



**Removing Barriers to
Opportunity and Equality**

**SUPPORTED DECISION-MAKING:
A NEW ALTERNATIVE TO GUARDIANSHIP**

By:

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Guardianship

- A person is entrusted by law with the care of a of another person, who is incapable of managing his or her own affairs.
- Requires a court order to establish and ongoing court oversight.
- Removes the person's freedom of choice, self-determination and independence.
- Removes some or all of a person's decision-making rights.
- Assigns decision-making to a third party (the guardian).

Why Families May Seek Guardianship

- Child reaches 18 years of age
- School or physician tells them it is necessary.
- Think it is necessary for school, health care or other decisions after age 18.
- Help their child handle money.
- Connect their child with adult services.
- May believe this is the only legal solution.

Problems with Guardianships

- Financial exploitation
- Abusive relationships
- Absent guardians
- Person loses all sense of self-worth and wellbeing.
 - They feel like nothing they say or want matters.
- Missed opportunity to learn good decision-making skills

Inappropriate Guardianships

While clear and convincing evidence is needed in most instances to establish a guardianship, we routinely see courts award guardianship because:

- A doctor misdiagnosing a medical condition as a mental condition;
- A doctor describing a temporary condition as a permanent one;
- A statement from a person with a conflict of interest;
- A person who is trying to supplant the decision-making authority of a parent, child or sibling because they are tired of arguing about decisions.

Important Things to Remember

- The law presumes all adults have the capacity for decision-making –this applies to everyone, including people with disabilities.
- Decision-making is a learned skill –people with disabilities need opportunity, experience and support to learn to make well informed decisions.
- There are other legal ways to assist people with decision-making that do not restrict, limit or remove individual rights.

What is Self-Determination?

- Self-Determination means making your own choices, learning to effectively solve problems, and taking control and responsibility for one's life.
- Practicing self-determination also means one experiences the consequences of making choices.
 - National Parent Center on Transition and Employment

What Are The Benefits of Self-Determination

People with greater self determination are:

- Healthier
- More independent
- More well-adjusted
- Better able to recognize and resist abuse
 - Khemka, Hickson, & Reynolds, 2005; O'Connor & Vallerand, 1994; Wehmeyer& Schwartz, 1998).

Does the Research Support Self-Determination?

- When denied self-determination, people: “[F]eel helpless, hopeless, and self-critical” (Deci, 1975, p. 208).
- Experience “low self-esteem, passivity, and feelings of inadequacy and incompetency,” decreasing their ability to function (Winick, 1995, p. 21).
- People with disabilities who actively participate in decision making throughout their lives are better able to make well informed decision. (Khemka, Hickson, & Reynolds, 2005; O’Connor & Vallerand, 1994; Wehmeyer& Schwartz, 1998).

What is Supported Decision-Making?

Supported decision-making allows individuals to make their own decisions and stay in charge of their lives, while receiving the help and assistance they need to do so. All people need and use support to make important life decisions. Even if a person with a disability needs extra help to make significant life decisions, their right to make their own choices should not be taken away. Using a supported decision-making agreement, a person with a disability chooses someone they trust to serve as their supporter.

SDM Core Principals

- A person's right to choose is presumed.
- A person should have control of decisions that impact their life aided by natural support services and networks.
- Decision making assistance is available when needed.
- Assistance in decision making comes in a variety of forms.

Under a supported decision-making agreement, the supporter **CAN** help a person with a disability:

- Understand the options, responsibilities, and consequences of their decisions.
- Obtain and understand information relevant to their decisions.
- Communicate their decisions to the appropriate people.
- The supporter **cannot** make decisions for the person with a disability!

Who Can Be the Supporter?

Any adult may be a supporter. Usually it is a family member or friend. The adult with a disability must choose who will serve as his or her supporter. The individual should pick someone they trust. A supported decision-making agreement is based on trust. An adult with a disability cannot be told whom to select as his or her supporter.

What does the Agreement do?

The adult with a disability may allow his or her supporter to help gather information needed for a life decision, support the decision-making process by helping the adult evaluate and understand the options and consequences, and communicate that decision to other parties. The agreement may be established for one specific decision or for many decisions.

Informal SDM should be used even if Guardianship or Other Alternatives are in place.

W.Va. Code §44A-1-8(e)(5) requires a guardian to “encourage the protected person to participate to the maximum extent of his or her abilities in all decisions affecting him or her and to act in his or her own behalf on all matters in which he or she is able to do so.”

SDM Agreements Can be Used to Help Prevent Unnecessary Guardianship

W.Va. State Code §44A-1-3. Advance directives.

- The existence of a living will, medical power of attorney, durable power of attorney or other advance directive, duly executed by a person alleged to be a “protected person”, as defined in section four of this article, or the prior appointment of a surrogate decisionmaker for the protected person may eliminate, limit or supersede the need for the assistance or protection of a guardian or conservator, and any person so appointed is to be the first preferred nominee for guardian or conservator, as set forth in section eight, article two of this chapter.

States with SMD Laws

- Texas, Delaware and Washington D.C. have implemented SDM laws.
- Many others have legislation and pilot projects.
- The National Resource Center for Supported Decision-Making has provided 11 states with grants to support SDM law.

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