** Sometimes changing the law is not needed or not enough. If the burden of proof is too high or not clear, like it was in New Jersey, it might be hard for people to get their rights back. Try making standards of proof clearer. Try changing the *clear and convincing evidence* standard to the *prima facie* evidence standard. You can do what New Jersey did and work through the courts.

**Work together.** Help teach people about alternatives to guardianship, like supported decision-making. In New Jersey, just one lawyer asked for help from Disability Rights NJ. By asking for help, they made a huge difference together! Now, people can get their rights back more easily in New Jersey.

**Work with the courts.** Working with judges and other people in the courts can help people learn about supported decision-making. Courts can make better rules to guide judges in making decisions to stop or change guardianships.

## 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](mailto:youthvoice@umb.edu)

## Do You Want to Learn More about What Happened in New Jersey?

For more information, contact Stacey Bussel, Managing Attorney – Community Inclusion and Employment Teams, Disability Rights NJ by email at: [sbussel@disabilityrightsni.org](mailto:sbussel@disabilityrightsni.org)



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