Leandra Colley
Final Research Paper

Last Resort or First Response: How Georgia's Guardianship System Fails Elders with Intellectual and Developmental Disabilities

I. Introduction

Georgia's guardianship statute is designed to protect individuals who cannot make decisions for themselves, but it operates in tension with the principle that adults retain autonomy unless guardianship is absolutely necessary. The statute defines "incapacitated adult" narrowly and directs courts to "encourage the development or maintenance of maximum self-reliance and independence" and impose guardianship only when no less restrictive alternative is adequate.[1] In practice, courts often default to guardianship rather than approaching it as a last resort. National data suggests that plenary guardianships outnumber limited guardianships by as much as eleven-to-one, indicating that courts often default to the most restrictive option.[2] This is particularly problematic for older adults with intellectual and developmental disabilities (IDD), where overlapping vulnerabilities and limited services make less restrictive options difficult to implement.

Georgia's guardianship framework fails older adults with IDD for two reasons. First, supported decision-making (SDM), the less restrictive alternative the statute contemplates, lacks a statutory foundation in Georgia and is inconsistently applied. Second, inadequate capacity assessment practices and a near-total absence of data make it impossible to determine whether courts are applying the least restrictive alternative requirement. This paper sets out the governing legal framework, examines where

[1] O.C.G.A. § 29-4-1(a)-(f) (2026)
[2] Pamela B. Teaster et al., *Wards of The State: A National Study of Public Guardianship* (2007), https://supporteddecisionmaking.org/wp-content/uploads/2023/01/wards_of_the_state.pdf. Georgia does not track guardianship outcomes in a way that allows meaningful evaluation.

guardianships fall short, analyzes SDM as the primary alternative, and proposes reforms.

II. The Legal Framework

Guardianship is a court-ordered arrangement in which a guardian is given the authority to make personal decisions on behalf of an adult who "lacks sufficient capacity to make or communicate significant responsible decisions concerning his or her health or safety."[3] O.C.G.A. § 29-4-1 requires that guardianship should be used only where less restrictive alternatives would be inadequate.[4] Additionally, O.C.G.A. § 29-4-20 clarifies that, in a guardianship arrangement, a protected person has a right to the least restrictive form of assistance, considering the protected person's preferences and functional limitations.[5] Together, these provisions support the idea that Georgia's statutes are meant to preserve autonomy rather than impose blanket incapacity findings.[6] In other words, plenary guardianship should not be the default response. Even after appointment, the statute requires guardians to encourage the protected person to participate in decisions and act on their own behalf.[7] At every step, the statute requires courts to consider options that preserve autonomy. Nevertheless, the statute does not require courts to document the analysis supporting a guardianship determination, which leaves probate judges with broad discretion and little oversight.[8]

[3] O.C.G.A. § 29-4-1(a)(6)(2026)
[4]Id. § 29-4-1(f)
[5] OC.G.A. § 29-4-20(a)(6) (2026)
[6] *See* Teaster et al., *supra* note 2. National studies suggest that plenary guardianships substantially outnumber limited guardianships, despite statutory preferences for less restrictive intervention.
[7] O.C.G.A. § 29-4-22 (2026)
[8] U.S. Senate Special Comm. on Aging, *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans* 10 (2018), https://www.aging.senate.gov/imo/media/doc/Guardianship%20Report.pdf

The preference for autonomy and less restrictive intervention is not unique to Georgia, as federal law also requires it. In *Olmstead v. L. C.*, the Supreme Court held that the unnecessary institutionalization of individuals with disabilities constitutes discrimination under Title II of the ADA.[9] Although *Olmstead* addressed physical segregation and institutionalization, its reasoning applies similarly to guardianship because plenary guardianship removes an individual's authority to make decisions about where to live, how to spend money, what medical care to receive, and other deeply personal aspects of daily life, even where less restrictive options may allow them to function adequately with support. The court reasoned that where reasonable accommodations can be made, they *should* be made for a protected person.[10] As Professor Leslie Salzman argues, substituted decision-making under guardianship can violate the ADA's integration mandate by replacing the individual's judgment entirely, rather than providing the support necessary to exercise it.[11] As both Georgia's statutes and *Olmstead* require, the state's use of guardianship imposes a more restrictive alternative than the law permits where supported decision-making would adequately meet the individual's needs.

[9] *Olmstead v. L. C.*, 527 U.S. 581 (1999)
[10] Id., at 606 n.16
[11] Leslie Salzman, Rethinking Guardianship (Again): Substituted Decision Making as a Violation of the Integration Mandate of Title II of the Americans with Disabilities Act, 81 *Univ. Colo. L. Rev. 157* (2009), https://supporteddecisionmaking.org/wp-content/uploads/2023/01/rethinking_guardianship_again-1.pdf. Substituted decision-making is the transfer of legally authorized decision-making authority from the individual to another person, usually through guardianship. Substituted decision-making differs from supported decision-making because supported decision-making allows the individual to receive assistance understanding and communicating their preferences while still being the ultimate decision-maker.

III. Why Guardianship Becomes the Default

A. Inadequate Capacity Assessments and Uninformed Decision-Making

The problem of uninformed guardianship determinations starts with the evidence. Courts depend on clinical evaluations to determine whether guardianship is warranted, but that evidence is routinely inadequate. A tri-state study reviewing 298 guardianship case files in Massachusetts, Pennsylvania, and Colorado found that written clinical evidence was substandard across all three states, with Massachusetts receiving the lowest rating and many partially illegible reports.[12] Despite this, full guardianship was granted in over 75% of cases regardless of the quality of evidence.[13] Evaluations were often brief, conclusory, and missing critical information.[14] In many cases, evaluations failed to describe functional abilities or the individual's preferences and instead relied on general statements or a medical diagnosis alone.[15] A medical diagnosis alone should not justify removing someone's decision-making authority because diagnoses affect individuals differently, and many people with cognitive disabilities can still make informed decisions with appropriate support systems in place.[16] Courts were therefore asked to make sweeping determinations based on records that did not explain how the individual functioned in daily life or whether they could make decisions with

[12]Jennifer Moye et al., Clinical Evidence in Guardianship of Older Adults Is Inadequate: Findings from a Tri-State Study, *47 Gerontologist 604* (2007), 604-5, https://academic.oup.com/gerontologist/article/47/5/604/718666
[13]Id. at 606
[14] Id. at 610
[15]Id.
[16] For example, two individuals with the same intellectual or cognitive disability diagnosis may have extremely different functional abilities, communication styles, and support needs. One individual may require substantial assistance with daily living, while another may still be capable of making informed healthcare, financial, or personal decisions with limited support.

support. Capacity determinations should not be made on diagnosis alone, but reliance on incomplete evidence allows courts to do exactly that.

The same researchers developed a six-domain assessment model identifying what courts should instead require evaluators to address: medical condition, cognition, functional abilities, values, risk of harm and level of supervision needed, and means to enhance capacity.[17] When these areas are addressed adequately, they provide a detailed, functional record necessary to support limited guardianship or alternatives like supported decision-making (SDM).[18] In Colorado, the state with the most progressive statutory reform, clinical evaluations were more complete and limited guardianship orders were used in approximately 34% of cases, compared to only one case in either Massachusetts or Pennsylvania.[19] When the framework is applied, it creates more successfully tailored interventions. Alternatively, when the framework is not applied, courts are left to grant plenary guardianship based on incomplete and conclusory evidence.[20]

Standard capacity assessment tools compound this problem for individuals with IDD, because these assessments were largely developed based on older adults with acquired cognitive decline rather than on individuals who have lived their entire lives with a cognitive impairment.[21] Medical practitioners are treated as experts in the entire

[17]Jennifer Moye et al., A Conceptual Model and Assessment Template for Capacity Evaluation in Adult Guardianship, 47 *The Gerontologist* 591 (2007), https://academic.oup.com/gerontologist/article/47/5/591/718664
[18] Id.
[19] Moye et al., *supra* note 9, at 609.
[20] Id. at 609-10
[21]Nina A. Kohn et al., Supported Decision-Making: A Viable Alternative to Guardianship*?*, *117 Penn St. L. Rev. 1111* (2013), https://www.pennstatelawreview.org/117/4%20Final/4-Kohn%20et%20al.%20(final)%20(rev2).pdf

domain of medicine, rather than in their specialty.[22] The structure of the system reinforces these shortcomings. During the transition to adulthood, schools and service providers frequently present guardianship as the primary or default option for supporting individuals with IDD in decision-making.[23] Studies show that almost 60% of people with IDD ages eighteen to twenty-two who receive publicly funded services have guardians, reflecting how early and consistently this option is introduced.[24] Some professionals provide families with no information on alternatives at all.[25] In many cases, families are not presented with SDM or other options, or those alternatives are not explained in a way that allows for meaningful consideration.[26] This guardianship structure has long-term consequences that shape the protected person's autonomy well into his or her advanced years. Courts and families rely on incomplete evaluations without considering alternatives, which perpetuates a system in which plenary guardianship becomes the default outcome.

B. Fragmented Services and the Absence of Data

For older adults with IDD, the pull toward guardianship is intensified by the complexity of their care. Research on this population is limited, and the service systems these individuals depend on do not reliably communicate with one another.[27] For

---

[22]Nat'l Council on Disability, *Beyond Guardianship: Toward Alternatives that Promote Greater Self-Determination for People with Disabilities* 80 (2018), https://www.ncd.gov/assets/uploads/docs/ncd-guardianship-report-accessible.pdf ("In one case, an attorney who contributed to this report noted having to object when a judge appointed an orthopedic surgeon to evaluate the capacity of a woman with intellectual disabilities.")
[23]Emily DiMatteo et al., *Rethinking Guardianship to Protect Disabled People's Reproductive Rights,* Ctr. for Am. Progress (Aug. 11, 2022), https://www.americanprogress.org/article/rethinking-guardianship-to-protect-disabled-peoples-reproductive-rights/
[24]Id.
[25]Id.
[26]Id.
[27]Tamar Heller, Ph.D., et al., *Interventions to Promote Health: Crossing Networks of Intellectual and Developmental Disabilities and Aging*, *7 Innovations in Aging s24*(2013), https://www.sciencedirect.com/science/article/pii/S193665741300109X; Nat'l Disability Auth., *The Care of Older Adults with Intellectual Disabilities and Complex Age-Related Conditions* (2023),

example, an elderly adult with Down syndrome and early-onset dementia may receive medical care through one healthcare provider, disability services through a Medicaid waiver program, and aging-related assistance through a separate eldercare network; yet, none of these systems may communicate with one another or share a unified decision-making framework. As a result, individuals and their families must navigate a fragmented network of providers without a unified decision-making system. In the current system, guardianship functions as a coordination tool rather than a narrow legal intervention. For example, Georgia's Adult Guardianship Program functions as a guardian of last resort when no willing person is available, but families regularly pursue guardianship because it is the only tool that produces a recognized legal status that agencies and providers will respect.[28] SDM could serve the same coordination function if supporters were formally recognized, and providers were trained to accept SDM agreements. Texas's Supported Decision-Making Agreement Act, for example, gives SDM agreements formal legal recognition and requires third parties to acknowledge the authority of supporters operating under those agreements.[29] In the absence of that infrastructure, courts compensate through blanket guardianship orders.

The lack of reliable data further reinforces this problem. Unlike in capacity determinations, the issue here is the absence of system-wide data: courts do not consistently track how many individuals are under guardianship, what types of orders

https://www.youtube.com/watch?v=KOgy7Vs3lSo. This webinar largely discusses coordination issues in the healthcare system oversees, but the discussion also addresses issues that America's elder population encounter.

[28]GA. Dept of Hum. Servs., Adult Guardianship Program, https://aging.georgia.gov/programs-and-services/adult-guardianship-program-agp. (April 13, 2026); Nat'l Council on Disability, *supra* note 21.

[29] Tex. Est. Code § 1357.001-.157 (2026)

are entered, or what outcomes those individuals experience.[30] This limits oversight and makes it difficult to evaluate whether guardianship is being used appropriately or excessively.[31] Georgia's Adult Guardianship Program website, for example, provides no current data on how many adults with IDD are under public guardianship or whether less restrictive alternatives were considered before those orders were entered.[32]

Available evidence suggests that these systemic gaps shape guardianship determination outcomes in significant ways. A 2025 National Center for State Courts study of a Pennsylvania pilot program providing free legal representation in guardianship cases for adults sixty and older suggests that plenary guardianship, while necessary only in some cases, is common because people often go through these proceedings without representation or meaningful consideration of less restrictive alternatives.[33] The study found that plenary guardianships were nearly halved in represented cases, while cases where no guardianship was ordered nearly doubled.[34]

IV. Supported Decision-Making as the Least Restrictive Solution

SDM is a framework that allows individuals with cognitive disabilities to retain their legal decision-making authority while receiving assistance from trusted supporters who help gather information and communicate decisions.[35] Unlike guardianship, SDM requires no court proceeding, can be modified or terminated by the protected person at

[30]Justice in Aging, *Guardianship Data Reform* (2022), https://justiceinaging.org/guardianship-data-reform/
[31]Nat'l Council on Disability, *supra* note 22, at 65.
[32]GA. Dep't of Hum. Servs., Adult Guardianship Program, *supra* note 27.
[33]Nat'l Ctr. for State Cts., *Trends in State Courts 2025*, 14 (2025), https://www.ncsc.org/sites/default/files/media/document/NCSC-Trends-2025.pdf
[34] Id.
[35] Peter Blanck & Jonathan G. Martinis, "The Right to Make Choices": The National Resource Center for Supported Decision-Making, *3 INCLUSION 24* (2015), https://bbi.syr.edu/wp-content/uploads/application/pdf/bio/2015-blanck-martinis-right-make-choices-accessible-AD.pdf

any time, and does not remove legal rights.[36] SDM agreements specify the areas where support is needed and the responsibilities of each supporter, allowing SDM to be tailored to an individual's actual needs.[37] This is the kind of targeted intervention that Georgia's statute requires but continuously fails to produce.

The empirical research on SDM is limited, which is itself significant. An empirical review found very few studies on SDM outcomes and almost no basis for comparing decisions made under SDM to those made under guardianship.[38] This absence of data is often used to dismiss SDM, but the absence reflects a lack of investment rather than a lack of effectiveness. Concerns surrounding potential for abuse under SDM agreements have merit, but guardianship is not necessarily a risk-free arrangement. The Government Accountability Office has documented hundreds of cases of elder abuse and exploitation by court-appointed guardians, and it has found that this abuse often occurs in systems with weak oversight procedures.[39] Courts have also been documented to fail in screening prospective guardians and reviewing irregularities in their annual accountings.[40] Without comparable data on SDM outcomes, there is no empirical basis for concluding that guardianship is the safer option.

Georgia law permits limited guardianship, but as described above, courts frequently enter plenary orders even where limited ones would suffice. This is in part because clinical evidence, as documented above, fails to show how the individual could

---

[36]Id., at 26.
[37]Id.
[38]Nina A. Kohn & Jeremy A. Blumenthal, A Critical Assessment of Supported Decision-Making for Persons Aging with Intellectual Disabilities, 7 *Disability and Health Journal* (2013), https://www.sciencedirect.com/science/article/pii/S1936657413000599
[39]U.S. Gov't Accountability Off., GAO-10-1046, *Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors* 5 (2010), https://www.gao.gov/products/gao-10-1046; U.S. Gov't Accountability Off., GAO-17-33, *Elder Abuse: The Extent of Abuse by Guardians Is Unknown, but Some Measures Exist to Help Protect Older Adults* (2016), https://www.gao.gov/products/gao-17-33
[40]Nat'l Council on Disability, *supra* note 22, at 70

function with additional support.[41] Moreover, Georgia does not formally recognize SDM, leaving the agreements without clear legal standing and allowing providers to disregard them.

Other states have taken a different approach. Texas enacted the first SDM Agreement Act in 2015, with other states adopting similar laws recognizing SDM agreements later.[42] Formal statutory recognition increases SDM use in practice because courts have a framework to apply, and providers know the agreements carry legal weight.[43] Using *Olmstead* as a vehicle for SDM advocacy in Georgia could also be helpful. Where an older adult with IDD can make decisions with an SDM network, the state's failure to recognize that structure effectively compels a more restrictive intervention when a less restrictive one would suffice. Professor Salzman argues, and *Olmstead* supports, that states are required to provide decision-making support as a less restrictive alternative and that doing so does not constitute a fundamental program alteration.[44]

V. Recommendations and Conclusion

Georgia should take three steps. First, it should enact a Supported Decision-Making Agreement Act modeled on the Texas statute. This new statute should require healthcare providers, financial institutions, and government agencies to honor SDM agreements and require courts to evaluate SDM on the record before ordering any form of guardianship.

---

[41]Moye et al., *supra* note 9
[42]Nat'l Res. Ctr. for Supported Decision-Making, *U.S. Supported Decision-Making Laws*, https://supporteddecisions.org/resources-on-sdm/state-supported-decision-making-laws-and-court-decisions/
[43]Blanck & Martinis, *supra* note 34, at 27
[44]Salzman, *supra* note 10, at 207

Second, Georgia should require mandatory training for probate court judges on IDD, capacity assessment methodology, and alternatives to guardianship. Research shows that the quality of capacity evaluations improves when statutes require more thorough documentation, and courts with better clinical evidence are more likely to enter limited orders rather than plenary orders .[45] Because Georgia appellate courts rarely review guardianship cases, probate judges have broad and largely unchecked discretion over this case type. Training is one of the few mechanisms available to ensure that discretion is exercised consistently with what the statute requires.

Third, Georgia should implement a statewide data collection system that tracks guardianship petitions, the outcomes, whether less restrictive alternatives were considered, and whether the individual had an IDD diagnosis.[46] Without this data, patterns of overuse cannot be identified.[47] Additionally, advocates and the legislature cannot meaningfully evaluate whether reform efforts are working if they do not have a database of information.[48]

Georgia's law explicitly states a commitment to preserving autonomy. For older adults with IDD, however, that commitment remains largely aspirational. This population often navigates aging-related needs within systems that rely on diagnosis-based evaluations and lack recognized alternatives, which makes guardianship the path of least resistance. Without the development of viable alternatives tailored to elders with IDD, guardianship will continue to function as a substitute for system failure rather than as a last resort.

[45]Moye et al., *supra* note 9, at 600, 610
[46]Justice in Aging, *supra* note 29, at 42
[47]Nat'l Ctr. for State Cts., *supra* note 32, at 16
[48]Id.