



## Guardianship and Supported Decision-making Draft Position Statement

The Texas Council for Developmental Disabilities supports increasing opportunities for, and protecting the civil rights and well being of, people with developmental disabilities. The vast majority of people with disabilities, including those with intellectual and developmental disabilities, are able to make important decisions without the need for a guardian. With the provision of supports and services, most persons with disabilities are capable of making important decisions such as where they want to live without the need for a full or limited guardian.

Guardianship is a legal tool which allows a person to make decisions for another person. It also removes the civil rights and privileges of a person by assigning control of their life to someone else. Although state law in Texas directs a court to encourage the development or maintenance of maximum self-reliance and independence, it is not uncommon for courts to create full guardianships that deprive individuals with disabilities of the right to make fundamental decisions about their lives. The broad definition of incapacity in Texas Estate Code has a discriminatory impact by enabling a court to appoint a guardian if an adult has a physical or mental condition and is substantially unable to provide food, clothing, or shelter, to care for their physical health, or manage their own financial affairs. Even though individuals with a disability may need supports and services or assistance from others to provide for such needs, they should still be afforded the right to make choices about these aspects of their lives.

The Texas Council for Developmental Disabilities supports the following changes to the guardianship system in Texas that would promote the well being and protect the rights of people with disabilities:

- A person should not be presumed to need a guardian simply due to advanced age or the presence of a physical or mental disability.
- Courts should consider alternatives to guardianship before creating a guardianship. People with disabilities should be given the opportunity to avoid or limit guardianship through a variety of alternatives including supported decision-making, which would allow a person with a disability to select a person or persons to help make decisions that would typically be made by a guardian.
- The definition of incapacity in state law should be revised to consider the person's everyday functioning, values, preferences and cognition rather than their medical diagnosis. The definition of incapacity should also require the consideration of the various proactive measures that have been taken or could be taken, including the use of available supports and services, to maximize the ability of that individual to function, and to make and communicate informed decisions.
- Attorneys ad litem should be knowledgeable of alternatives to guardianship and supports and services that assist or could assist individuals to make their own decisions and minimize the need for guardianships.
- A person under a guardianship should receive a copy of their guardianship orders and be informed in a manner accessible to the individual about how they may raise complaints or concerns about their guardian or guardianship to the court, including resources for further assistance.
- A bill of rights for persons under guardianship that delineates all rights, responsibilities and privileges granted under state and federal laws should be adopted in state law.
- People who have guardians should, when possible, be able to make decisions about where they live.
- The term "ward" should be revised to "person under guardianship" in state law and supporting materials.
- A guardian should meet with the person under guardianship and the person's physician before consenting to the administration of psychoactive medication for that individual except in a medication-related emergency as defined by Section 574.101(2), Health and Safety Code.