

SEXUAL ASSAULT ADVOCACY TOOLKIT



KANSAS
BELIEVE



Kansas BELIEVE Sexual Assault Advocacy Toolkit

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The information in this toolkit is intended to assist sexual assault advocates when working with survivors with disabilities. The editors and staff of the Kansas Coalition Against Sexual and Domestic Violence and the Self-Advocate Coalition of Kansas do not render legal services and specifically disclaim any liability, loss, or risk from the use and application of any of the contents of this toolkit.

Suggested Citation:

Kansas Coalition Against Sexual and Domestic Violence & Self-Advocate Coalition of Kansas, *Kansas BELIEVE Sexual Assault Advocacy Toolkit* (2018).

Acknowledgements

This toolkit is the result of a collaborative effort of many dedicated and talented people – self-advocates, domestic violence and sexual assault advocates, Self-Advocate Coalition of Kansas staff, Kansas Coalition Against Sexual and Domestic Violence staff, and technical assistance providers including the Vera Institute of Justice Center on Victimization and Safety. We hope this toolkit will serve to improve and strengthen services for survivors with disabilities.

This project was supported by Grant No. 2014-FW-AX-K007 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

About Kansas BELIEVE



What is Kansas BELIEVE?

The Kansas BELIEVE (Building and Expanding Leaders and Individuals, Experience the Vision of Empowerment) Partnership membership is the Kansas Coalition Against Sexual and Domestic Violence (KCSDV) and the Self-Advocate Coalition of Kansas (SACK).

The vision of Kansas BELIEVE is that people with intellectual and development disabilities (I/DD) who have experienced sexual violence will be believed and will be able to make their own decisions. Kansas service and support providers will offer unconditional and continuous support in a relaxed place with safety and respect.

The mission of Kansas BELIEVE is to improve services and support to people with I/DD who have experienced sexual violence. We will do this through our:

- Active teamwork,
- Desire to understand, and
- Development of meaningful partnerships.

We will also build our ability to assist others in creating communities of safety and trust that are based on listening, believing, and providing unconditional support.



A picture of the hands of the Kansas BELIEVE team and self-advocates in a circle. The Kansas BELIEVE logo is in the middle of the hands.



Guardianship



Guardianship Toolkit for Sexual Assault Advocacy

Empowering People with Disabilities to Live Life

2018

SEXUAL ASSAULT ADVOCACY TOOLKIT – GUARDIANSHIP

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What is this toolkit?

The Kansas BELIEVE Partnership talked to self-advocates, survivors of sexual violence, and sexual assault advocates to learn what information on guardianship would be helpful to everyone.

This toolkit is written to help sexual assault advocates know about:

- Self-advocacy
- Self-determination
- Guardianship
- Guardian roles and responsibilities
- Guardianship considerations for sexual assault advocacy

This toolkit is not intended to provide legal advice. If you need legal advice, you should contact an attorney.

Who will this toolkit help?

This toolkit is designed to help sexual assault advocates who:

- Want more information about the guardianship.
- Want more information about how to help people with disabilities who may have a guardian

Self-advocacy and self-determination are important to understand before learning about how to help a person with intellectual and developmental disabilities (I/DD) or other disability. Self-advocacy and self-determination are defined next.

What is self-advocacy?

Self-advocacy is when people say what they want and need.

Self-advocacy means:

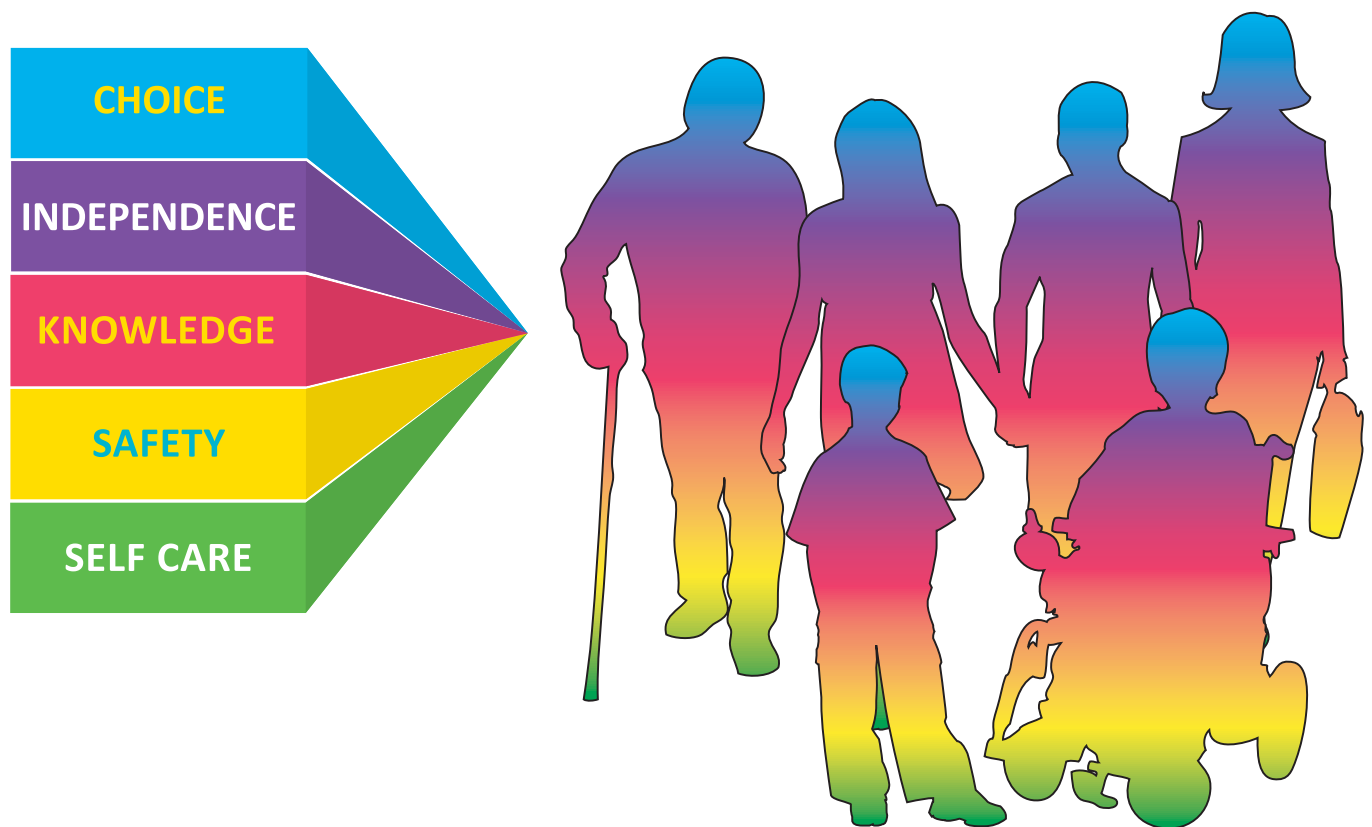
- Speak for yourself
- Share ideas about what you need and want
- Speak about what you want your life to be
- Speak about the things that can affect your life



A picture of a woman pointing to herself.

What is self-determination?

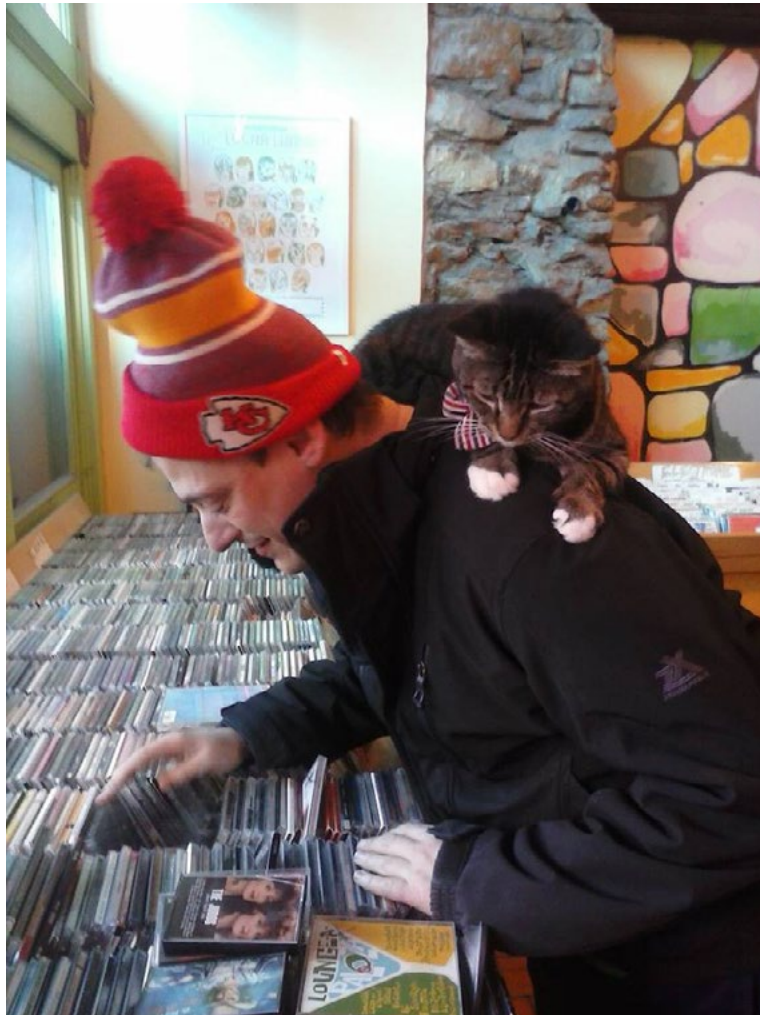
People are often labeled and defined by their disability or experience. People have feelings, ideas, beliefs, and values that are not limited by disability or experience. People with disabilities or people who experience sexual violence also have feelings, beliefs, and values. Each person is the expert in their own thoughts, feelings, and experiences, and knows what is best for them. As the expert of their life, people have the ability to direct decisions about their life, and this is self-determination. Choice, independence, knowledge, safety, and self-care are basic parts of self-determination.



HUMAN JUST LIKE EVERYONE ELSE

■ Choice (ability to try something and learn)

Each person has the right to experience successes and failures based on their decisions, and to decide if the result is what they want. This is how people build skills in understanding cause and effect for future decision-making and choices.



A picture of a self-advocate flipping through a selection of CD's with a cat resting on his shoulder.

■ Independence (decide how things are done)

Each person has the ability to make choices in their life according to their needs, beliefs, values, and desires. The level of independence and support varies based on the needs, abilities, skills, and experience of each person.



A picture of a self-advocate who has just received a “Cheerful Charlie” award at work.

■ Knowledge (information)

Each person has the right to have easily understood information about the options available, and the possible outcomes of each option.



A picture of a self-advocate speaking to the audience at the Kansas Disability Caucus.

■ Safety (emotional, financial, physical, spiritual)

Each person has the right to feel safe. Each person has the right to determine which safety plans they wish to use and which they do not. A person telling their own experience of violence or abuse should be met with support and options. Options are then chosen by the person so they can determine the next steps for their own safety.



A picture of a self-advocate at physical therapy.

■ Self-care (taking care of one's own emotions and body)

Each person has the right to heal in their own way. This involves taking care of their emotional, physical, and spiritual needs.



A picture of two self-advocates on a boat on vacation.

Decision-Making

Survivors with intellectual or developmental disabilities (I/DD) may have people involved in their life to help with decisions, finances, or other life activities. Some people may be appointed by the court to serve in a specific role, while others may not.

It is important for sexual assault advocates to understand the varying roles and functions of people who may be involved in survivors' lives, and how to help survivors with I/DD advocate for their rights.



A picture of a road that splits into two directions, with one direction being “yes” and the other direction “no.”

Guardianship

■ What is Guardianship?

Guardianship is an attempt by the state to provide a way to help and protect a person when that person is not able to take care of themselves. Guardianship, while intended to be helpful, places the most severe restrictions on a person's freedoms that a court can impose, including the right to self-determination and choice.

Guardianship is not necessarily intended to last forever. The goal of guardianship is to restore the person to complete decision-making ability, and the purpose should be to create few limits and to encourage self-determination. Guardianship should only be used after all other less restrictive alternatives have been explored.



A picture of two people looking at papers together.

■ What is a Guardian?

A guardian is an individual, or a private nonprofit corporation suitable to perform the duties of a guardian, certified and appointed by the court to act on behalf of a person who is in need of help taking care of their own needs.

A guardian makes legal decisions related to the health, safety, and welfare of the person, including accessing and monitoring supports and services for physical, psychological, and emotional care. The guardian provides informed consents and maintains communication with service providers, including case managers, facility staff, or medical providers. A guardian is supposed to advocate for and protect the personal, civil, and human rights of the person for whom they are the guardian. At all times, a guardian is under the court's direction and control.

Some people may use the term “guardian” to refer to a *natural guardian*. A natural guardian means both the biological or adoptive mother and father of a minor, and is different from the court-appointed guardian addressed in this toolkit.

It is important for sexual assault advocates to know that:

- Only the court can appoint a guardian.
- The court will issue Letters of Guardianship that give the guardian the authority to carry out their legal duties.
- In some cases, there may be a Guardianship Plan in place. A Guardianship Plan might include provisions about where the person will live or what kinds of decisions they will be allowed to make on their own.
- Guardianship may be temporary and only needed for a period of time.

There are also different types of guardians the court may appoint:

- Temporary Guardian—If a situation arises where there exists imminent danger to the physical health or safety of the person and the hearing procedures for guardianship have not yet been satisfied, the court may appoint a temporary guardian (see K.S.A. 59-3073).

- **Standby Guardian**—The court may appoint another person to assume the duties and responsibilities assigned to the guardian upon the resignation, temporary absence, or death of the guardian (see K.S.A. 59-3074).
- **Successor Guardian**—A successor guardian is a person appointed by the court to succeed a person earlier appointed as the guardian (see K.S.A. 59-3088 et. seq).
- **Co-Guardian**—The court may appoint one or more people, or corporations, to serve as guardian for an individual, and shall specify if the co-guardians may act independently or only in concert (see K.S.A. 59-3087 et. seq.).



A picture of a man shaking the hand of a woman.

■ What does the court consider when appointing guardianship?

- In Kansas, a person 18 years of age or older who, because of both an “impairment” and the lack of appropriate alternatives for meeting essential needs for physical health, safety, or welfare, may require the appointment of a guardian.
- A person may be considered as having an “impairment” if their ability to receive and evaluate relevant information, or effectively communicate decisions, or both, even with the use of assistive technologies or other supports, is impaired such that the person lacks the capacity to meet essential needs for physical health, safety, or welfare.
- Meeting essential needs for physical health, safety, or welfare means making determinations and taking actions that are reasonably necessary in order for a person to obtain or be provided with shelter, sustenance, personal hygiene, or health care, and without which serious illness or injury is likely to occur (see K.S.A. 59-3051 et. seq.).



A picture of a man on the telephone and the man is also writing something in a book.

■ What are the guardian's duties and responsibilities?

The duties and responsibilities of a guardian are defined in Kansas law (see K.S.A. 59-3075 et. seq.). The following provides an overview of a guardian's duties and responsibilities.

All guardians in Kansas shall:

- Become and remain personally acquainted with the person, the spouse of the person, and other interested people associated with the person and who are knowledgeable about the person's needs, and the person's responsibilities.
- Exercise authority only as necessitated by the person's limitations.
- Encourage the person to participate in making decisions affecting them.
- Encourage the person to act on their own behalf to the extent the person is able.
- Encourage the person to develop or regain the skills and abilities necessary to meet their own essential needs and to otherwise manage their own affairs.

In making decisions on behalf the person, guardians in Kansas shall:

- Consider the expressed desires and personal values of the person to the extent known by the guardian.
- Make sure that the personal, civil, and human rights of the person are protected.
- At all times act in the best interests of the person and exercise reasonable care, diligence, and prudence.
- File reports with the court concerning the status of the person and actions of the guardian.

Kansas law requires guardians exercise all powers and discharge all duties necessary or proper to implement the following provisions:

- Provide for the person's care (education, health care, treatment, housing, support, and maintenance).
- Consider and provide on behalf of the person any necessary or required consents, or refuse the same.

- Make sure the person lives in the least restrictive setting appropriate for their needs.
- Make sure the person receives medical care and non-medical care or other services that may be needed to preserve the health of the person or to assist the person in developing or retaining skills and abilities.
- Promote and protect the comfort, safety, health, and welfare of the person.
- Make decisions and arrangements, including giving necessary consents, about the person's funeral and body, if death occurs.

■ What are the guardian's limitations?

A guardian in Kansas shall not have power on behalf of the person to:

- Prohibit the marriage or divorce of the person.
- Consent to the termination of the person's parental rights.
- Consent to the performance of, or participation in, any experimental biomedical or behavioral procedure on the person, without prior review and approval by authorized review boards.

Unless approved by the court, a guardian shall not have the power on behalf of the person to:

- Consent to the adoption of the person.
- Place the person in a treatment facility as defined in K.S.A. 59-3077 (h).
- Exercise any control or authority over the person's estate, unless specifically authorized by the court.
- Consent to any psychosurgery, removal of a bodily organ, or amputation of a limb, unless otherwise approved in advance by the court. The only exception is in an emergency when necessary to preserve the life of the person or to prevent serious and irreparable impairment to the physical health of the person.

- Consent to the sterilization of the person, unless approved by the court following a due process hearing where the person is represented by a court-appointed attorney.
- Consent to the withholding or withdrawing of life-saving or life-sustaining medical care, treatment, services, or procedures.

■ Removal of Guardianship

The court may end a guardianship in any of the following situations:

1. The need for guardianship no longer exists (i.e., the person is no longer “impaired” and has been restored to capacity);
2. If a minor, the person has turned 18 (and was not determined to be a minor with an “impairment”); or
3. The person died.

The court may also end guardianship if the court finds that the guardian is not fulfilling their duties. If the court ends the guardianship, it will enter appropriate orders to close the case.



A picture of a woman with arms and hands open wide and her mouth open with a surprised look on her face.

■ What is the difference between a guardian and conservator?

While a guardian is appointed by the court to make legal decisions related to the health, safety, and welfare of the person, a **conservator is appointed by the court to make legal decisions affecting a person's finances and estate (personal and real property)**. A conservator is responsible for managing a person's financial affairs. As with a guardian, a conservator is at all times subject to the control and direction of the court.

Only the court can appoint a conservator, and the court will issue Letters of Conservatorship that give the conservator the authority to carry out their legal duties. In some cases, there may be a Conservatorship Plan in place. A Conservatorship Plan may include provisions regarding the type and amount of funds over which the conservatee may have control, and how the conservator may protect the eligibility of the person for public benefits.

Alternatives to conservatorship that may help with financial affairs can be obtained through Social Security representative payeeships, durable powers of attorney, and voluntary conservatorships, to name a few. The giving of durable powers of attorney and voluntary conservatorships requires that the person involved have capacity at the time they sign such agreements.



A picture of two men standing and talking about something on a piece of paper.

Supported Decision-Making and Alternatives to Guardianship

As previously noted, guardianship should only be used as a method of last resort and after all other less restrictive alternatives have been explored. Supported Decision-Making is one less restrictive alternative to guardianship. Supported Decision-Making is “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 and Martinis, 2015).



A picture of a self-advocate with her support team standing behind her.

With Supported Decision-Making, the person with the disability chooses “supporters” or “advisors” to assist them in different areas of their life. The supporters and their duties are typically listed in an agreement that is shared with all of the person’s service providers to ensure the supporters are included in discussions about important decisions. The supporters or advisors do not make decisions for the person or discuss matters without the person present.

Instead, the supporters help explain information in an understandable way, guide the person in weighing the courses of action, advise the person on the potential consequences of the decision, and assist with implementing decisions. Supported Decision-Making is a person-centered decision-making model that allows the person with the disability to retain their legal rights and decide who offers support. It is also a helpful model to teach about decision-making and self-determination. Supported Decision-Making can be combined with other assistance when needed to fully support a person's success.

Other alternatives to guardianship may include informal community supports through family, friends, or volunteers to help with things like shopping for food or other daily life activities. Professional assistance through social service agencies offering case management or home and community-based services may also be alternatives to guardianship.



A picture of two men sitting on chairs at a table and talking.

For additional help with guardianship, contact the following:

Self-Advocate Coalition of Kansas (SACK)

785-749-5588

Website: www.sackonline.org

Kansas Coalition Against Sexual and Domestic Violence

785-232-9784

Website: www.kcsdv.org

Disability Rights Center of Kansas

785-273-9661

Website: www.drckansas.org

Considerations for Sexual Assault Advocacy

Survivors are the experts of their lives and experiences. Survivors with intellectual and developmental disabilities (I/DD) have the right to decide what services they receive and who will be part of those services. The information below will help in making sure that survivors with I/DD are able to fully participate in sexual assault advocacy services and support.

■ Guardianship and Advocacy

Most people with disabilities do not need a guardian. In situations where an adult survivor has a legal guardian, sexual assault agencies can still provide services and support.

If an adult survivor discloses that they have a guardian and it is safe to do so, ask the survivor how they want the guardian to be part of their experience receiving services. Some people may be comfortable involving their guardian, while others may not.

Below are considerations if the survivor asks to have their guardian be part of or involved in services:

- The survivor can talk with their guardian about the advocacy services they want to receive.
- The survivor can meet with their guardian and the advocate together to talk about the advocacy services they want to receive.
- The guardian can meet with the advocate to learn about the advocacy services offered by the agency and how to best support the survivor.

It is important to remember that all advocacy services are voluntary. If a survivor with a guardian does not want advocacy services at all or does not want certain services, then the agency must respect the survivor's wishes regardless of what the guardian wants to have happen.

If a survivor is uncomfortable involving their guardian in services, or if someone asserts guardianship over another person who is an adult during the course of advocacy services, then the agency needs to:

- Require the legal documentation of guardianship be provided to the agency;
- Confirm that the guardian is court-appointed;
- Determine what decisions the guardian has the legal authority to make; and
- Ask the survivor safety-related questions about the guardian and safety plan with the survivor.

Due to the federal confidentiality provisions of the Violence Against Women Act, the Family Violence Prevention and Services Act, and the Victims of Crime Act, the agency may need to request the legal documentation of guardianship be provided to make service determinations, as this legal documentation will provide the information needed to determine who can consent to or refuse services, and make decisions about services.

Note: Family or friends may call themselves a guardian of a person with a disability, but may not be a court-appointed legal guardian. Therefore, these “guardians” are not legally able to make decisions on behalf of a person with a disability who is an adult. Court-appointed legal guardians have a letter from the court outlining their responsibilities. If a person claims to be a guardian and does not have documentation from the court, they should not be considered a legal guardian until court documents are provided and prove otherwise.

Questions to ask the survivor if someone claims to be or have a guardian might include:

1. Is there a paper that shows someone is a guardian for you?
2. Did the person go to court to become your guardian?
3. Is your guardian a family member?
4. Do you want your guardian to know you are receiving services?

- a. If yes, let's talk about how you can tell your guardian about the services you are receiving. Let's talk about how you want your guardian to be part of the services.
- b. If no, let's talk about why you do not want to tell your guardian about the services you are receiving. What are you worried about?

Safety-related questions about the guardian might include:

- Do you feel comfortable with your guardian?
- Does your guardian help make you feel safe? If no, can you share with me what makes you feel uncomfortable or unsafe with your guardian?
- If you feel unsafe, can you talk to your guardian about why?

Questions to ask the "guardian" might include:

1. Did you go to court to become the guardian?
2. Is there a letter from the court that shows you are the guardian for _____?
 - a. If yes, then ask the person to provide the guardianship letter to the agency.
 - b. If no, then talk about how the services are structured to empower the survivor to make decisions in a safe and confidential way.



A picture of two men standing and talking. One man is pointing to something on a piece of paper.

Guardianship Resources

Kansas Department for Aging and Disabilities
www.kdads.ks.gov

The Disability Rights Center of Kansas
www.drckansas.org

The Self-Advocate Coalition of Kansas
www.sackonline.org

Kansas Council on Developmental Disabilities
www.kcdd.org

Kansas CDDO Coalition
www.kscddcoalition.com

Kansas Guardianship Program
www.ksgprog.org
(785) 587-8555
1-800-672-0086

A Guide to Kansas Laws on Guardianship and Conservatorship
<http://bit.ly/Kansas-Laws-GC>

Autonomy, Decision-Making Supports, and Guardianship article by the ARC
<http://bit.ly/Decision-Making-Supports>

Guardianship Video Resources

To watch a short video explaining self-advocacy by the Self-Advocacy Resource and Technical Assistance Center, go to:
<http://bit.ly/What-is-Self-Advocacy>

To watch a short video about Supported Decision-Making by Able South Carolina, go to:
<http://bit.ly/Supported-Decision-Making>

We would like to thank the following for the use of the photos in this toolkit:



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www.sackonline.org/



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www.allsportsdigital.com/



The Kansas BELIEVE Partnership



Self Advocate Coalition of Kansas



2018