

## **Supported Decision-Making**



## **Options for Missouri**

## Table of Contents

Introduction . . . . .	1
1. Legislative Findings . . . . .	2
2. Purpose and Principles . . . . .	3
3. Guardianship Reform . . . . .	4
4. Supported Decision-Making Agreements . . . . .	5
5. Supported Decision-Making in Schools . . . . .	9
6. Mandatory Continuing Legal Education . . . . .	10
7. Consumer Assistance . . . . .	11
Appendix:	
Summary of Supported Decision-Making Laws in 21 States . . . . .	12
Positions of the National Council on Disability and the American Bar Association . . . .	39



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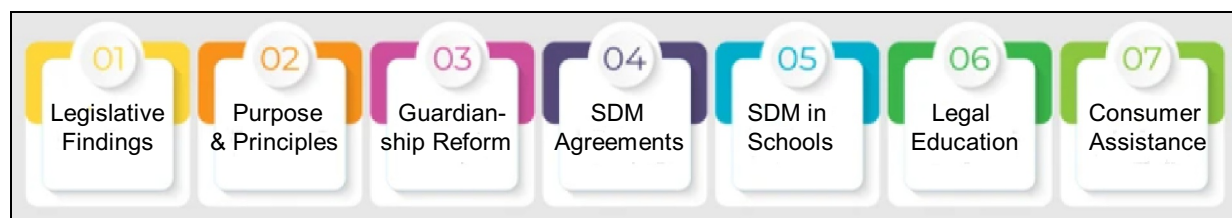


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# Supported Decision-Making Law

## *Options for Missouri*



The first supported decision-making law (SDM) was enacted in Texas in 2015. In the following years, 20 more states have passed such laws. Some focus exclusively on reforms to the guardianship process. Others recognize SDM agreements, establishing the process for adults to enter into such contracts, the required contents, and the legal consequences to SDM participants, including adults who create them as well as designated supporters who provide assistance and third parties who rely on them. Yet other states include provisions directing school districts to provide students and parents information about SDM as part of the process when students transition into adulthood. Noticeably absent from these laws are requirements that judges and court-appointed attorneys involved in guardianship proceedings receive training on less restrictive alternatives to guardianship, including SDM.

With the assistance of Spectrum Institute, the Alternatives to Guardianship Project has reviewed SDM laws in 21 states and the District of Columbia. We have identified the key elements in the SDM statutory scheme in each of them. The purpose of this review has been to create a menu of options to be considered for inclusion in new SDM legislation in Missouri.

This menu and related commentary are being shared with the developmental disability community, disability rights advocates, disability service providers, educators, and medical professionals, as well as people with developmental disabilities and their families. It is also being distributed to advocates and service providers for people who have other types of mental disabilities, such as seniors with cognitive decline and adults of all ages with mental disabilities arising from brain injuries or associated with medical conditions.

Each menu item identifies its purpose for being included in a SDM law in Missouri and lists the states which have adopted that item as part of its own SDM law. Reactions will be shared and discussed during a series of zoom meetings with stakeholders and other interested persons so that potential legislative authors and sponsors can evaluate the level of community support for various options as they craft and advance new legislation.



This section clarifies the public policies of Missouri and provides guidance to agencies and officials who interpret or implement the law.

### **1(a) Findings Related to Supported Decision-Making (NY)**

(1) A person's right to make their own decisions is critical to their autonomy and self-determination. People with intellectual, developmental, cognitive and psycho-social disabilities are often denied that right because of stigma and outdated beliefs about their capability. This right is denied, despite the reality that very few people make decisions entirely on their own. Everyone uses supports, as do people with disabilities; who may just need more or different kinds of supports.

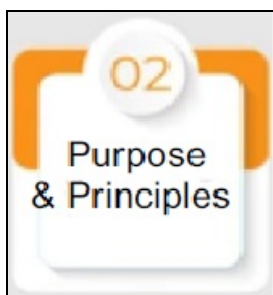
(2) The practice of supported decision-making is a way in which many people with disabilities can make their own decisions with the support they need from trusted persons in their lives, and that supported decision-making can be a less restrictive alternative to guardianship. Recognizing that supported decision-making can take a variety of forms, the legislature finds that a more formal process, resulting in a supported decision-making agreement between the person with a disability (the decision-maker) and their supporter or supporters, can provide the basis for requiring third parties, who might otherwise question a person's legal capacity because of their disability, to recognize their decisions on the same basis as others. When this more formal process is followed, people with disabilities can make choices confident that they will be respected by others and knowing they will be solely responsible for their own decisions.

(3) Supported decision-making and supported decision-making agreements should be encouraged when appropriate for persons with disabilities, and that the execution of a supported decision-making agreement should not detrimentally impact the eligibility of a person for other services, including adult protective services.

(4) The legislature strongly urges relevant state agencies and civil society to research and develop appropriate and effective means of support for older persons with cognitive decline, persons with traumatic brain injuries, and persons with psycho-social disabilities, so that full legislative recognition can also be accorded to the decisions made with supported decision-making agreements by persons with such conditions, based on a consensus about what kinds of support are most effective and how they can best be delivered.

## **1(b). Findings Related to Guardianship Alternatives (CO)**

- (1) Guardianship constitutes one of the most restrictive options available to adults with disabilities and their families;
- (2) Guardianship should be employed only when a less restrictive alternative would fail to meet the needs of the adult with a disability;
- (3) Adults with disabilities are presumed competent and have the capacity to facilitate the exercise of decisions regarding their day-to-day health, safety, welfare, or financial affairs, unless otherwise determined through legal proceedings.



This section establishes the legal philosophy underlying the less restrictive alternative requirement in the guardianship law and the importance of supported decision-making as a potential alternative to guardianship.

## **2(a). Purposes of the Act (DE, IL, LA, MD, NH, NV, RI, TX)**

- (1). The purposes of this act are:
  - (a) to recognize supported decision-making a less-restrictive alternative to guardianship for adults with mental or developmental disabilities who need assistance with decisions regarding daily living. (DE, LA, NH, RI, TX)
  - (b) to assist adults by obtaining support for them in making, communicating, or effectuating decisions that correspond to their will, preferences, and choices (LA, NV, RI); and
  - (c) to give legal status to supporters of such adults and to decisions made pursuant to supported decision-making.(NH, NV, RI)
- (3) This act shall be liberally construed and applied to promote its underlying purposes and policies. (LA)

## **2(b). Principles Underlying the Act**

- (1). The act shall be interpreted and administered in accord with the following principles:

(a) All adults, including those with mental or developmental disabilities, are presumed to have capacity to manage their affairs and to have legal capacity. (CO, DE, IL, NH, NY, RI)

(b) All adults are presumed capable of making a supported decision-making agreement. (MD, ND)

(c) All adults: (1) should have the freedom to choose to live in the manner they wish; (2) should be able to participate in the management of their affairs; and (3) should receive the most effective and least restrictive form of support when they are unable to manage their affairs alone. (DE, IL, NH, NV, RI)

(d) The values, beliefs, wishes, and cultural norms of adults should be respected. (DE, IL, NH, NV, RI)



This section strengthens the constitutional requirement that guardianship may only be used if less restrictive alternatives are not available.

### **3. Guardianship Reform**

#### **a. Contents of Petition**

(1) A petition for guardianship shall include an explanation of less restrictive alternatives that were considered by the petitioner and reasons why those alternatives are not suitable, as well as alternatives tried by the petitioner, if any, and the reasons why those alternatives do not meet the conservatee's needs. (CA, LA, MN, MT, ND)

#### **b. Judicial Findings**

(1) The court, when determining whether a guardianship or conservatorship is the least restrictive alternative available, and whether to grant or deny a guardianship or conservatorship petition, should consider the person's abilities and capacities with current and possible supports, including but not limited to supported decision-making agreements, powers of attorney, designations of health care surrogates, and advance health care directives. (CA, MN, MT, OK, WA)

(2) "Least restrictive alternative" means an approach to meeting a person's needs that restricts

fewer rights of the person than would the appointment of the guardian. Less restrictive alternatives may include, but are not limited to, the following: (a) a supported decision making agreement. (b) appropriate technological assistance. (c) the appointment of a representative payee. (d) the appointment of a health care representative (e) the creation of a power of attorney. (IN, WA)

(3) In making a determination on a guardianship, including whether supported decision-making or other less restrictive alternatives are appropriate, the court may consider the following factors: any proposed vetting of the person or persons chosen to provide support in decision making; reports to the court by an interested party or parties regarding the effectiveness of an existing supported decision-making arrangement; or any other information the court determines necessary or appropriate to determine whether supportive services, technological assistance, supported decision making, protective arrangements or less restrictive arrangements will provide adequate protection for the respondent. (ME)

(4) Prior to granting a petition for guardianship, the court shall make findings particular to the respondent on why less restrictive alternatives do not work. (MN)



This section creates the framework for supported decision-making agreements and specifies how they are created and implemented and the duties and consequences for those who are involved in them.

#### **4. Supported Decision-Making Agreements**

a. The following definitions apply for purposes of this act.

(1) “Adult with a disability” means an adult with any disability, including an older adult with a disability or an age-related disability. Disability includes, but is not limited to, an intellectual or developmental disability, cognitive disability, communication disability, psychiatric disability, physical disability, sensory disability, learning disability, dementia, cognitive impairment, Alzheimer’s disease, major neurocognitive disorder, or chronic illness or condition. (CA)

(2) “Life decision” means any decision that affects the adult with a disability, including, but not limited to, a decision regarding any medical, psychological, financial, educational, living arrangement, access to home and community-based services, social, sexual, religious, or occupational matter. (CA)

(3) “Supported decision-making” means an individualized process of supporting and accommodating an adult with a disability to enable them to make life decisions without impeding the self-determination of the adult. (CA)

(4) “Supported decision-making agreement” means a written agreement, in plain language accessible to the adult with a disability executed in conformance with this act. (CA)

(5) “Supporter” means one or more adults who enter into a valid supported decision-making agreement to help the adult with a disability make decisions. (CA)

#### b. Voluntary and Informed Choice

(1) An adult with a disability may choose to enter into a supported decision-making agreement with one or more chosen supporters. Support may include, but is not limited to, helping the adult with a disability obtain and understand information related to a life decision, communicating the decision to others, and assisting the individual to ensure their preferences and decisions are honored. (CA)

(2) A supported decision-making agreement must be entered into voluntarily and without coercion or undue influence. (AK, CA, CO, DE, IN, LA, MD, NH, NV, WI)

(3) An adult with a disability who enters into a supported decision-making agreement must understand the nature and effect of the agreement. (AK, DE, IN, NH, NV)

#### c. Duties of Supporter

(1) A supporter is bound by all existing obligations and prohibitions otherwise applicable by law that protect adults with disabilities and the elderly from fraud, abuse, neglect, coercion, or mistreatment. (CA, NV)

(2) A supporter shall act with the care, competence, and diligence ordinarily exercised by an individual in a similar circumstance, with due regard to the possession of, or lack of, special skills or expertise. (IL, NH)

(3) The relationship between an adult with a disability and a supporter is one of trust and confidence. (IN, MD, NH)

(4) A supporter must: (a) support the will and preference of the adult, and not the supporter's opinion of the adult's best interests; (b) act honestly, diligently, and in good faith; © act within the scope of the supported decision-making agreement; and (d) avoid conflicts of interest. (IN, LA, MD, NH, NY)



(5) A supporter may not be an employer, employee, or service provider of the adult unless the supporter is a family member of the adult with a disability. (AK)

d. Signatories

(1) A supported decision-making agreement must be signed by the adult and the supporters in the presence of two witnesses or a notary public. (AK, DC, DE, MD, ND, NV, RI, WI)

e. Third Parties

(1) Recognition

(a) A third party shall recognize decisions made by the principal with the assistance of supporters under a validly executed supported decision-making agreement. (AK)

(b) A decision or request made or communicated with the assistance of a supporter in conformity with this law shall be recognized for the purposes of any provision of law as the decision or request of the adult with a disability. (RI)

(2) Immunity

(a) A third party has immunity from civil, criminal, or professional liability if they act in good faith to recognize decisions made under the agreement or if they in good faith refuse to honor the decision based on actual knowledge that the agreement is invalid. (AK, DC, IL, IN, MD, ND, NY)

(b) Immunity does not apply if a third party has substantial cause to believe that the supported person is an adult in need of protective services. (DC, ND)

f. Duty to Report

(1) If a caregiver [or other person] who is aware of the existence of a supported decision-making agreement has a reasonable belief that the supported person is an adult in need of protective services, they [shall] [may] report the alleged abuse or neglect to Adult Protective Services. (DC, IL, LA, NH, NY, TX, WI)

g. Regulations and Best Practices

(1) The Department of Mental Health is authorized to make regulations governing supported decision-making agreements. (DE)

(2) The Department of Mental Health shall prepare and provide access to a supported

decision-making agreement instrument and accompanying information for adults with functional impairments, family members, education professionals, health care and social service professionals, county clerks, and local bar associations. (WI)

(3) The Missouri Developmental Disabilities Council is authorized to: (a) develop best practices guidance for supported decision-making agreements; (DE) (b) provide public information about this law and the supporter role, responsibilities, and limitations; (IL) and may develop training and education materials for both principals and supporters. (IL)

#### h. Contents of Agreement

##### (1) Assistance Described

(a) The agreement shall include at least one supporter and a description of the types of decisions the supporter will or will not provide assistance with. (NV)

##### (1) Declaration of Supporters

(a) A supported decision-making agreement shall contain a separate declaration by each supporter that states the supporter's relationship with the principal, states the willingness of the supporter to act as a supporter for the principal, and indicates that the supporter acknowledges the duties of a supporter under this act. Each declaration must be signed by the supporter making the declaration. (AK)

##### (2) Term of Agreement

(a) A supported decision-making agreement may indicate the date it becomes effective and its duration. If the supported decision-making agreement does not indicate the date it becomes effective, the supported decision-making agreement becomes effective immediately. If a supported decision-making agreement does not indicate its duration, the supported decision-making agreement remains effective until terminated by operation of law. (AK)

##### (3) Termination of Agreement

(a) An adult with a disability may at any time terminate all or a portion of a supported decision-making agreement. A supporter may at any time terminate all or a portion of the supporter's obligations under a supported decision-making agreement. (AK)

(b) A termination under (a) of this section [may be orally or in writing] (CA, CO) [must be in writing and signed, and (1) the signing must take place in the presence of two witnesses who also sign the termination; or (2) the signature must be notarized.] (AK)

(c) A principal or supporter terminating all or a portion of a supported decision-making agreement shall notify, in person, by certified mail, or by electronic means, the other party to the agreement that the agreement has been terminated. (AK)

(d) If a portion of a supported decision-making agreement is terminated under this section and the termination is consistent with this section, the remainder of the agreement remains in effect. (AK)

(e) The agreement is terminated if an adult protective services agency finds the adult has been mistreated by a supporter or if a supporter has been convicted of a financial crime. (CO)

(f) An adult may make, change, or revoke a supported decision making agreement even if the adult does not have the capacity to independently manage the adult's own health care, legal matters, or financial affairs. (IN)

j. Statutory Form

(a) The following form is authorized to be used for a supported decision-making agreement.

[Contents of this section of the proposed bill will depend on which of the provisions listed above are supported by stakeholders and are acceptable to its author and coauthors.]



This section directs school districts to include supported decision-making in discussions and materials designed to help students and families when a student is transitioning to adulthood.

## 5. Supported Decision-Making in Schools

a. When a child with a disability reaches the age of majority or is emancipated, the rights accorded to the child's parents under this chapter transfer to the child. The school district shall notify the child and the parents of the transfer of rights. (OR)

b. To promote self-determination and independence, prior to the child reaching adulthood the school district shall provide the child and the child's parents with information and training resources regarding supported decision-making as a less restrictive alternative to guardianship, and with information and resources regarding strategies to remain engaged in the child's secondary education and post-school outcomes. The school district shall provide

the information described in this subsection at each individualized education program (IEP) meeting that includes discussion of post-secondary education goals and transition services. (OR, TX, WI)

c. If a student with a disability or the student's parent requests information regarding guardianship or alternatives to guardianship from the school district at which the student is enrolled, the school district shall provide to the student or parent information and resources on supported decision-making agreements. (TX)

d. If guardianship is being discussed by an (IEP) team with a student or their family, the team shall inform them about supported decision-making as an alternative to guardianship. The IEP team shall make available to the student and parents resources to assist in them in establishing a supported decision-making agreement. If one is validly executed, the IEP team shall abide by decisions made by the student pursuant to the SDM agreement. (NH)

e. The department of education shall develop information resources regarding alternatives to guardianship, including SDM agreements for students with disabilities who are approaching the age of 18. (NH)



This section deals with mandatory continuing education materials and programs for judges who preside over guardianship proceedings and court-appointed attorneys who represent respondents in such cases.

## **6. Mandatory Continuing Legal Education**

### **a. Court-Appointed Attorneys (CA, MA, MD, TX)**

(1) Attorneys appointed to represent respondents in adult guardianship proceedings shall certify to The Missouri Bar that during the preceding year they have received five hours of training with approved continuing education credits on the following topics:

(a) State and federal statutes-including the federal Americans with Disabilities Act (42 U.S.C. §§ 12101-12213)-rules of court, and case law governing adult guardianship proceedings, capacity determinations, and the legal rights of persons alleged to lack legal capacity and persons with disabilities;

(b) The attorney-client relationship and lawyer's ethical duties to a client under the Rules of

Professional Conduct and other applicable laws; and

(c) special considerations for representing an older adult or a person with a disability, including: (I) communicating with an older client or a client with a disability; (ii) vulnerability of older adults and persons with disabilities to undue influence, physical and financial abuse, and neglect; (iii) effects of aging, major neurocognitive disorders (including dementia), and intellectual and developmental disabilities on a person's ability to perform the activities of daily living; and (iv) less-restrictive alternatives to guardianship, including supported decision-making.

(2) The Missouri Bar shall develop rules and procedures to implement this annual reporting requirement for court-appointed attorneys who represent respondents in adult guardianship proceedings.

(3) The Supreme Court of Missouri shall develop rules and procedures to require that circuit courts only appoint attorneys in guardianship cases who have met these requirements.

#### b. Circuit Court Judges

(1) Judges assigned to hear adult guardianship proceedings shall receive two hours of training annually on the same topics required for court-appointed attorneys in such cases and shall certify to the Supreme Court that they have complied with this requirement.

(2) The Supreme Court of Missouri shall develop rules and procedures to ensure that circuit court judges comply with this requirement.



This section provides for a mechanism to give assistance to people with disabilities and their families as well as professionals and government employees who deal with supported decision-making.

### 7. Consumer Assistance

a. The Missouri Developmental Disabilities Council, upon appropriation by the Legislature and in consultation with disability rights and disability services organizations, shall administer a statewide Supported Decision-making Technical Assistance Program (SDM-TAP) to provide support, education, and technical assistance, and to administer grants to expand and strengthen the use of supported decision-making across Missouri. (CA)

## Appendix

# Alaska Supported Decision-Making Law

## Elements of Law

HB 336, enacted in 2018, recognizes supported decision-making agreements and sets forth the requirements and legal consequences flowing from such agreements. It does not address the topic of guardianships or declare that SDM arrangements are a less restrictive alternative to guardianships. However, [existing law](#) allows a court to impose a guardianship only if it finds that less restrictive means to meet the needs of the respondent are not feasible.

1. Authorization of SDM agreements for adults if done voluntarily and without coercion or undue influence and the adult understands the nature and effect of the agreement.
2. Supporter may not be an employer, employee, or service provider of the adult unless the supporter is a family member.
3. Describes the mandatory contents of the agreement.
4. Requires the agreement to be signed by the principal and supporters and be witnessed by two persons or one person and a notary.
5. Describes the role of supporters.
6. Requires third parties to recognize decisions made by the principal with the assistance of supporters under the agreement.
7. Gives third parties immunity from liability if they act in good faith to recognize decisions made under the agreement or if they in good faith refuse to honor the decision based on actual knowledge that the agreement is invalid.
8. Limits SDM agreements to the following matters: health care; managing income and assets; personal matters that arise in the course of daily living; monitoring support services; living arrangements; and work arrangements.
9. Creates a statutory SDM agreement form that may be used.

## Alaska SDM Resources

# California Supported Decision-Making Law

## Elements of Law

1. **Petition.** AB 1663 requires the petition for conservatorship to include alternatives to conservatorship considered by the petitioner or proposed conservator and reasons why those alternatives are not suitable, alternatives tried by the petitioner or proposed conservators, if any, and the reasons why those alternatives do not meet the conservatee's needs.
2. **Self-Help Centers.** The law, upon appropriation, would require the Judicial Council to establish a conservatorship alternatives program within each self-help center in each superior court. A conservatorship alternatives program would provide information relating to less restrictive alternatives to conservatorship. The law would designate the duties of court staff reviewing petitions under the conservatorship alternatives program.
3. **Judicial and Legal Education.** Existing law requires the Judicial Council to adopt a rule of court that specifies educational requirements for staff attorneys, examiners, investigators, and attorneys appointed as legal counsel in guardianship and conservatorship cases, as well as judges who are regularly assigned to hear probate matters. This law requires the Judicial Council to include the less restrictive alternatives to conservatorship in the required subject matter to meet those educational requirements.
4. **SDM Definition.** The law defines “supported decision-making” as an individualized process of supporting and accommodating an adult with a disability to enable them to make life decisions without impeding the self-determination of the adult.
5. **SDM Process.** The law establishes a supported decision-making process and a process for entering into a supported decision-making agreement for adults with disabilities.
6. **SDM Agreement.** The law specifies the elements of a written supported decision-making agreement, including the duties of SDM supporters.
7. **Duty of Court.** The law requires the court, when determining whether a conservatorship is the least restrictive alternative available, and whether to grant or deny a conservatorship petition, to consider the person's abilities and capacities with current and possible supports, including but not limited to supported decision-making agreements, powers of attorney, designations of health care surrogates, and advance health care directives.
8. **Technical Assistance Program.** Requires the State Council on Developmental Disabilities, upon appropriation by the Legislature and in consultation with specified groups, to administer a statewide Supported Decision-making Technical Assistance Program (SDM-TAP) to provide support, education, and technical assistance, and to administer grants to expand and strengthen the use of supported decision-making across California.

## California SDM Resources



# **California Supported Decision-Making Court Rule on Attorney Education**

## **Elements of Rule 7.1103**

Effective Jan. 1, 2020, attorneys who re appointed to represent conservatees or proposed conservatees must receive training on various topics, including alternatives to conservatorship such as supported decision-making.

Annual educational requirements require three hours of education on these subjects:

- 1) State and federal statutes-including the federal Americans with Disabilities Act (42 U.S.C. §§ 12101-12213)-rules of court, and case law governing probate conservatorship proceedings, capacity determinations, and the legal rights of conservatees, persons alleged to lack legal capacity, and persons with disabilities;
- (2) The attorney-client relationship and lawyer's ethical duties to a client under the California Rules of Professional Conduct and other applicable law; and
- (3) Special considerations for representing an older adult or a person with a disability, including:
  - (A) Communicating with an older client or a client with a disability;
  - (B) Vulnerability of older adults and persons with disabilities to undue influence, physical and financial abuse, and neglect;
  - (C) Effects of aging, major neurocognitive disorders (including dementia), and intellectual and developmental disabilities on a person's ability to perform the activities of daily living; and
  - (D) Less-restrictive alternatives to conservatorship, including supported decision-making.

# Colorado Supported Decision-Making Law

## Elements of Law

Senate Bill 21-075 authorizes supported decision-making agreements as an alternative to guardianship.

1. Legislative Findings. The law declares: that guardianship should be used only when a less restrictive alternative would not meet the needs of an adult with a disability; adults with disabilities are presumed competent and to have capacity to make decisions.
2. No Fiduciary Relationship. The law declares that a SDM agreement does not create a fiduciary relationship between the adult and their supporters.
3. Other Options. The law states that in addition to a SDM agreement, adults have options to use other processes to make decisions, including: powers of attorney; release of information forms; and designation of representative payees.
4. Voluntariness. The law states that a SDM agreement must be voluntary and without undue influence or coercion.
5. Scope of Decisions. SDM agreements may be used to assist an adult in making life decisions, including but not limited to medical, psychological, financial, educational, occupational, and social decisions; accessing treatment records; and deciding how and in what relationships the adult with a disability chooses to engage.
6. No compensation. SDM supporters are not entitled to receive compensation for services rendered under the agreement.
7. Termination. A SDM agreement is terminated if APS finds the adult has been mistreated by a supporter or a supporter has been convicted of a financial crime.
8. Contents. The law states what the contents of the agreement must be.
9. Immunity. A person who relies on a SDM agreement in good faith has no civil, criminal, or professional liability.

## Colorado SDM Resources

# District of Columbia Supported Decision-Making Law

## Elements of Law

The supported decision-making law enacted by the District of Columbia in 2018 does not make reference to guardianships. The [guardianship statutes](#) do not require the court to find that less restrictive alternatives are not available and do not mention SDM.

1. Definitions. There is a section defining operate terms used in the law.
2. Excluded. There is a section listing the types of people who may not act as supporters, including health care or service providers, anyone found to have abused or neglected the supported person, anyone convicted of certain types of crimes.
3. Witnesses. The SDM agreement must be signed by the adult and the supporter in the presence of two witnesses or a notary public.
4. Form of Agreement. The law describes the contents that should be in the agreement.
5. Warning. Anyone who is aware of the SDM agreement is advised that they may file a report with APS if they have cause to believe the supported person is being abused or neglected by the supporter.
6. Functions of Supporter. The law describes the functions that the supported person may assign to the supporter.
7. Reliance. A third party may rely on a SDM agreement unless they have substantial cause to believe that the supported person is an adult in need of protective services.
8. Immunity. An act or omission done in good faith and in reasonable reliance on a supported decision-making agreement shall not subject a third party to civil, criminal, or professional liability.
9. Mandatory Report. If a caregiver who is aware of the existence of a supported decision-making agreement has a reasonable belief that the supported person is an adult in need of protective services, they shall report the alleged abuse or neglect to APS.
10. Rules. The law directs the mayor to issue rules to implement these provisions.

## District of Columbia SDM Resources

### SDM in Educational Settings

# **Delaware Supported Decision-Making Law**

## **Elements of Law**

Senate Bill 230, enacted in 2015, authorizes supported decision-making agreements as an alternative to guardianship.

1. **Legislative Findings.** The law makes several legislative declarations related to the value of supported decision-making arrangements as an addition to various existing alternative decision-making options for adults with disabilities.
2. **Purpose.** The law states several purposes: provide assistance to adults in gathering information, making informed decisions, and communicating those decisions; give supporters legal status to be with and participate in the process; enable supporters to assist an adult in making decisions but not become a substitute decision-maker for the adult.
3. **Principles.** The law declares that it shall be administered and interpreted in accord with several principles: freedom of all adults to live in the manner they wish; all adults should be able to participate in the management of their affairs; all adults should receive the most effective and least restrictive form of support when they are unable to manage their affairs alone; the values, beliefs, wishes, and cultural norms of adults should be respected.
4. **Presumption of Capacity.** All adults are presumed to have capacity to manage their affairs. A SDM agreement is not evidence of incapacity.
5. **Voluntariness and Knowledge.** Adults may enter into a SDM agreement if they do so voluntarily and without coercion or undue influence and if they understand the nature and effect of the agreement.
6. **Requirements for Agreement.** The agreement must include at least one supporter and a description of the types of decisions the support will or will not provide assistance with. The supporter must agree to provide such assistance. The agreement must be in writing and witnessed. The law specifies what a supporter may and may not do.
7. **Limitation of Liability.** The law specifies when good faith reliance on the SDM agreement makes a third party immune from liability.
8. **Regulations and Best Practices.** A state agency is authorized to make regulations. The State Council is authorized to develop best practices guidance for SDM arrangements.

## **Delaware SDM Resources**

# Illinois Supported Decision-Making Law

## Elements of Law

House Bill 3849, enacted in 2021, recognizes supported decision-making.

1. Purpose. The purpose of the law is to recognize a less-restrictive alternative to guardianship for adults with intellectual and developmental disabilities who need assistance with decisions regarding daily living.
2. Principles. All adults should (1) be able to live in the manner they choose and to accept or refuse support, assistance, or protection as long as they do not harm others and are capable of making decisions about those matters. (2) be able to be informed about and, to the best of their ability, participate in decisions regarding daily living. (3) receive the most effective yet least restrictive and intrusive forms of support, assistance, and protection when they are unable to care for themselves or manage their affairs alone. Furthermore, the values, beliefs, wishes, cultural norms, and traditions that the principal holds should be respected.
3. Definitions. The law defines the operative terms.
4. Presumption of capacity. All adults are presumed to be capable of making decisions regarding daily living and to have capacity. A diagnosis of mental illness, intellectual disability, or developmental disability, of itself, does not void the presumption of capacity.
5. Supporter Disqualifications. The following persons may not act as a supporter unless they are an immediate family member of the adult: employer or employee; a paid service provider; persons convicted of certain offenses.
6. Supporter Duties. The law specifies the duties of a supporter. A supporter shall act with the care, competence, and diligence ordinarily exercised by an individual in a similar circumstance, with due regard to the possession of, or lack of, special skills or expertise.
7. Role of Agency. The Guardianship and Advocacy Commission shall provide public information about this law and the supporter role, responsibilities, and limitations. It shall develop training and education materials for both principals and supporters.
8. Duty to Report. A person who is aware a SDM agreement who has cause to believe that the adult is being abused or neglected by the supporter, shall report it to APS.
9. Immunity. A person is not subject to criminal or civil liability or professional misconduct if an act or omission is done in good faith and in reliance on a SDM agreement.

## Illinois SDM Resources

# Indiana Supported Decision-Making Law

## Elements of Law

Senate Bill 380, enacted in 2019, defines supported decision-making as a less restrictive alternative to guardianship and requires a guardianship petition to explain what less restrictive alternatives to guardianship were explored prior to filing a guardianship petition and why they are not feasible.

1. “Less Restrictive Alternatives” Defined. SECTION 1. IC 29-3-1. Sec. 7.8. (a) "Less restrictive alternatives" means an approach to meeting a person's needs that restricts fewer rights of the person than would the appointment of the guardian. (b) Less restrictive alternatives may include, but are not limited to, the following: (1) A supported decision making agreement. (2) Appropriate technological assistance. (3) The appointment of a representative payee. (4) The appointment of a health care representative (5) The creation of a power of attorney.

2. “Supported Decision-Making” Defined. Chapter 14. Supported Decision Making Sec. 1. As used in this chapter, "supported decision making" refers to the process of supporting and accommodating an adult in the decision making process to make, communicate, and effectuate life decisions, without impeding the self-determination of the adult.

3. Prerequisites. Sec. 4. (a) An adult may not enter into a SDM agreement unless the adult: (1) enters into the agreement voluntarily and without coercion or undue influence; and (2) understands the nature and effect of the agreement. (b) An adult may make, change, or revoke a supported decision making agreement even if the adult does not have the capacity to independently manage the adult's own health care, legal matters, or financial affairs.

4. Duties of Supporter. Sec. 5. (a) A supporter must: (1) support the will and preference of the adult, and not the supporter's opinion of the adult's best interests; (2) act honestly, diligently, and in good faith; (3) act within the scope set forth in the adult's supported decision making agreement; (4) **avoid conflicts of interest**; and (5) notify the adult in writing of the supporter's intent to resign as a supporter. (b) The relationship between an adult and a supporter is one of **trust and confidence**. A supporter **may not charge a fee** for performing services under the agreement. **(emphasis added)**

5. Immunity. A third party who acts in good faith reliance on a SDM agreement does not have civil, criminal, or professional liability.

6. Amendments. A [2021 law](#) requires a SDM agreement to be notarized.

## Indiana SDM Resources

# Louisiana Supported Decision-Making Law

## Elements of Law

Act No. 258, passed in 2020, authorized supported decision-making agreements. It also strengthened the adult guardianship (called “interdiction”) to require petitioner to specify with particularity what less restrictive measures were considered and why they won’t work.

The part of the law dealing with SDM contains the following elements.

1. Definitions. The law defines operative terms.
2. Purpose. The purpose of the law is to recognize a less restrictive decision-making process and empowers supported decision-making as an option over interdiction for adults with disabilities who need assistance with decisions regarding daily living.
3. Voluntary. A SDM agreement must be done voluntarily and without undue influence.
4. Duties of Supporter. In exercising the authority granted to the supporter in the SDM agreement, the supporter must: support the will and preference of the adult and not the supporter's opinion of the adult's best interests; act honestly, diligently, and in good faith; avoid conflicts of interest.
5. Contents of Agreement. The law specifies the elements that must be contained in the agreement.
6. Presumption of Validity. A supported decision-making agreement that complies with the law is presumed valid.
7. Reliance. A party may rely on the presumption of validity unless 24 the party has actual knowledge that the supported decision-making agreement was not validly executed.
8. Mandatory Reporting. If a person who is aware of the existence of a supported decision-making agreement has cause to believe that the adult is being abused, neglected, or exploited by a supporter, the person shall report the alleged abuse, neglect, or exploitation to APS.

## Louisiana SDM Resources

# Maryland Supported Decision-Making Law

## Elements of Law

SB 559 recognizes and authorizes the use of supported decision-making as an alternative to guardianship for adults with disabilities. The law went into effect October 1, 2022.

1. Definitions. The law defines operative terms.
2. Purpose. The purpose of this title is to assist adults by: (1) obtaining support for the adult in making, communicating, or effectuating decisions that correspond to the will, preferences, and choices of the adult; and (2) preventing the need for the appointment of a substitute decision maker for the adult, including a guardian of the person or property.
3. Presumption of Capacity. All adults are presumed capable of making a supported decision-making agreement.
4. Voluntariness. An adult may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement.
5. Duties of Supporter. A supporter shall support the will and preference of the adult and not the supporter's opinion of the reasonableness of the adult's wishes, preferences, or choices; act honestly, diligently, and in good faith; act within the authority given in the supported decision-making agreement; avoid conflicts of interest.
6. Fiduciary Relationship. The relationship between the adult and the supporter shall be one of trust and confidence that preserves the decision-making authority of the adult.
7. Selection Process. A SDM agreement shall document how the adult selected the supporter or supporters
8. Signatories. A SDM agreement must be signed by the adult and the supporter or Supporters, with each signature witnessed by two qualified adults.
9. Immunity. A third party who relies on a SDM agreement has no civil, criminal or professional liability if they acted in good faith on the decision and had a good faith belief the agreement was valid when executed and was not revoked. There is no liability for declining to act on an agreement if there is a reasonable good faith belief that the agreement was invalid or revoked or the supporter was coercing or unduly influencing the adult.

## Maryland SDM Resources



# **Maine Supported Decision-Making Law**

## **Elements of Law**

In 2020, Maine codified supported decision-making as a less restrictive alternative to guardianship and conservatorship. The law requires that courts first find that the adult cannot make or communicate decisions, even with the use of supported decision-making and other supportive services, before appointing a guardian or conservator.

1. **Factors to Consider.** In making a determination on a guardianship, including whether supported decision-making or other less restrictive alternatives are appropriate, the court may consider the following factors: any proposed vetting of the person or persons chosen to provide support in decision making; reports to the court by an interested party or parties regarding the effectiveness of an existing supported decision-making arrangement; or any other information the court determines necessary or appropriate to determine whether supportive services, technological assistance, supported decision making, protective arrangements or less restrictive arrangements will provide adequate protection for the respondent.

2. **Other Protective Arrangements.** After the hearing conducted on a petition for guardianship or one or more protective arrangements instead of guardianship, the court may enter an order for one or more protective arrangements instead of guardianship if the court finds by clear and convincing evidence that:

A. The respondent lacks the ability to meet essential requirements for physical health, safety or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, after the court's consideration of the respondent's ability to use appropriate supportive services, technological assistance or supported decision making that provides adequate protection for the respondent; and

B. The respondent's identified needs cannot be met by less restrictive alternatives that provide adequate protection for the respondent.

3. **SDM Agreement.** There is no legislation to define supported decision-making or establish the legal requirements for executing or implementing such an agreement.

## **Mains SDM Resources**

# **Minnesota Supported Decision-Making Law**

## **Elements of Law**

Enacted in 2021, SF 3357 defined “supported decision-making” and amended the guardianship law to require that less restrictive alternatives be explored.

1. Petition. The petition for a guardianship must describe what less restrictive means have been attempted and considered, how long such less restrictive means have been attempted, and a description of why such less restrictive means are not sufficient to meet the respondent's identified needs.

2. SDM Defined. "Supported decision making" means assistance from one or more persons of an individual's choosing in understanding the nature and consequences of potential personal and financial decisions which enables the individual to make the decisions and, when consistent with the individual's wishes, in communicating a decision once made.

3. Incapacitated Person. "Incapacitated person" means an individual who, for reasons other than being a minor, is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions, and who has demonstrated deficits in behavior which evidence an inability is unable to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological and supported decision making assistance.

4. Judicial Findings. The court may appoint a guardian, limited or unlimited guardian in duration or power, for a respondent only if it finds by clear and convincing evidence that: (1) the respondent is an incapacitated person; and (2) the respondent's identified needs cannot be met by less restrictive means, including but not limited to use of appropriate technological assistance, supported decision making, community or residential services, or appointment of a health care agent under section 145C.01, subdivision 2. The court must make specific findings particular to the respondent why less restrictive alternatives do not work.

5. SDM Agreement. No legislation has been enacted to define the requisites for creating a SDM agreement, the legal consequences of such an agreement, or the duties of the parties to such an agreement.

## **Minnesota SDM Resources**

# Montana Supported Decision-Making Law

## Elements of Law

Enacted in 2021, SB 31, amended the guardianship law to make reference to SDM but did not specify the requirements or details of SDM agreements.

1. LRA Defined. Less restrictive alternative" means an approach to meeting a person's needs that restricts fewer rights of the person than would the appointment of a guardian. The term includes supported decision-making, appropriate technological assistance, and appointment of a representative payee.
2. SDM Defined. Supported decision-making" means assistance from one or more persons of a person's choosing in: (a) understanding the nature and consequences of potential personal and financial decisions, which enables the person to make the decisions; and (b) communicating a decision, once made, if consistent with the person's wishes."
3. Petition. The petition for guardianship shall state (I) any less restrictive alternatives for meeting the alleged incapacitated person's needs that have been implemented or, if no less restrictive alternatives have been implemented, the reason why; and (ii) the reason why a less restrictive alternative is insufficient to meet the alleged incapacitated person's needs;
4. Judicial Findings. If the court is satisfied that the person for whom a guardianship is sought is incapacitated, that the identified needs of the person cannot be met by a less restrictive alternative, and that judicial intervention in the person's personal freedom of action and decision is necessary to meet essential requirements for the person's physical health or safety, it may appoint a guardian.
5. The law does not specify the requirements for SDM agreements, the consequences of them, the duties of supporters, or limit the liability of third parties who rely on them.

## Montana SDM Resources

# New Hampshire Supported Decision-Making Law

## Elements of Law

1. Purpose. The law recognizes a less restrictive alternative to guardianship for adults with disabilities. It authorizes SDM as an option for adults with disabilities who seek assistance in making life decisions but choose to retain all of their legal rights. It gives legal status to supporters of such adults and to decisions made pursuant to supported decision-making.
2. Principles. All adults should be able to choose to live in the manner they wish and to accept or refuse support, assistance, or protection; all adults should be able to be informed about and participate in the management of their affairs; and the values, beliefs, wishes, cultural norms, and traditions that adults hold should be respected in managing their affairs.
3. Presumption of Capacity. All adults are presumed to be capable of managing their affairs and to have legal capacity.
4. Definitions, Form and Content. The law defines operative terms and specifies the form of a SDM agreement and the required content.
5. Voluntariness. Each party to the agreement has signed the agreement voluntarily and with an understanding of the nature and effect of the agreement.
6. Duties of Supporters. A supporter is in a fiduciary relationship with the principal and is subject to the following requirements: to act loyally, without self-interest, and in good faith; to act within the authority granted in the agreement; to avoid conflicts of interest; to disclose to the principal all facts known to the supporter relevant to making a decision; to act with care, competence, and diligence.
7. Mandatory Reporting. If a person who is aware of the existence of a SDM agreement has cause to believe that the principal has been abused or neglected by the supporter, the person shall promptly report such to APS.
8. Special Education. If guardianship is being discussed by the IEP team with a student or the student's family, the team shall promptly inform them about supported decision-making as an alternative to guardianship. The IEP team shall make available resources to assist in establishing a supported decision-making agreement. If one is executed, the IEP team shall abide by decisions made by the student pursuant to the SDM agreement. The department of education shall develop information resources regarding alternatives to guardianship, including SDM agreements for children with disabilities who are approaching the age of 18

## New Hampshire SDM Resources

# **Nevada Supported Decision-Making Law**

## **Elements of Law**

Assembly Bill 480, enacted in 2019, authorizes supported decision-making agreements. The law contains many elements from the 2015 law enacted in Delaware.

I. Purpose. The law states several purposes: provide assistance to adults in gathering information, making informed decisions, and communicating those decisions; give supporters legal status to be with and participate in the process; enable supporters to assist an adult in making decisions but not become a substitute decision-maker for the adult.

2. Principles. The law declares that it shall be administered and interpreted in accord with several principles: freedom of all adults to live in the manner they wish; all adults should be able to participate in the management of their affairs; all adults should receive the most effective and least restrictive form of support when they are unable to manage their affairs alone; the values, beliefs, wishes, and cultural norms of adults should be respected.

3. Voluntariness and Knowledge. Adults may enter into a SDM agreement if they do so voluntarily and without coercion or undue influence and if they understand the nature and effect of the agreement.

4. Capacity. A SDM agreement is not evidence of incapacity. Unlike the Delaware law, this law does not declare that all adults are presumed to have capacity to make decisions.

5. Requirements for Agreement. The agreement must include at least one supporter and a description of the types of decisions the supporter will or will not provide assistance with. The supporter must agree to provide such assistance. The agreement must be in writing and witnessed. The law specifies what a supporter may and may not do.

6. Limitation of Liability. The law specifies when good faith reliance on the SDM agreement makes a third party immune from liability.

7. Mandatory Reporters. The law shall not be construed to affect the requirement of any person to report the abuse, neglect, exploitation, isolation or abandonment of an older person or a vulnerable person as provided by existing law.

8. Less Restrictive Alternatives. The original bill would have incorporated SDM as a less-restrictive alternative consistent with the state's guardianship law. The enacted version does not include a specific reference to SDM as a less restrictive alternative to guardianship.

## **Nevada SDM Resources**

# **New York Supported Decision-Making Law**

## **Elements of Law**

1. Legislative Findings
2. Definitions
3. Presumption of Capacity
4. Scope of Agreement
5. SDM is Less Restrictive Alternative to Guardianship
6. SDM Supporter Covered by Evidentiary Privileges
7. Duties and Authority of Supporters
8. Formation and Term of Agreement
9. Revocation and Amendment of Agreement
10. Eligibility and Resignation of Supporters
11. Facilitation and Education Process
12. Form of Agreement
13. Legal Effect of Agreement
14. Third Party Obligations
15. Substantial Cause to Believe Abuse, Undue Influence, Etc.
16. Immunity for Good Faith Reliance
17. Health Care Agency Reliance
18. Reporting Abuse, Neglect, Exploitation
19. Implementing Rules and Regulations by State Agency

## **SDMNY: Supported Decision-Making New York** **References and Resources**

# SDMNY

## Supported Decision-Making New York

### The Process

SDMNY has developed a three-phase facilitation model by which persons with developmental disabilities (Decision-Makers) choose trusted persons in their lives such as family members, neighbors, or friends, to support them in making a variety of decisions.

A trained facilitator, supervised by an [experienced mentor](#), works with the Decision-Maker and their chosen supporters to negotiate and formalize a Supported Decision-Making Agreement (SDMA) that sets out the responsibilities and obligations of the parties.

Facilitation meetings are generally an hour long and can take place monthly or more frequently. On average, the facilitation process requires between 9 and 12 meetings.

The facilitation process allows the Decision-Maker to explore how decisions are made, areas in which they want support (health care, education, living arrangements, finances, intimacy and relationships, etc.), and the kinds of support they may want in making decisions.

SDMNY has developed a [three-phase](#) facilitation model focusing on four areas of concern: (1) which areas the Decision-Maker wants support in; (2) what kinds of support they want; (3) who they want the support from, and; (4) how they want to receive that support.

Phase 1: The Facilitator works with the Decision-Maker to learn how they communicate, make decisions, the decisions that are likely to arise in both the short and long term, and the trusted persons in their life whom they may want as Supporters. The Facilitator guides the Decision-Maker through the steps of making a decision in order to build decision-making capability.

Phase 2: The Facilitator works with the Supporters the Decision-Maker has chosen, educating them about SDM and helping them “re-position” from people who make decisions for the Decision-Maker to those who are able to see the Decision-Maker as an adult capable of making their own decisions.

Phase 3: The Facilitator works with the Decision-Maker and their Supporters to negotiate the Supported Decision-Making Agreement (SDMA), which will memorialize their agreement on all aspects of the four areas of concern. The Facilitator then prepares a draft of the SDMA that all parties review and may choose to alter, submits the draft (or drafts) to their mentor, then to the SDMNY legal team for final review. Phase 3 is also a time to ensure that, before signing the SDMA, all parties fully understand their roles, obligations, and responsibilities.

# North Dakota Supported Decision-Making Law

## Elements of Law

The state's guardianship law requires the petition to state whether less restrictive alternatives were considered and requires the court, prior to ordering a guardianship, to find by clear and convincing evidence, that no available alternative resource plan is suitable to safeguard the proposed ward's health, safety, or habilitation which could be used instead of a guardianship. "Alternative resource plan" means a plan that provides an alternative to guardianship, using available support services which are acceptable to the alleged incapacitated person.

House Bill 1378, enacted in 2019, contains the following provisions for SDM.

1. Definitions. The law defines operative terms.
2. Agreement. The law specifies the types of decisions the supporter assists with.
3. Liability. A supporter is not liable to the named individual and has not engaged in professional misconduct for acts performed as a supporter in good faith unless the supporter has been recklessly or grossly negligent or has intentionally committed misconduct.
4. Presumption of Capacity. It is presumed the named individual has capacity to enter a supported decision-making agreement. This presumption may be rebutted only by clear and convincing evidence.
5. Restrictions. A supported decision-making agreement does not give a supporter the ability to act as a surrogate decision-maker. A supported decision-making agreement does not give a supporter the authority to sign documents on behalf of the named individual.
6. Witnesses. The agreement must be witnessed by two qualified persons or a notary.
7. Immunity. A third person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a supported decision-making agreement. Reliance is invalid if the person has cause to believe the named individual is being abused, neglected, or exploited by the supporter or has actual knowledge or notice the supported decision-making agreement is invalid or has been terminated.

## North Dakota SDM Resources



# Oklahoma Supported Decision-Making Law

## Elements of Law

SB 198, enacted in 2021, amends the guardianship law to include SDM as a less restrictive alternative to guardianship. It requires a specific finding that the identified needs of the person require a guardianship instead of less restrictive alternatives

1. Definitions. The law defines operative terms. “Least restrictive alternative” means the form of assistance that least interferes with the legal ability of an incapacitated or partially incapacitated person to act in his own behalf an approach to meeting the needs of an individual that restricts fewer rights of the individual than would the appointment of a guardian including, but not limited to, supported decision-making, appropriate technological assistance, appointment of a representative payee and appointment of an agent by the individual including under a power of attorney for health care or finances. “Supported decision making” means assistance from one or more persons chosen by an individual in understanding the nature and consequences of potential personal and financial decisions to enable the individual to make such decisions, and in communicating such decisions if consistent with the wishes of the individual.

2. Judicial Findings. If after a full hearing and examination upon such petition, the court finds by clear and convincing evidence that the subject of the proceeding is an incapacitated or partially incapacitated person, the court shall determine the extent of the incapacity and the feasibility of less restrictive alternatives to guardianship to meet the needs of the subject of the proceeding. Upon such determination, the court may: 1. Dismiss the action if the court finds that less restrictive alternatives to guardianship are feasible and adequate to meet the needs of the subject of the proceeding; or 2. Appoint a guardian or limited guardian. An order making such an appointment shall include a specific finding that it was established by clear and convincing evidence that the identified needs of the subject of the proceeding require a guardianship instead of less restrictive alternatives.

3. Necessity. Guardianship for an incapacitated person shall be: 1. Used only as is necessary to promote and protect the well-being of the person and his or her property; 2. Designed to encourage the development of maximum self-reliance and independence of the person; and 3. Ordered only to the extent required by the actual mental, physical and adaptive limitations of the person.

## Oklahoma SDM Resources

# **Oregon Supported Decision-Making Law**

## **Elements of Law**

HB 2105, enacted in 2021, requires school districts to provide parents and students during transition of the student to an adult status information on supported decision-making as an alternative to guardianship.

ORS 343.181 is amended to read:

343.181. (1) When a child with a disability reaches the age of majority as described in ORS 109.510 or 109.520 or is emancipated pursuant to ORS 419B.550 to 419B.558: [(1)] (a) The rights accorded to the child's parents under this chapter transfer to the child; [(2)] (b) The school district shall provide any written notice required to both the child and the parents; and [(3)] (c) The school district shall notify the child and the parents of the transfer of rights.

(2) To promote self-determination and independence, the school district shall provide the child and the child's parents with information and training resources regarding supported decision-making as a less restrictive alternative to guardianship, and with information and resources regarding strategies to remain engaged in the child's secondary education and post-school outcomes. The school district shall provide the information described in this subsection at each individualized education program meeting that includes discussion of post-secondary education goals and transition services.

## **Oregon SDM Resources**

# **Rhode Island Supported Decision-Making Law**

## **Elements of Law**

House Bill 5909, passed in 2019, establishes the use of SDM as an alternative to guardianship and codifies an SDM Agreement form.

1. Purpose. The law states several purposes: to provide a mechanism to adults who would benefit from decision-making assistance; give legal status to SDM supporters; establish SDm as an alternative to guardianship.
2. Principles. All adults should be able to choose to live in the manner they wish and to accept or refuse support, assistance, or protection; all adults should be able to be informed about and participate in the management of their affairs; and the values, beliefs, wishes, cultural norms, and traditions that adults hold, should be respected in supporting adults to manage their affairs.
3. Definitions. The law contains a section defining operative terms.
4. Presumption of Capacity. The law declares that all adults are presumed to be capable of managing their affairs and to have legal capacity.
5. Contents of SDM Agreement. The law specifies the elements that must be included in a SDM agreement.
6. Witnesses. The agreement must be witnessed by two persons or a notary.
7. Recognition of Supporters. A decision or request made or communicated with the assistance of a supporter in conformity with this law shall be recognized for the purposes of any provision of law as the decision or request of the principal.

## **Rhode Island SDM Resources**

# Texas Supported Decision-Making Law

## Elements of Law

1. Definitions
2. Purpose
3. Scope of Agreement
4. Authority of Supporter
5. Term of Agreement
6. Authorizing and Witnessing
7. Form of Agreement
8. Reliance on Agreement
9. Reporting of Suspected Abuse or Neglect  
*TX terms: “cause to believe” and “shall report”*  
*NY terms: “substantial cause” and “may report”*
10. Mandatory Training of Court-Appointed Attorneys

## **Disability Rights Texas & SDM** References and Resources

# Texas Supported Decision-Making Law

## Resources

### **Making My Own Choices: An Easy-to-Follow Guide on Supported Decision-Making Agreements (DRTx - 2016) [Link](#)**

This user-friendly guide includes information and resources to help understand supported decision-making and to complete a supported decision-making agreement.

### **The Right to Make Choices: Supported Decision-Making Comprehensive Toolkit (DRTx 2018) [Link](#)**

This toolkit is helps everyone involved in the supported decision-making process:, such as individuals with disabilities who want support to make their own decisions, supporters, and family members, as well as legal and educational professionals and service providers. In addition to covering key concepts, it answers frequently asked questions, features a guide for Supported Decision-Making Agreements, and includes a number of sample forms.

### **Changing Your Guardianship Without a Lawyer (DRTx 2018) [Link](#)**

This guide provides general information about what an adult can do to change their guardianship without a lawyer. Specifically, they learn about asking for a successor guardian or guardianship restoration, modification, and removal in Texas.

### **Supported Decision-Making Overview (DRTx - 2021) [Link](#)**

This publication explains the basics of SDM: who can enter into the agreement; who can be a supporter; what the agreement does; the role of the supporter; what rights are maintained; how it differs from a power of attorney; guardianship and other alternatives

### **Overcoming Civil Death: A Report on Needed Legal Reforms for People Seeking Restoration of Rights (DRTx - 2022) [Link](#) / [Video](#)**

The report includes DRTx's solution-based recommendations for how to address barriers to terminating a guardianship so more Texans with disabilities can have their rights restored and have more control over their lives.

### **CMEs and Guardianship in Texas (DRTx - 2021) [Link](#)**

This guide explains Certificates of Medical Examination (CME) and the need to evaluate supports and services that allow for less restrictive alternatives to guardianship.

### **County Judges Benchbook – Guardianship (Texas Association of Counties - 2021) [Link](#)**

This publication contains a section on supported decision-making as a method of avoiding guardianships.

# Texas Special Ed Transition Planning Law

## Elements of Law

Sec. A29.011. TRANSITION PLANNING. (a) The commissioner shall by rule adopt procedures for compliance with federal requirements relating to transition services for students who are enrolled in special education programs under this subchapter. The procedures must specify the manner in which a student's admission, review, and dismissal committee must consider, and if appropriate, address the following issues in the student's individualized education program:

10) the use and availability of appropriate: (A) supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills; and (B) supports and services to foster the student's independence and self-determination, including a supported decision-making agreement under Chapter 1357, Estates Code.

Sections 29.0112(b) and (e), Education Code, are amended to read as follows: (b) The transition and employment guide must be written in plain language and contain information specific to this state regarding:

(7) guardianship and alternatives to guardianship, including a supported decision-making agreement under Chapter 1357, Estates Code; (8) self-advocacy, person-directed planning, and self-determination;

Section 29.017, Education Code, is amended by amending Subsections © and (d) and adding Subsections (c-1), (c-2), (c-3), (e), and (f) to read as follows: © Not later than one year before the 18th birthday of a student with a disability, the school district at which the student is enrolled shall: (1) provide to the student and the student's parents: (A) written notice regarding the transfer of rights under this section; and (B) information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Chapter 1357, Estates Code, and other supports and services that may enable the student to live independently;

(c-2) If a student with a disability or the student's parent requests information regarding guardianship or alternatives to guardianship from the school district at which the student is enrolled, the school district shall provide to the student or parent information and resources on supported decision-making agreements under Chapter 1357, Estates Code.

Legislative Report (2017 Law) S.B. 748 modernizes the Education Code to recognize supported decision-making agreements as an alternative to guardianship and maximizes the autonomy of persons with disabilities. **It requires school districts to produce a comprehensive guide for transition planning that includes supported decision-making.**

# Washington Supported Decision-Making Law

## Elements of Law

Various laws enacted in 2019 - 2022 incorporate SDM into state law as an alternative to guardianship.

1. Definitions. "Less restrictive alternative" means an approach to meeting an individual's needs which restricts fewer rights than would the appointment of a guardian or conservator. The term includes supported decision making, appropriate technological assistance, appointment of a representative payee, and appointment of an agent by the individual, including appointment under a power of attorney for health care or power of attorney for finances. "Supported decision making" means assistance from one or more persons of an individual's choosing in understanding the nature and consequences of potential personal and financial decisions, which enables the individual to make the decisions, and in communicating a decision once made if consistent with the individual's wishes.

2. Judicial Findings. Sec. 301. (1) On petition and after notice and hearing, the court may:

- (a) Appoint a guardian for an adult if the court finds by clear and convincing evidence that:
- (i) The respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making; and
- (ii) The respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative.

## Washington SDM Resources

# Wisconsin Supported Decision-Making Law

## Elements of Law

Wisconsin's [guardianship law](#) states that a guardianship may not be ordered unless the court finds by clear and convincing evidence that "The individual's need for assistance in decision making or communication is unable to be met effectively and **less restrictively** through appropriate and reasonably available training, education, support services, health care, assistive devices, a **supported decision-making agreement** under ch. 52, or other means that the individual will accept." (Emphasis added)

1. **Role of Supporter.** Assembly Bill 655, enacted in 2018, allows an adult with a functional impairment to create a supported decision-making agreement to allow another person, referred to as a "supporter," to assist the adult with certain decision-making. Under the law, a designated supporter is **not a surrogate decision maker** for the adult and is **not authorized to sign legal documents** for the adult or bind the adult to a legal agreement.
2. **Requirements of Agreement.** A supported decision-making agreement must be in writing, in substantially the form provided under the bill, entered into voluntarily, and signed and dated either before at least two adult witnesses or a notary public in order to be valid. The supporter must consent to provide the support specified in the agreement.
3. **Immunity.** The law provides immunity for a person whose act or failure to act is done in good faith and in reliance on a supported decision-making agreement, unless the person has cause to believe the adult is being abused or neglected.
4. **Abuse Reporting.** A third party who is aware of a SDM agreement who has reason to believe that an adult with a functional impairment is being abused, neglected, or exploited by the supporter, may report the issue to an elder-at-risk agency, adult-at-risk agency, state or local law enforcement, or DHS. The law does not eliminate or limit a mandatory reporter's obligation to report such circumstances under any other statute or regulation.
5. **Agency Implementation.** The department of health services shall prepare and provide access to a supported decision-making agreement instrument and accompanying information for adults with functional impairments, family members, education professionals, health care and social service professionals, county clerks, and local bar associations.
6. **Schools.** The local educational agency shall provide the individual and the individual's parents with information on supported decision-making, other alternatives to guardianship, and strategies to remain engaged in the individual's secondary education.

## [Wisconsin SDM Resources](#)



# **Positions of the National Council on Disability**

## **Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination ([2018 Report](#))**

### **Due Process**

\* Guardianship represents a deprivation of liberty, which implicates due process. (NCD 2018, p. 33) \* Guardianship cases are often dispensed with as quickly as possible with little concern for due process or protecting the civil rights of individuals facing guardianship. (NCD 2018, p. 21) \* Although guardianship is largely a creature of state law, it nonetheless raises fundamental questions concerning federal civil rights and constitutional due process. (NCD 2018, p. 27) \* A state guardianship court improvement program should be funded to assist courts with developing and implementing best practices in guardianship, including training of judges and court personnel on due process rights and less-restrictive alternatives. (NCD 2018, p. 22) \* The degree of due process provided in a guardianship matter should not be contingent on the type of disability that is the alleged cause of an individual's incapacity or inability to make and carry out decisions. The DOJ should take the position that such practices are discriminatory on the basis of the ADA. (NCD 2018, p. 165).

### **Americans with Disabilities Act**

\* The Americans with Disabilities Act (ADA) is applicable to guardianship proceedings; 2) the need for assistance with activities of daily living or even with making decisions does not give rise to a presumption of incapacity; and 3) guardianship should be a last resort that is imposed only after less restrictive alternatives have been determined to be inappropriate or ineffective. (NCD 2018, p. 19). \* The integration mandate of Title II of the ADA requires that states provide services, activities, and programs in the most integrated and least restrictive setting appropriate to the needs of qualified people with disabilities. (NCD 2018 p. 50) \* Many guardianship reforms rely on the fundamental principles of integration and least restrictive environments, as required both in the text of the ADA and in the Supreme Court's interpretation of the ADA in the case of *Olmstead v. L.C.* (NCD 2018 p. 51) \* In 1999, in the *Olmstead* decision, the U.S. Supreme Court interpreted the ADA to give rise to an obligation to provide services to people with disabilities in the least restrictive environment that will meet their needs. (NCD 2018 p. 119) (*Olmstead v. L.C. ex rel Zimring*, 527 U.S. 581 (1999))



### RESOLUTION

The American Bar Association’s House of Delegates approved a resolution in 2017 that encourages states to adopt provisions requiring supported decision-making arrangements to be considered as a less restrictive alternative to guardianship:

“RESOLVED, That the American Bar Association urges state, territorial, and tribal legislatures to amend their guardianship statutes to require that supported decision-making be identified and fully considered as a less restrictive alternative before guardianship is imposed; and urges courts to consider supported decision-making as a less restrictive alternative to guardianship; and;

FURTHER RESOLVED, That the American Bar Association urges state, territorial, and tribal legislatures to amend their guardianship statutes to require that decision-making supports that would meet the individual’s needs be identified and fully considered in proceedings for termination of guardianship and restoration of rights; and urges all courts to consider available decision-making supports that would meet the individual’s needs as grounds for termination of a guardianship and restoration of rights.”