




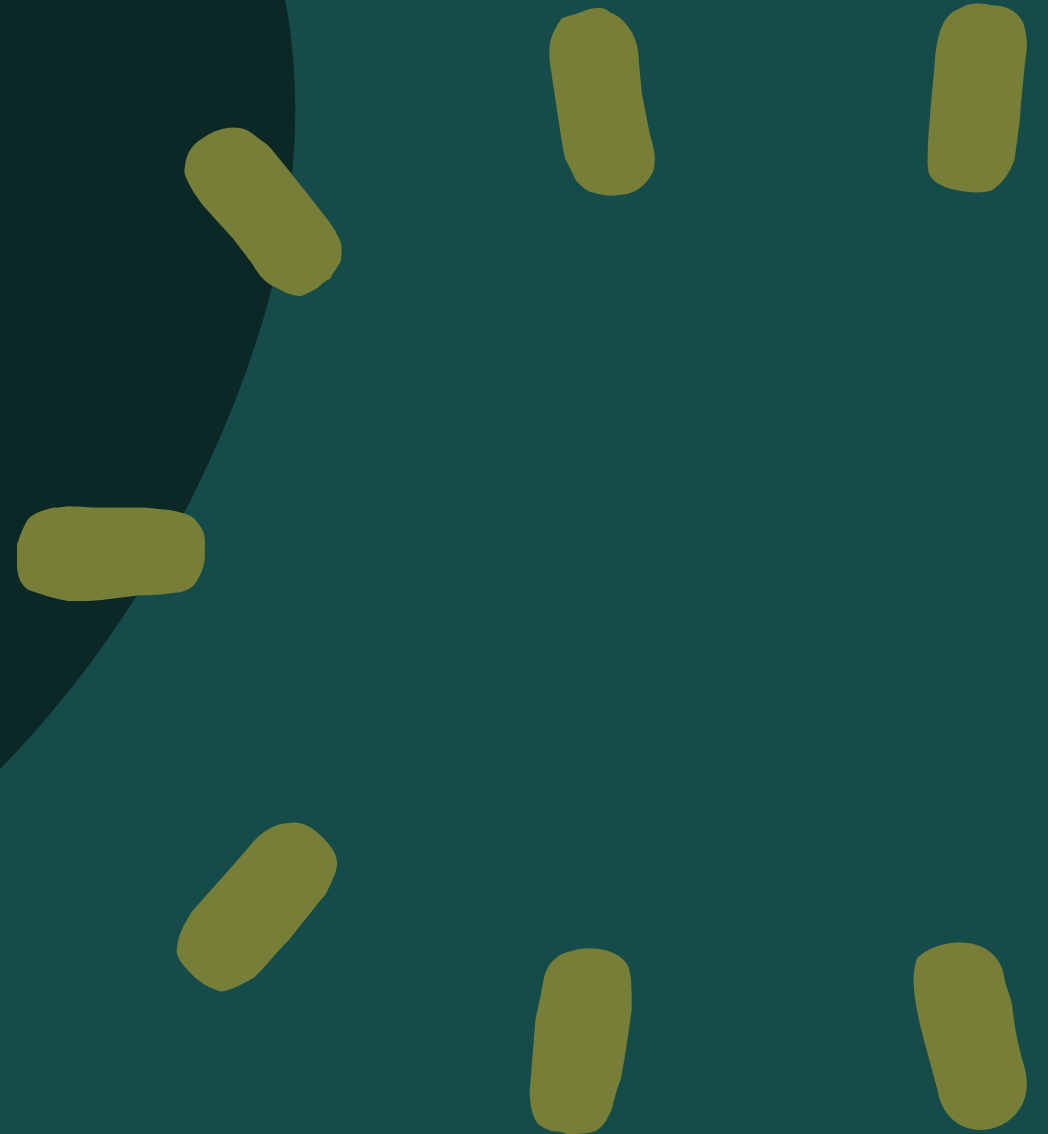
Alternatives to Guardianships

What to know before seeking
guardianship of your loved one



Presenters: Tanasia White, Esq. (De Novo)
Geraldine Gruvis-Pizarro, Esq. (Volunteer Lawyers Project)

Alternatives to Guardianships of Minors



Caregiver Authorization Affidavits

- A parent may give permission to someone their child lives with to make medical and educational decisions for the child, making them a caregiver.
 - Allows caregiver to make educational and medical decisions for the child without parent being present.
- Does not require documents to be filed with court.
 - Notarization required
- Requires certification of good faith
- No cost except notarization fees

Caregiver Authorization Affidavit Form

CAREGIVER AUTHORIZATION AFFIDAVIT

Massachusetts General Laws Chapter 201F

1. AUTHORIZING PARTY (Parent/Guardian)

I, _____, residing at _____
am: (circle one) the parent legal guardian legal custodian of the minor child(ren) listed
below.

I do hereby authorize _____, residing at _____
_____ to exercise concurrently the rights
and responsibilities, except those prohibited below, that I possess relative to the education and
health care of the minor children whose names and dates of birth are:

| | | | |
|------------|---------------------|------------|---------------------|
| name _____ | date of birth _____ | name _____ | date of birth _____ |
| name _____ | date of birth _____ | name _____ | date of birth _____ |

The caregiver may NOT do the following: (If there are any specific acts you do not want the
caregiver to perform, please state those acts here.)

The following statements are true: (Please read)

- There are no court orders in effect that would prohibit me from exercising or conferring the rights and responsibilities that I wish to confer upon the caregiver. (If you are the legal guardian or custodian, attach the court order appointing you.)
- I am not using this affidavit to circumvent any state or federal law, for the purposes of attendance at a particular school, or to re-confer rights to a caregiver from whom those rights have been removed by a court of law.
- I confer these rights and responsibilities freely and knowingly in order to provide for the child(ren) and not as a result of pressure, threats or payments by any person or agency.
- I understand that, if the affidavit is amended or revoked, I must provide the amended affidavit or revocation to all parties to whom I have provided this affidavit.

This document shall remain in effect until _____ (not more than two years from today)
or until I notify the caregiver in writing that I have amended or revoked it.

I hereby affirm that the above statements are true, under pains and penalties of perjury.

Signature: _____
Printed name: _____
Telephone number: _____

2. WITNESSES TO AUTHORIZING PARTY SIGNATURE

(To be signed by persons over the age of 18 who are not the designated caregiver.)

| | |
|--|--|
| _____ Witness #1 Signature | _____ Witness #2 Signature |
| _____ Printed Name, Address and Telephone | _____ Printed Name, Address and Telephone |
| _____ _____ | _____ _____ |

3. NOTARIZATION OF AUTHORIZING PARTY'S SIGNATURE

Commonwealth of Massachusetts

_____, ss

On this date, _____, before me, the undersigned notary public, personally appeared
_____, proved to me through satisfactory evidence of
identification, which was _____, to be the person whose name is signed
on the preceding document, and swore under the pains and penalties of perjury that the foregoing
statements are true.

Signature and seal of notary: _____
Printed name of notary: _____
My commission expires: _____

4. CAREGIVER ACKNOWLEDGMENT

I, _____, am at least 18 years of age and the above
child(ren) currently reside with me at _____.

I am the children's (state your relationship to the child) _____.

I understand that I may, without obtaining further consent from a parent, legal custodian
or legal guardian of the child(ren), exercise concurrent rights and responsibilities relative
to the education and health care of the child(ren), except those rights and responsibilities
prohibited above. However, I may not knowingly make a decision that conflicts with the
decision of the child(ren)'s parent, legal guardian or legal custodian.

I understand that, if the affidavit is amended or revoked, I must provide the amended
affidavit or revocation to all parties to whom I have provided this affidavit prior to further
exercising any rights or responsibilities under the affidavit.

I hereby affirm that the above statements are true, under pains and penalties of perjury.

Signature of caregiver: _____
Printed name: _____
Telephone Number: _____
Date: _____



Benefits and Limitations of Caregiver Affidavits

Benefits

- Flexible
- Does not take away any of the parent's rights to make decisions or child custody (concurrent responsibility)

Limitations

- May not be accepted by all providers in all circumstances
- Only grants medical and educational decision making (school, doctors, and dentist)
- Must be renewed after 2 years

Revoking Caregiver Authorization Affidavit

- If there is a disagreement with the parent & caregiver, the parent has the final say
- To revoke the parent must write a letter to the caregiver, saying that the caregiver no longer has permission to make these decisions.
 - Please be sure to sign the letter and include the date.
 - The parent and the caregiver each gives a copy of this letter to the child's school, doctor, and dentist.



Temporary Agents

- A Temporary Agent (TA) is a person you give the legal responsibility to care for and make important decisions for your child when you cannot.
 - TA can make decisions about where child lives, medical treatment and educational needs.
 - TAs can also take money out of your bank account for your child.
- A child's parent or a legal guardian can appoint a TA
- Does not require documents to be filed with court
 - Appointment must be in writing, must be signed by parent/guardian, TA and 2 witnesses over 18 years old.
- Appointment can last up to 60 days from date TA signs appointment.

Temporary Agent Appointment Form

TEMPORARY AGENT APPOINTMENT

Massachusetts General Laws Chapter 190B, § 5-103

I. APPOINTING PARTY (Parent/custodian/guardian)

I, _____,

am the: parent legal guardian legal custodian of

the minor child(ren) listed below.

I do hereby appoint _____ to be my Temporary Agent to exercise concurrently any power regarding the care, custody, or property [except the power to consent to marriage or adoption and any additional acts prohibited below], that I possess relative to the minor child(ren) whose names and dates of birth are:

| | | | |
|-------|---------------|-------|---------------|
| _____ | _____ | _____ | _____ |
| name | date of birth | name | date of birth |

| | | | |
|-------|---------------|-------|---------------|
| _____ | _____ | _____ | _____ |
| name | date of birth | name | date of birth |

The agent may NOT do the following: *(If there are any specific acts you do not want the agent to perform, please state those acts here.)*

I understand that I may not appoint a temporary agent for the child(ren) listed above if they have another living parent whose whereabouts are known to me and who is willing and able to provide care and custody.

Check applicable statements:

- The non-appointing parent has given consent *(See paragraph 4)*
- I have not attached the non-appointing parent consent because the non-appointing parent is: *(The non-appointing, or other parent, does not have to give permission if one of the following statements is true)*
- deceased.
 - whereabouts unknown.
 - unwilling to provide care for the minor child.
 - unable to provide care for the minor child.

The following statements are true: *(Please read)*

- There are no court orders in effect that would prohibit me from exercising or conferring the rights and responsibilities that I wish to confer upon the agent. *(If you are the guardian or custodian, please attach the court order appointing you.)*
- I am not using this appointment to circumvent any state or federal law, for the purposes of attendance at a particular school, or to re-confer rights to an agent from whom those rights have been removed by a court of law.
- I confer these rights and responsibilities freely and knowingly in order to provide for the child(ren) and not as a result of pressure, threats, or payments by any person or agency.
- I understand that if the Appointment is amended or revoked, I must provide the amended Appointment or revocation to all parties to whom I have provided the Appointment.

This Appointment shall remain in effect until _____ *(not more than 60 days from the date I sign this Appointment.)* or until I notify the agent in writing that I have amended or revoked it.

Signature: _____ Date: _____

Address: _____

Temporary Agent Appointment Form

2. WITNESSES TO AUTHORIZING PARTY SIGNATURE

(To be signed by persons over the age of 18 who are not the appointed agent.)

| | |
|-------------------------------|-------------------------------|
| _____ Witness #1 Signature | _____ Witness #2 Signature |
| _____ Printed name | _____ Printed name |
| _____ Address | _____ Address |
| _____ | _____ |
| _____ | _____ |

3. TEMPORARY AGENT ACCEPTANCE

I, _____, hereby accept this Temporary Agent Appointment.

I am at least 18 years of age.

I understand that I may, without obtaining further consent from a parent, legal custodian, or legal guardian of the child(ren), exercise concurrent power relative to the child(ren), except those powers prohibited above. However, I may not knowingly make a decision that conflicts with the decision of the child(ren)'s parent, legal guardian, or legal custodian.

I understand that if the Appointment is amended or revoked, I must provide the amended Appointment or revocation to all parties to whom I have provided this Appointment prior to further exercising any rights or responsibilities under the Appointment.

Signature: _____ Telephone Number _____
Printed name: _____ Date: _____
Address: _____

4. NONAPPOINTING PARENT CONSENT (if applicable)

I, _____, am the nonappointing parent of the child(ren). I consent to the designation of _____ to be a temporary agent for my child(ren). I understand that the temporary agent will have any power regarding the care, custody, or property of the child(ren), [except as stated in Section I].

Signature: _____ Date: _____

Printed Name: _____ Telephone number: _____

Address: _____



Benefits and Limitations of Temporary Agents

Benefits

- Flexible
- Doesn't take away any of parent's rights to make decisions or child custody
 - (concurrent responsibility)
- Amendable or Revocable by parent/Guardian at any time
 - Must provide copy of terminated or amended appointment to all providers

Limitations:

- Short term
- May not be accepted by all providers in all circumstances
- Cannot consent for the child to be adopted or to be married
- If child's other parent is willing and able to take care of your child, cannot appoint TA unless the other parent agree to the appointment of a TA in writing.

Informal Arrangements

- Parents can make informal, temporary caregiver arrangements with family/extended family/chosen family members



Benefits and Limitations of Informal Arrangements

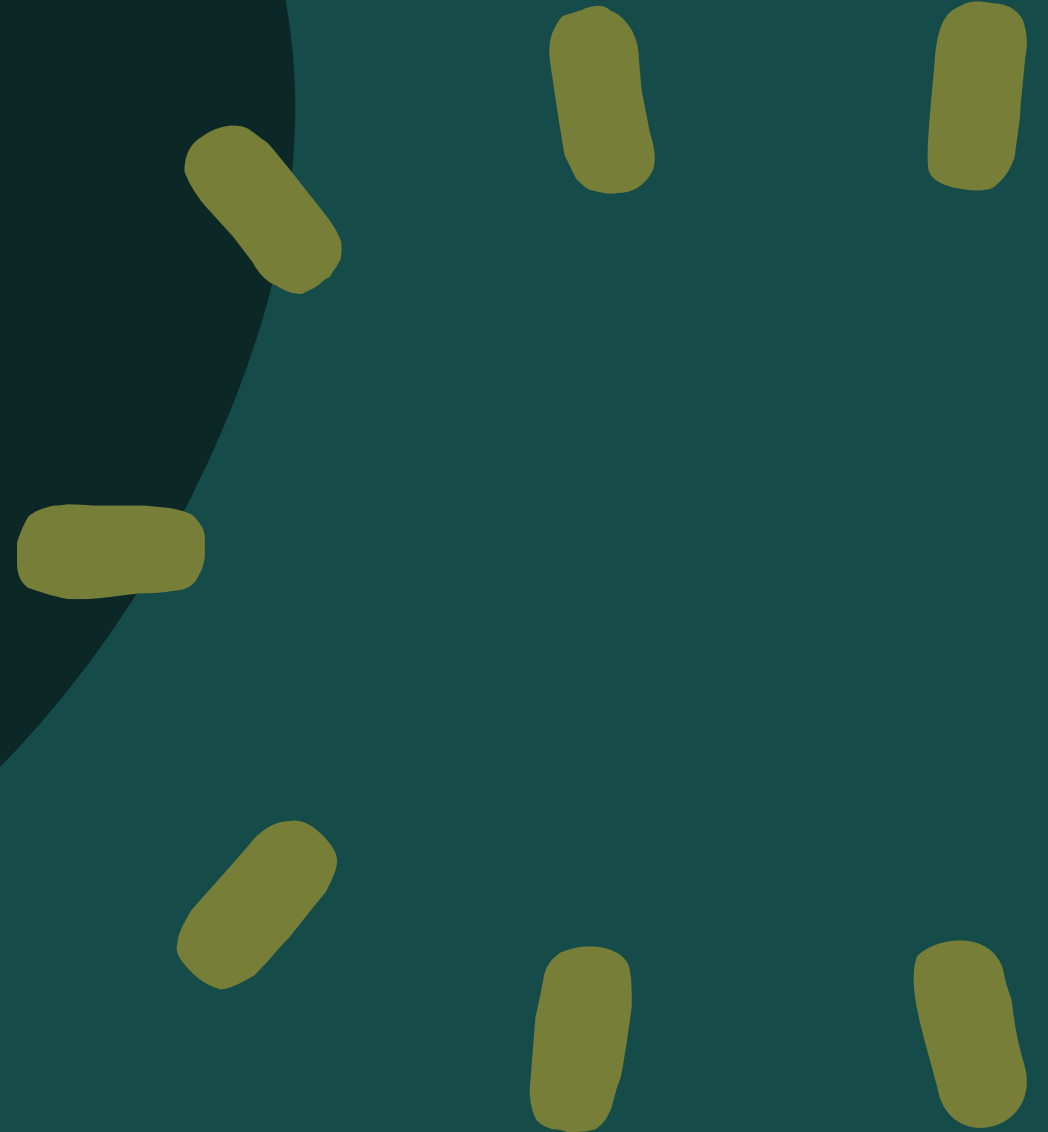
Benefits

- Flexible
- No court involvement

Limitations

- Easily challenged
- No legal authority
- May not be sufficient long term for medical, educational and/or housing needs

Alternatives to Guardianships of Incapacitated Adults



When a child turns 18 Years Old...

- They are considered a legal adult...
- Capable of making their own decisions and...
- Able to understand the results of those decisions.

What does this mean?



- Parents can no longer make any decisions on behalf of their adult child
- Can no longer access any type of medical information regarding their adult child
- Will not be allowed any type of involvement in IEP decision making or any decision about future planning for their adult child



What are the options if the adult child
is incapacitated?



Available Supportive Options

Do nothing

Power of Attorney

Medical
Healthcare Proxy

Representative
Payee for
SSDI/SSI

HIPAA release of
information

Supported
Decision Making
(SDM)

Limited
Guardianship –
for some decision
making

General
Guardianship –
for all decision
making

Durable Power of Attorney (POA)



- Legal Document
- Assigns trusted adult to speak and act on your behalf, called an attorney-in-fact
- Both parties must understand what the legal document is for
- The person who executes the DPOA may revoke it at any time.
- Durable vs. Springing POA
 - Durable means it becomes effective upon creating the document and survives even if the person becomes incapacitated
 - Springing means there is a triggering event that activates the POA (dementia, severe illness, stroke, etc.)

Health Care Proxy (HCP)

- Legal document
- Allows a trusted person to make medical decisions for another person
- Both people must understand what the legal document is for
- The person who chooses their HCP can revoke it at any time
 - Patient can also choose an alternate HCP
- Some health care providers might question the HCP signed by an incapacitated person



Representative Payee for Social Security Benefits



- The Social Security's Representative Payment Program provides benefit payment management for beneficiaries who are incapable of managing their Social Security or Supplemental Security Income (SSI) payments.
- Usually, family or friends will serve as payees, if not then a qualified organization.
- There is also the option to designate in advance up to three (3) individuals who could serve as payee for the client if the need arises.
- Payees may receive an annual Representative Payee Report to account for the benefit payments received.
 - Due to a recent change in the law, certain rep payees are no longer required to complete the annual representative payee report but are still required to keep a record of how the payments are spent or saved and must make these records available to the SSA if requested.

HIPPA/Medical Release

- Allows the person authorized by the patient to communicate with doctors and specialists and get medical records
- This DOES NOT provide the authority to make medical decisions
 - Helpful to have a trusted person read medical records and help the patient process complex information
- The person providing the permission for someone else to access their medical records must understand what the release is for before signing it



Shared or Delegated IEP Educational Decision-Making Authority

18-year-olds are believed to be able to make decisions about their own education

Student can choose to share decision making with parents (or other adult)

Student can choose to delegate decisions to parents (or other adult)

School district will inform the student and parents about this option

The student will be provided forms to sign

Any access granted by the student can also later be revoked



Guardianship

- Legal process - must go to court
- A judge will approve and assign a guardian through a court order
- Guardian will be able to make all or some of the decisions on behalf of the Incapacitated Adult in major life areas (medical, services, education, etc.)
- Guardianship can mean removal of some or all rights of the Respondent to make decisions (Limited v. General Guardianship)



Supported Decision Making (SDM)

- In general, the concept of supported decision-making involves formalizing a network of family, friends and/or trusted professionals to assist a vulnerable adult in making life decisions. The idea is to preserve the autonomy of the individual, which is lost when a court appoints a guardian to conduct a person's affairs.
- It is aimed at high-functioning developmentally disabled individuals who are becoming adults.
- There are some high-functioning developmentally disabled adults who bristle at the idea of having a guardian. In that case, a supported decision-making agreement would address that situation where you have a high-functioning yet impaired young adult who still needs some guidance with their decision-making abilities.



Supported Decision Making

- Adults with disabilities can get help making important life decisions
- Retain the power to make decisions about their life
- Make their own decisions with help from known and trusted people
- Sometimes these helpers can work together as a team if that is what the person being helped has asked for
- It is **NOT** a legal process in MA
 - Because it has not yet been codified into law, there are concerns about offering this as an option because it is unclear that medical providers will accept the documents if they feel the person didn't have the capacity to fully understand them when they were signed.

Pending Legislation in MA for SDM

- Senate Bill 124 amends the Massachusetts Uniform Probate Code, Chapter 190B, to add new §5-508, which provides for supported decision-making agreements. The proposal defines supported decision-making as “the process of supporting and accommodating the decision-maker, without impeding the self-determination of the decision-maker, in making life decisions.”
- Life decisions include but are not limited to “decisions related to where the decision-maker wants to live; the services, supports, financial decisions, and medical care the decision-maker wants to receive; whom the decision-maker wants to live with; or where the decision-maker wants to work.”

Why consider Supported Decision Making?

- Ideal for young adult who can..
 - make their own decisions if they have a strong support system
- Examples:
 - High functioning Autistic young adult
 - High functioning young adult with Down Syndrome

What are some issues to consider when discussing Supported Decision Making?



- Medical providers may not want to do surgery even with a health care proxy in place (if they feel that the patient lacked capacity when signing the proxy)
- Potential for manipulation by human service agencies that may impose their own agendas on a person with an intellectual disability
- Need to be confident that the SDM team members will support the best interests of the person with a disability

What are the steps for SDM plan?



Select the individual and/or group of trusted supporters

with the help of trusted family members, friends, service providers, the person with a disability chooses people that they want to help them with important decisions.



Develop a plan

decide who will be supporters in the needed areas and determine what specifically they will help with and what they don't need help with. The plan will say what kinds of supports are needed so the person can use their right to make decisions.

- Example: the agreement might say that the person with a disability wants help making decisions about getting food and finding a place to live, but not with choices about clothing.
- Help with getting an education or training but not helping to choose and keep supports and services



Draft a written agreement

write up an agreement that outlines who the supporters are and what they will and won't be helping with.



Review sample agreements

- SDM can be in place with other ways to help with decisions such as POA, HCP and shared decision making when the person is still in high school.
- Parents interested in SDM will need to be connected with people/orgs that know how to set it up. 28

Supported Decision Making “DAILY LIFE”

Medical appointments

Housing benefits

Managing Bank accounts

There should be a conversation between the parents or trusted supporters to make the young adult's doctors, other medical providers and banks aware of the SDM agreement and explain what it is before there is any need for medical care or banking decisions.

For more information please connect with :

Legal Aid

Community Legal Aid

(Serving Berkshire, Franklin, Hampden, Hampshire, and Worcester Counties)

<https://communitylegal.org/contact/>

De Novo

(Serving the Greater Boston Area)

<https://www.denovo.org/contact>

Greater Boston Legal Services

(Serving the Greater Boston Area)

<https://www.gbls.org/get-legal-help>

Northeast Legal Aid

(Serving Essex and Middlesex Counties)

<https://www.northeastlegalaid.org/contact-us>

South Coastal Counties Legal Services

(Serving Barnstable, Bristol, Dukes, Nantucket, and Plymouth counties as well as Avon and Stoughton in Norfolk county)

<https://sccls.org/contact/>

Volunteer Lawyers Project:

(Serving Suffolk (parts of Norfolk & Middlesex) counties)

<https://vlpnet.org/get-help/>

For more information please connect with :

Other Resources

- Court Service Centers
- <https://www.mass.gov/orgs/court-service-centers>

- Lawyer for the Day Program (by County)
- *Barnstable County*: <https://barnstablebarassociation.org/legal-assistance-info>
- *Berkshire County*: [Berkshire Probate and Family Court lawyer for the day | Mass.gov](https://www.mass.gov/location-details/berkshire-probate-and-family-court-lawyer-for-the-day)
- *Bristol County*: <https://www.bristolcountyprobate.org/>
- *Dukes County*: <https://www.mass.gov/locations/dukes-probate-and-family-court>
- *Essex County* : <https://www.mass.gov/location-details/essex-probate-and-family-court-lawyer-for-the-day>
- *Hampden County*: <https://www.hcbarlegalclinic.org/what-we-do>
- *Hampshire County*: <https://www.mass.gov/location-details/hampshire-probate-and-family-court-lawyer-for-the-day>
- *Middlesex County*: <https://www.mass.gov/location-details/middlesex-probate-and-family-court-lawyer-for-the-day>
- *Nantucket County*: <https://www.mass.gov/location-details/nantucket-probate-and-family-court-lawyer-for-the-day>
- *Norfolk County*: <https://www.mass.gov/location-details/norfolk-probate-and-family-court-lawyer-for-the-day>
- *Plymouth County*: <https://www.mass.gov/location-details/brockton-probate-and-family-court-lawyer-for-the-day>
- *Suffolk County*: <https://www.mass.gov/location-details/suffolk-probate-and-family-court-lawyer-for-the-day>
- *Worcester County*: <https://www.mass.gov/location-details/worcester-probate-and-family-court-lawyer-for-the-day>

- MA Legal Resource Finder
- <https://masslrf.org/en/home>

- Trial Court Law Libraries
- <https://www.mass.gov/ask-a-law-librarian>

- Masslegalhelp.org
- <https://masslegalhelp.org/children-and-families/guardians-and-other-caregivers>

QUESTIONS?

