

Making Alternatives to Guardianship a Reality in NC

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The Cares Program – Facilitating Systems Change With and For Adults of All Ages

A Personal Introduction to This Work…







Today's Objectives…

- Build awareness of adult guardianship in NC and the NC Rethinking Guardianship initiative
- Share resources about guardianship and less restrictive alternatives
- Provide an update on significant activities in 2021
- Invite participation in evolving family and societal systems change around decision-making

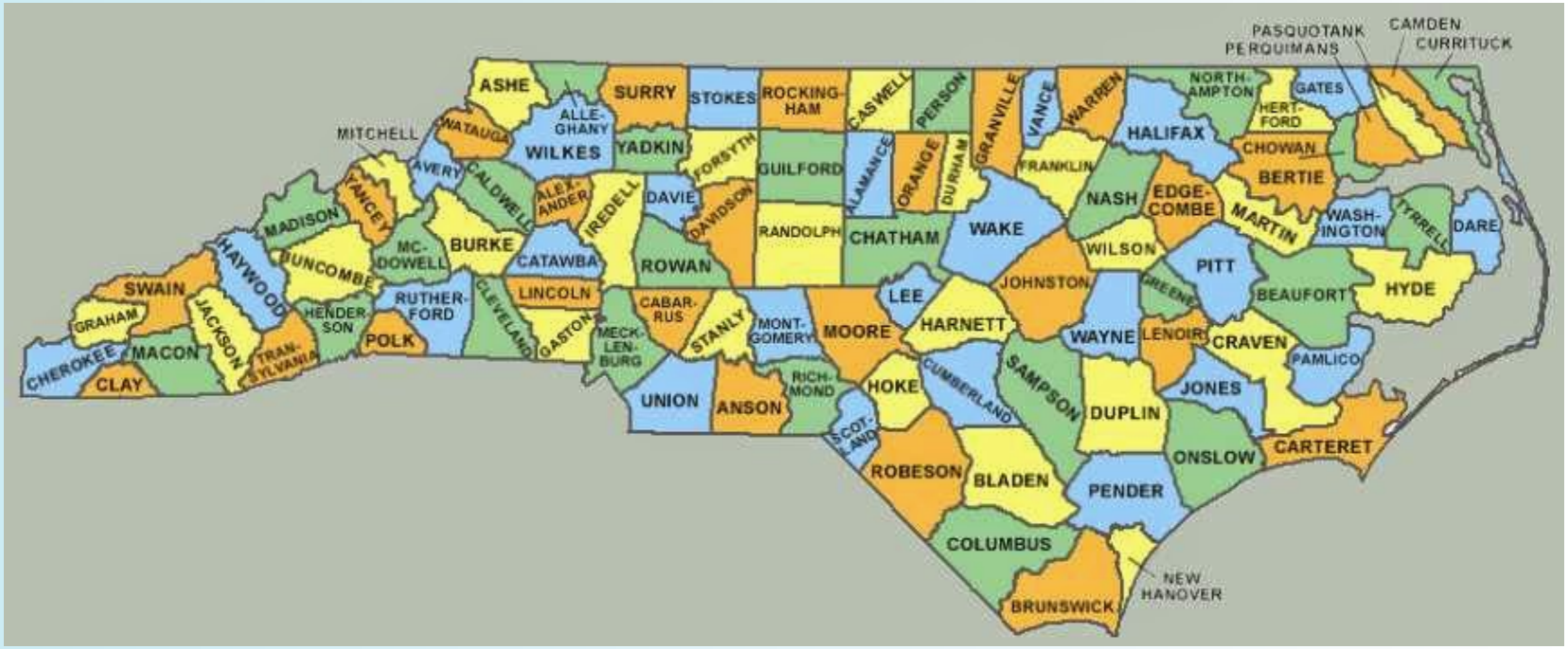
Background on Guardianship in NC

- **Guardianship removes an adult's rights to manage his or her life** decisions and **places those decision-making responsibilities with a court appointed guardian**.

- It is estimated that there are more than 23,000 adults subject to guardianship in NC. Out of 5,000 adults in the state who were served by a public guardian in 2013, nearly 3,000 **(56%) were adults ages 18-59 years old, the majority of whom (85%) had an intellectual/developmental disability and/or mental illness**

- Approximately one-third of individuals under guardianship have a public guardian; **approximately two-thirds have private guardians, many of whom are family members**.

- Even now, due to the way that records are kept**, it is not possible to know how many adults in North Carolina are currently under guardianship.**



North Carolina

100 Counties – 100 Jurisdictions – 100 Clerks of Court

Types of Guardians

- **Guardian of the Person**
  - has authority to make decisions in most areas of a adult's personal life, exclusive of assets. This includes giving consent or approval for the adult subject to guardianship to receive any needed medical services (with some limitations such as sterilization, amputations and end of life).

- **Guardian of the Estate**
  - has authority to manage the adult's assets such as bank accounts, brokerage accounts, vehicles, real estate, personal property, cash and income such as pensions, dividends, wages, interest and rental income.

- **General Guardian**
  - has the powers and duties of both a guardian of the person and a guardian of the estate.

- **Interim Guardian**
  - A limited duration version of any of the above, appointed by the Court due to an emergency. Its termination date (when the authority ends) will be shown on the face of the document.

- **Limited Guardianship**
  - Tailored to fit the individual in the areas in which assistance with decision-making is needed

Who can be appointed as guardians?

N.C.G.S. § 35A-1214

- The clerk shall consider appointing a guardian according to the following order of priority:
  - An individual recommended in a written instrument (such as a Will, Power of Attorney, etc);
  - an individual;
  - a corporation or a disinterested public agent.
  - No public agent shall be appointed guardian until diligent efforts have been made to find an appropriate individual or corporation to serve as guardian
  - In every instance the clerk shall base the appointment of a guardian or guardians on the best interest of the ward.

A Word About Public Guardianships in North Carolina…

- About 7,000 adults currently under public guardianship – DSS and Corporations
- 1,410 receive services through corporate guardianship organizations – high risk SPMI/SUD
- Before 2012, LME/MCOs played this role

In other states…

- Researched training for public guardians through WINGS & NGA in 2020 – spoke with 6 states (CA,CO,OH,IL,TX,PA)

- None of the best practice states interviewed had public guardians within Departments of Social Services and none of them were co-housed or cross-trained with Adult Protective Services.

- Some of those interviewed indicated that the separation between APS and Public Guardianship was by design to reduce possible conflicts of interest (e.g., APS protective orders becoming guardianships; guardians being investigated by APS).

- The Office of Public Guardianship is a common name for these entities and is commonly housed in the judicial system.

Rethinking Guardianship is …

1) Creating long-term changes in the state's guardianship system
2) Promoting less restrictive alternatives to guardianship

RETHINKING GUARDIANSHIP

Our History- Our Present – Our Future

- ***Rethinking Guardianship: Building a Case for Less Restrictive Alternatives*** –
  January 2015 - December 2017

- ***Rethinking Guardianship: A Person-Centered Approach***
  July 2018 – December 2019

- ***Rethinking Guardianship Bridge Initiative***
  January 2020 – June 2020

- ***Making Alternatives to Guardianship a Reality in NC***
  July 2020 – June 2023

Collective Impact framework:

- Backbone, Common Agenda, Shared Measurement, Continuous Communication, Mutually Reinforcing Activities
- Statewide workgroup with diverse affiliations and Steering Team
- National WINGS (Working Interdisciplinary Network of Guardianship Stakeholders)

It's About Ensuring Rights and Protecting Elders…







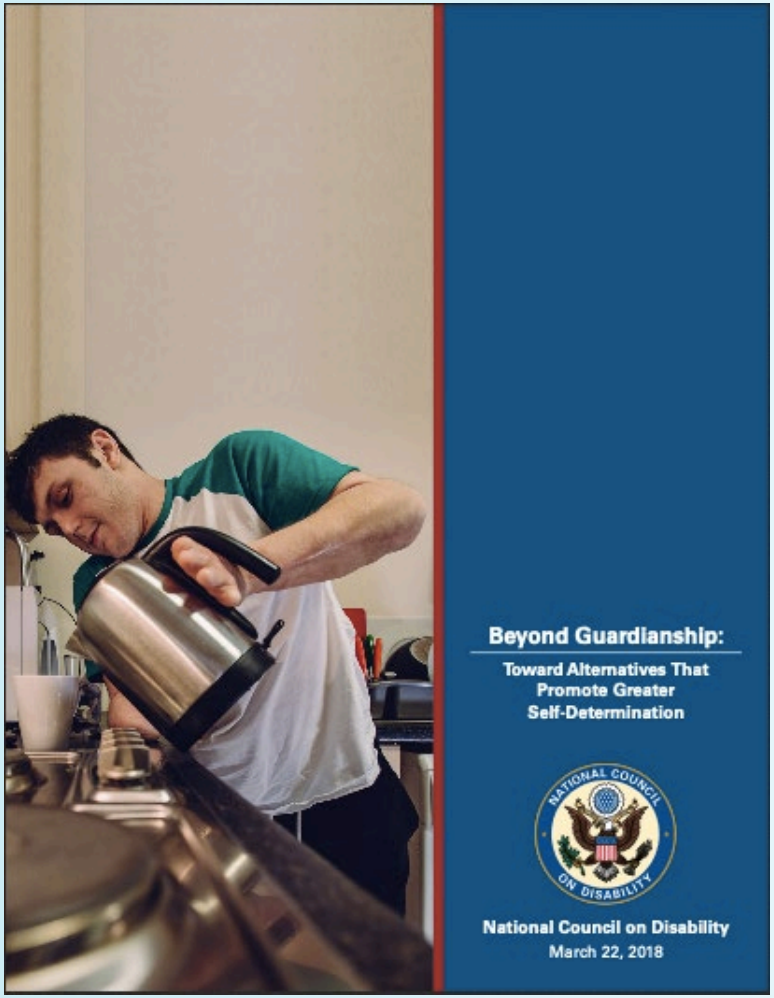


It's Also About Adults with Disabilities of All Ages…



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

National Council on Disability
2018 & 2019 Reports





Common Agenda

- **Core concepts and basic principles**:
  - Autonomy, liberty, freedom, dignity
  - Presumption of competence
  - Right to life-time decision-making support



Common Agenda/Shared Aspiration

The System-as-it-Should-be would

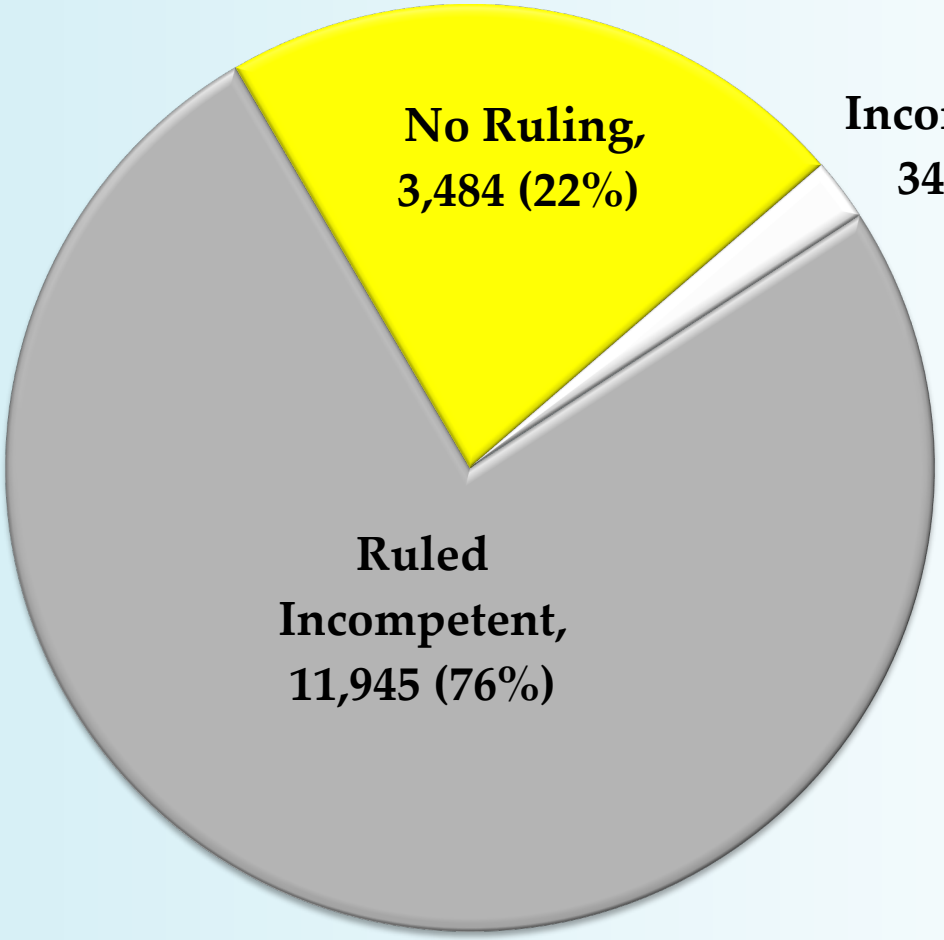
- **Always use least restrictive options** and be based on **best practices**
- Offer easily **available and accessible information** about options and alternatives to guardianship that is communicated to and understood by stakeholders
- Rest on a process in which **all stakeholders are identified and engaged**
- Have built-in **accountability** for all stages of guardianship and less restrictive alternatives.



The Importance of a Balanced Approach

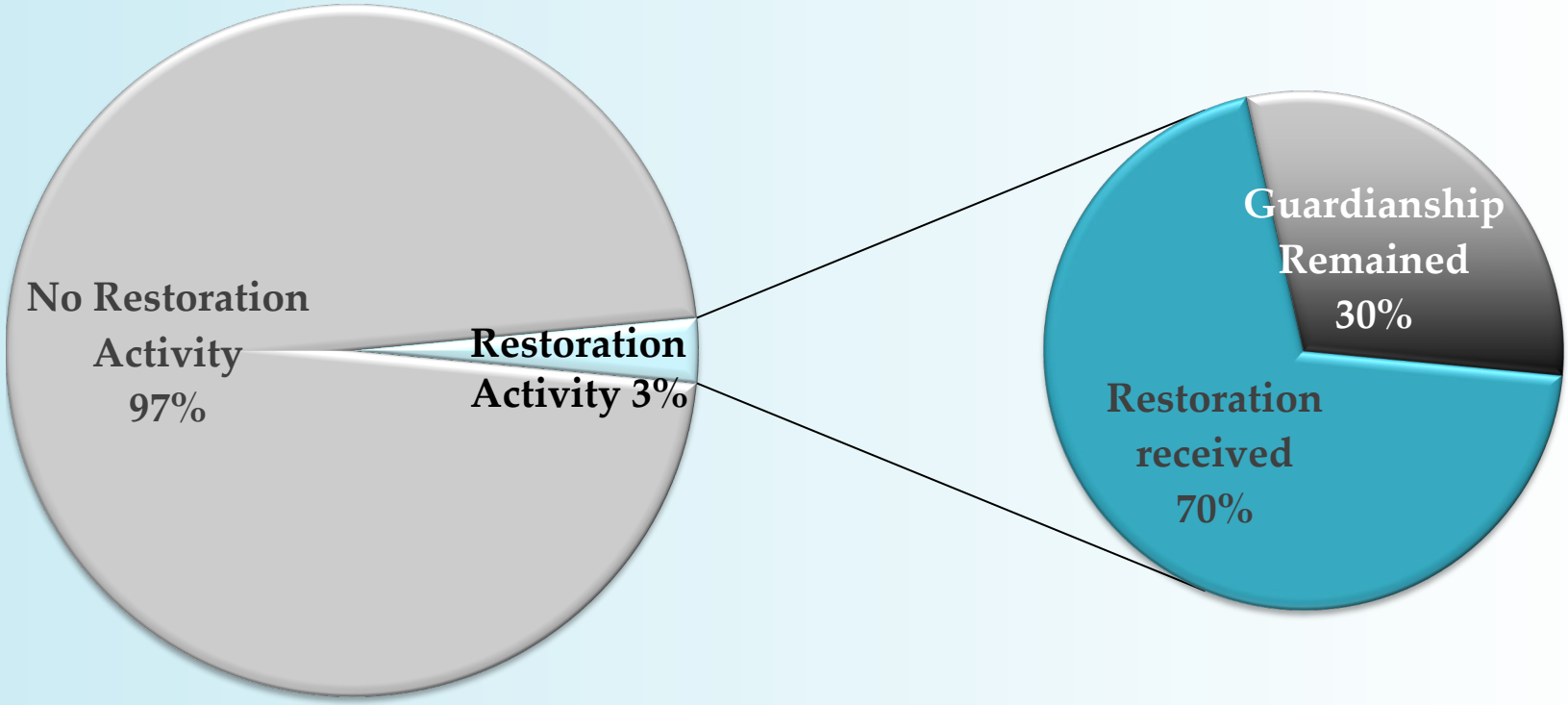
Autonomy - Support - Protection

How Many People Declared Incompetent in NC? July 1, 2012 – December 31, 2015



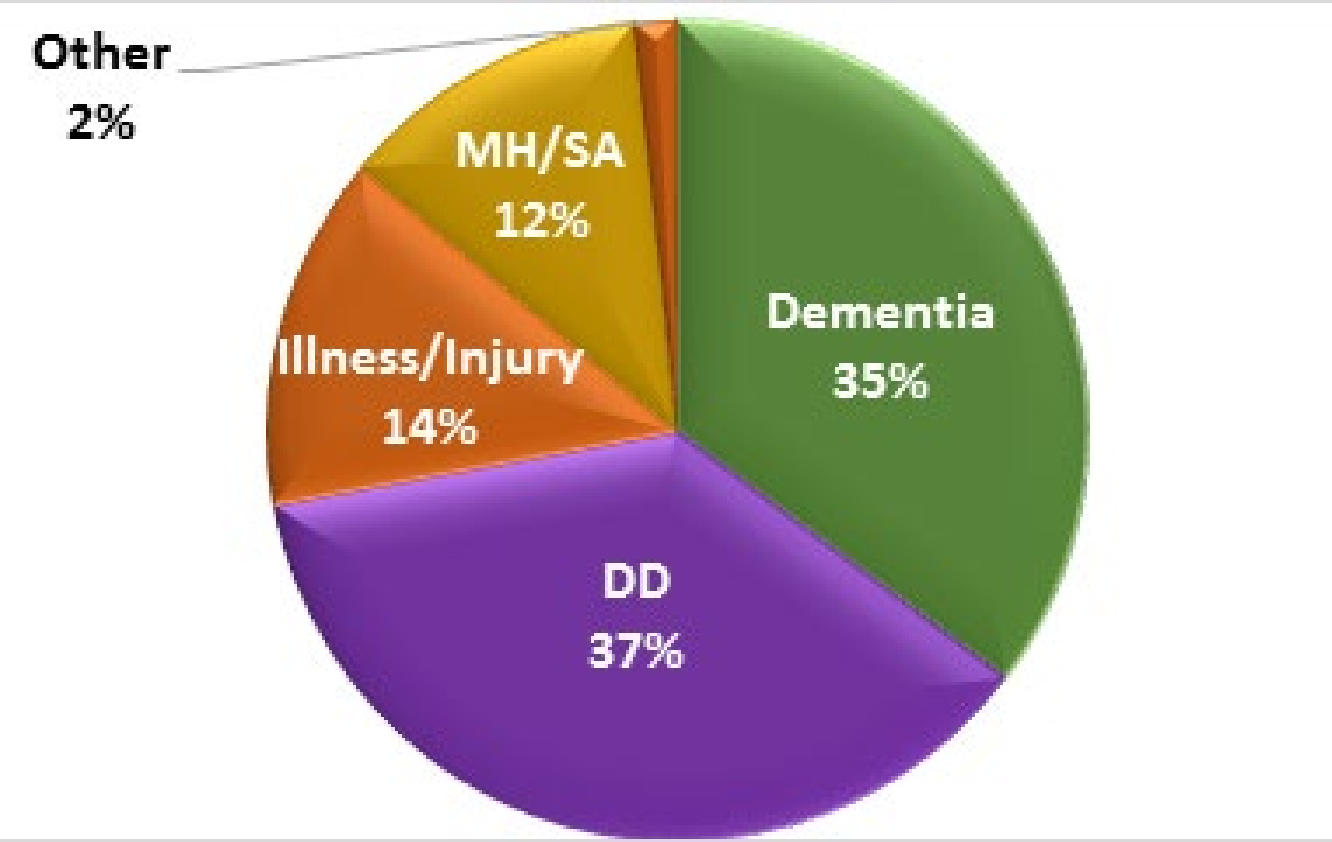
Based on 15,771 of the 15,798 cases--excluding 27 (0.17%) people whose records were missing any petition/ruling on incompetence

How Many People Sought & Received Restoration?

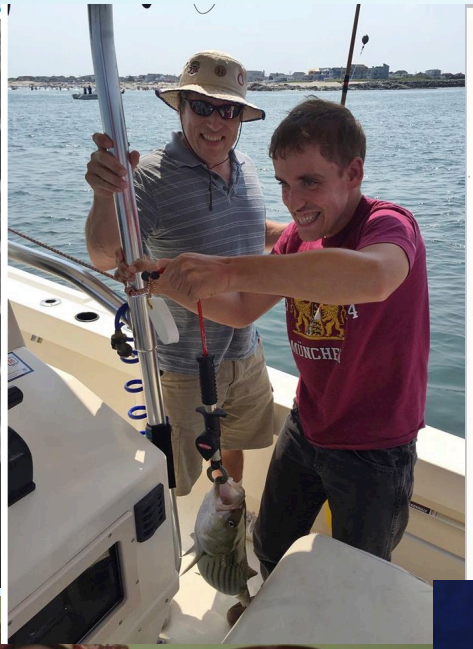


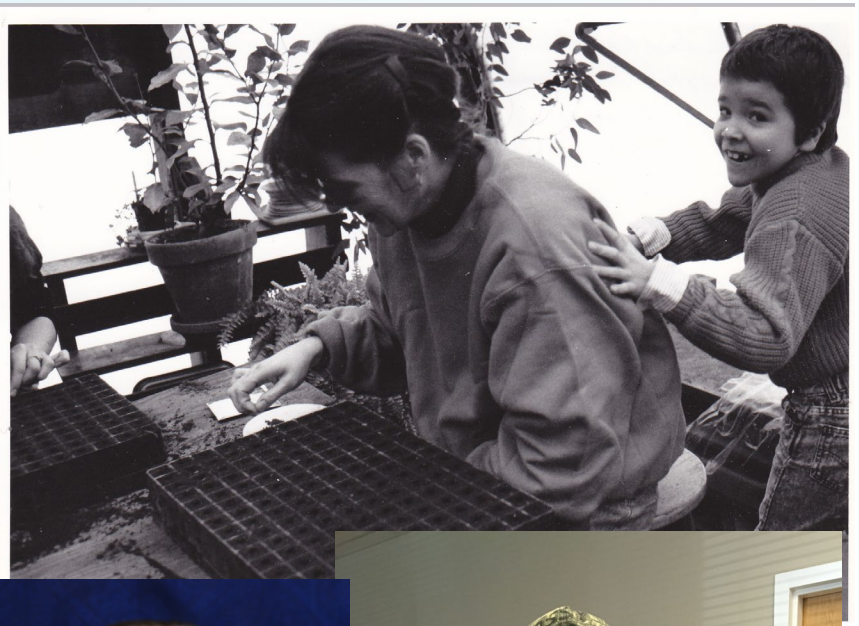
Catawba Data Analysis

January 1, 2015 – September 30, 2016

















Story Themes

- **Desire to do what is best** for one's family member
- Expressions of individuals' **hope and desire for autonomy** and choice
- **Surprise or shock** about what was unknown before, during, and after guardianship – Legally binding, may not offer the desired results
- **Disillusionment** over the role of the guardian ad litem because of a seeming "disconnect" between what is expected of that person and what is experienced
- **Feelings of outrage or despair** when perceived that the court appointed guardian took control of an adult's life and abused this power
- **Empowerment and pride** at the prospect (and realization) of restoration.

Making Alternatives to Guardianship a Reality in North Carolina

- Recommended by *Rethinking Guardianship* - NCCDD Funded for July 2020 – June 2023

- Focused on Youth Transitioning to Adulthood and Adults Transitioning to the Community from Long Term Residential Facilities

"If you want fewer guardianships, stay out of the courtroom"

NCCDD
North Carolina Council on Developmental Disabilities

2021 Areas of Focus

1. Reforms to GS 35A in preparation for the 2023 long session

2. Addressing the school to guardianship "pipeline"

3. Participating in the Olmstead planning process

4. Creating accessible, on demand educational modules on Supported Decision-Making strategies

NC General Statute 35A Reform

- ✓ **change language** (e.g. adult subject to guardianship)
- ✓ requirement for **consideration of alternatives** to guardianship
- ✓ process for **regular review** (rather than presumption of permanence) with possibility of increased use of limited guardianship and restoration
- ✓ **rights** for those under guardianship
- ✓ provide for **appointed counsel** in addition to GAL

School-to-Guardianship Pipeline



"For a variety of reasons, youth with I/DD are disempowered by schools actively encouraging guardianship to the exclusion of less restrictive alternatives and not providing families and students with sufficient information about the availability of a full continuum of decision-making supports." *NCD 2019 report*

A quick recent example in NC

NC Local Education Agency (school district) Message to NC Department of Public Instruction, Exceptional Children's Division to review transfer of rights brochure…

<u>As it arrived:</u>

"The guardianship/conservatorship process should begin… If families and students feel uncomfortable with the transfer of the decision-making abilities of the student, the prospective guardian needs to petition for guardianship at the local probate court."

Suggested Change… Interrupting the "Pipeline to Guardianship"

"If families and students feel uncomfortable with the transfer of decision-making authority to the student, there are many strategies and opportunities to support the student's transition into adulthood."

"Parents and students can learn about free or low cost options by visiting https://rethinkingguardianshipnc.org/ and the National Resource Center for Supported Decision-Making at http://supporteddecisionmaking.org

As a last resort, parents may petition for limited or full guardianship at the local probate court."

Olmstead in Action: Informed Decision-Making Tool

Peer/In-Reach Form A

North Carolina Transitions to Community Living Initiative
Informed Decision-Making Tool

This form is designed as a tool for the In-Reach Peer-Specialist to guide conversations and document an informed decision-making process with TCLI eligible individuals who have chosen to remain in an adult care home (ACH) or transition to an ACH or state psychiatric hospital (SPH) instead of the community.

Recognizing decision-making as an ongoing process, the approach outlined in this form is designed to take place over time with the individual and their guardian (when applicable). The ultimate goal is to raise the value of self-empowerment and each individual's right to choose where they want to live while pursuing pathways to recovery and community integration.

Whether or not their choice remains the same, it is critical that individuals have been fully informed of the available alternatives to living in a licensed facility and that any barriers have been identified and addressed.

Before using this form, it's important for In-Reach Specialists/Staff to acknowledge and explore the individual's current preferences and choices. This may be done in consultation with the individual's guardian and/or natural supports. For example, if an individual has chosen to remain in an ACH or SPH you may consider saying:

> *You are the expert in yourself. May I ask you more about where you are currently staying (or where you would like to live)?*
>
> *I remember a time plans were being made for me to move from (name setting) to (name setting)….* As an In-Reach Specialist, you can share your experience as a peer considering a transition to an integrated setting.
>
> *My role is to just make sure that when a person says they want to live (name setting), that choice is an informed choice.*
>
> *May I ask you what you like about where you are staying now?*

If the individual says they don't want to be asked, you may reply:

> *There is no pressure for you to change your mind or make a decision today. I value your right to choose. That is one of the main reasons for visiting with you. There's no wrong or right answer here but, what have you been told about informed choice?*
>
> *So your choice is to (restate their decision)? I've had the opportunity to meet a lot of individuals who have made a similar decision. (Offer an example of a person you worked with who benefited from having more information.)*

If the individual's guardian does not want the person to participate, you may reply:

> *I understand your role as this individual's guardian and that you have the responsibility to make decisions with and for this individual. So you are probably already familiar with your obligation under NC General Statute 35A-1201(5), which states:*
>
> > *"Guardianship should seek to preserve for the incompetent person the opportunity to exercise those rights that are within his comprehension and*

Individual Form B

North Carolina Transitions to Community Living Initiative
Informed Decision-Making Tool

Name & Contact Information: _____

The purpose of this form is to support you in making an informed decision about where you want to live with the help of conversations, experiences and reflections.

You can complete this form with the support of the In-Reach Specialist, your guardian, and any other person you wish to include. It will remain with you after each conversation or be mailed to you shortly after the visit.

I. Exercising Your Right to Choose

1. What does it mean to you that you have a right to choose where you live?
2. Do you want to choose where you live? Why or why not?
3. How have you made important choices in the past?
   (examples: ask family and friends, read about choices, try something on a trial basis)
4. How far along are you with making a choice about where you live?
   ☐ Not thought about it ☐ Thinking about it ☐ Close to choosing
   ☐ Made a choice What is the choice? _____
   Date: _____
5. If you have made a decision, how did you go about making that decision?
6. How can you gain more confidence about this choice?

Support for Your Decision:

Who else is involved? _____
What option do they prefer? _____
Is the person pressuring you? _____
How can they support you? _____
In what ways can the In-Reach Specialist help you? _____
What role do you prefer in making the choice?
Share the decision with … _____
Decide myself after hearing views of… _____
Someone else decides… _____

From NC – TCLI Informed Decision-Making Form
for Community Transitions from Licensed Facilities
(RG Bridge Grant 2019-20)

If the individual's guardian does not want the person to participate, you may reply:

- *I understand your role as this individual's guardian and that you have the responsibility to make decisions with and for this individual. So you are probably already familiar with your obligation under NC General Statute 35A-1201(5), which states:*

  > *"Guardianship should seek to preserve for the incompetent person the opportunity to exercise those rights that are within his comprehension and judgment, allowing for the possibility of error to the same degree as is allowed to persons who are not incompetent."*

Also, given your role as the guardian, you play a critical role in implementing Title II of the Americans with Disabilities Act (ADA) and the U.S. Supreme Court's Olmstead Decision, an integration mandate which:

- *Prohibits discrimination by public entities in services, programs, and activities on the basis of disability;*
- *Requires that services, programs, and activities be administered in the most integrated setting appropriate; and,*
- *Enables people with disabilities to interact with people without disabilities to the fullest extent possible*

You may follow up these replies by asking the guardian:

- *What integrated living options have you explored with (name the individual)?*
- *What would it take for (name of the individual) to live in the community?*

Supported Decision-Making

"a recognized alternative to guardianship through which people with disabilities use friends, family members, and professionals to help them understand the situations and choices they face, so they may make their own decisions without the 'need' for a guardian."

- Blanck & Martinis, 2015







"Living on their own for two years together, Suvya & Janie have figured out who can help most effectively with what. It is incumbent on people supporting these women to push them to make their own decisions when it is clearly in their power. This does not mean they will always get it right, but without stretching the muscles, there is no growth. This has clearly led to less asking, more acting, and greater self-determination."

**Shared by Janie's mother Betsy MacMichael, Executive Director, First in Families of NC*

TYPES of Guardianship

General Guardianship
Appointed as both Guardian of the Person and Guardian of the Estate

Guardianship of the Person
Appointed solely for the purpose of performing duties relating to care, custody, and control

Guardianship of the Estate
Appointed solely for the purpose of managing property, estate, and business affairs

Limited Guardianship
Tailored to fit the individual in the areas in which assistance with decision-making is needed

Interim Guardianship
Appointed when there is an imminent or foreseeable risk of harm to the individual or their estate

Find out more

Place your organization's contact information here.

The **Rethinking Guardianship Initiative** provides information and resources about guardianship and alternatives in NC http://rethinkingguardianshipnc.org/

This document was developed as a partnership between the North Carolina Council on Developmental Disabilities, the North Carolina Division of Aging and Adult Services, and the Jordan Institute for Families in the School of Social Work at the University of North Carolina at Chapel Hill.

RETHINKING GUARDIANSHIP

An Introduction to Options



Adult guardianship exists to protect our most vulnerable citizens — but **not all** need guardianship

Which is YOUR situation?

- ❑ A professional has encouraged you to seek guardianship of a family member or friend
- ❑ You have a child who has a developmental disability who is age 16 or 17
- ❑ You are in foster care, age 16 or 17, and someone has told you that you may need adult guardianship when you turn 18
- ❑ You have been told that someone is seeking guardianship over you
- ❑ You have a family member or friend who has a mental health condition and is having difficulty making decisions
- ❑ You have a family member or friend who has dementia
- ❑ You have a family member or friend who is aging and you or they are concerned about their future
- ❑ You have a family member or friend who has a traumatic brain injury and needs help making decisions

What is guardianship?

Guardianship is a legal relationship in which one individual is given the authority by the court to make decisions on behalf of another individual who is unable to make and/or communicate decisions on their own.

Not all vulnerable adults need guardianship.
Guardianship can take away people's right to make the most basic decisions for themselves—such as where they will live and what they will do in the course of a day. Before pursuing guardianship, consider less restrictive alternatives.

ALTERNATIVES to Guardianship

Family, Friends & Community Support Services
A system of support for an individual in various areas of their life.

Supported Decision Making
A written plan identifies individuals to assist in key areas of life, such as financial, health/medical, and daily living.

Foster Care 18-21
Continued supportive and financial services for young adults aging out of foster care at age 18.

Joint Bank Account
An account which allows another person to help pay bills and manage money. Check with your financial institution.

Living Trust
A legal arrangement for an individual who is having difficulty managing property or assets themselves.

Special Needs Trust
A legal arrangement that allows an individual who has a disability to preserve assets while maintaining eligibility for government benefits.

Representative Payee for Social Security Benefits
Provides financial management of Social Security benefits.

Fiduciary for Veteran's Benefits
Provides financial management of VA pension benefits.

Power of Attorney (Durable/General)
A legal document giving someone the right to conduct financial business on behalf of someone else without a court order.

Health Care Power of Attorney
A legal document giving someone the right to make health care decisions on behalf of someone else.

Advance Instruction for Mental Health Treatment
A legal document in which an individual indicates what treatment and care for mental health conditions they want in the event that they are unable to communicate their wishes.

Living Will or Advance Directive
A legal document that sets out an individual's desires for medical care and treatment when they can no longer communicate and are near the end of life.

***All* adults have rights,**
including the right to
self-determination.
Adults have the right to make decisions — good *and* bad.

RETHINKING GUARDIANSHIP

Supported Decision-Making in North Carolina: Understand Your Options – SAMPLE LANDING PAGE

Start Here: Supported Decision-Making 101

Once you understand the basics, click on the options below to learn more about your options.

- Family, Friends and Community Support Services
- Supported Decision-Making Agreement
- Foster Care 18-21
- Joint Bank Account
- ABLE Account
- Living Trust
- Special Needs Trust
- Representative Payee for Social Security Benefits
- Fiduciary for Veteran's Benefits
- Power of Attorney (Durable/General)
- Health Care Power of Attorney
- Advance Instruction for Mental Health Treatment
- Living Will or Advance Directive

RETHINKING GUARDIANSHIP

HOME | OUR MISSION | WHO WE ARE | RESOURCES | PILOT PROJECTS | STORIES | CONTACT US

Welcome



More information?

- Visit the Rethinking Guardianship website https://rethinkingguardianshipnc.org/
- Join the Rethinking Guardianship Workgroup! Email me at lkfields@email.unc.edu

Resources

North Carolina Rethinking Guardianship Website
rethinkingguardianshipnc.org/

National Council on Disability (NCD) - Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination for People with Disabilities - https://ncd.gov/publications/2018/beyond-guardianship-toward-alternatives

National Council on Disability – Turning Rights Into Reality
https://ncd.gov/publications/2019/turning-rights-into-reality

National Resource Center for Supported Decision-Making
http://supporteddecisionmaking.org/

MO Guardianship: Understanding Your Options and Alternatives
http://moguardianship.com/#materials

The Jenny Hatch Justice Project
http://jennyhatchjusticeproject.org/home



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