

# Supported Decision-Making in New Mexico

TASK FORCE REPORT  
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## *EXECUTIVE SUMMARY*

*Supported Decision Making (SDM) has gained momentum worldwide as an alternative to substituted decision-making models like guardianship because it maximizes self-determination and promotes the civil rights of people with disabilities.*

*In SDM, individuals with disabilities make decisions for themselves with the assistance of supporters, trusted people who help the individual obtain and understand information relevant to making a decision, evaluate options and consequences, and communicate the decision to others.*

*The New Mexico Developmental Disabilities Council created a SDM Task Force in 2022 to evaluate how the model could be most effectively implemented in New Mexico.*

*Comprised of twenty-five individuals representing key stakeholder groups, the Task Force convened three meetings and multiple subcommittee meetings, researched existing models and scholarship, and drew on their knowledge of the guardianship and disability landscapes in New Mexico to arrive at the findings contained in this Report.*

*The Task Force proposes legislation codifying SDM that aligns with the goal of maximizing autonomy for persons with disabilities, and outlines an implementation framework that involves a robust outreach and education plan and the development of critical resources and infrastructure to support the successful and widespread implementation of SDM in the state.*



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## Background

**Supported Decision Making (SDM)** emerged in recent years as a new approach for assisting individuals with disabilities who rely on others for help making life decisions.

In contrast to centuries-old substituted decision-making models such as guardianship, which are often underpinned by antiquated notions about the need to protect individuals with disabilities from themselves by stripping them of their basic rights, the SDM model aims to better recognize the autonomy, personhood, and dignity of individuals with disabilities by emphasizing self-determination and maximizing agency over their own lives.

Although flexible and individualized, generally speaking SDM is “a series of relationships, practices, arrangements, and agreements, of more or less formality and intensity, designed to assist an individual with a disability to make and communicate to others decisions about the individual’s life.”<sup>1</sup> In SDM, the individual with a disability receives help from supporters with obtaining and understanding information relevant to making a decision, evaluating consequences and benefits of the decision, and communicating the decision to others.

International movement toward a SDM model began in 2016 with the ratification of Article 12 of the United Nations Convention on the Rights of Persons with Disabilities, which recognized the exercise of legal capacity as a human right.<sup>2</sup>

In 2014, the creation of a National Resource Center on Supported Decision-Making funded by an Administration on Community Living grant spurred development of SDM practice in the United States.<sup>3</sup> Courts have recognized SDM in guardianship proceedings in multiple jurisdictions, and over a dozen states have passed legislation formally recognizing SDM by statute.<sup>4</sup> In other jurisdictions, SDM has been implemented informally or by policy.<sup>5</sup> The American Bar Association<sup>6</sup>, American Civil

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<sup>1</sup> Robert D. Dinerstein, Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road from Guardianship to Supported Decision-Making, HUM. RTS. BRIEF, Winter 2012.

<sup>2</sup> *Id.*

<sup>3</sup> Supported Decision Making Program, Administration on Community Living, [https://acl.gov/programs/consumer-control/supported-decision-making-program#:~:text=Supported%20decision%20making%20\(SDM\)%20is,or%20family%20members%20they%20choose](https://acl.gov/programs/consumer-control/supported-decision-making-program#:~:text=Supported%20decision%20making%20(SDM)%20is,or%20family%20members%20they%20choose).

<sup>4</sup> U.S. Supported Decision Making Laws, Center for Public Representation Center for Supported Decision Making. Last visited 7/14/22. <https://supporteddecisions.org/resources-on-sdm/state-supported-decision-making-laws-and-court-decisions/>

<sup>5</sup> Supported Decision Making, Vermont Developmental Disabilities Services Division. Last visited 7/12/22. <https://ddsd.vermont.gov/supported-decision-making>

<sup>6</sup> Commission on Disability Rights, Section of Civil Rights and Social Justice Report to the House of Delegates, American Bar Association, 2017. [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2017\\_SDM\\_%20Resolution\\_Final.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/2017_SDM_%20Resolution_Final.pdf)

Liberties Union<sup>7</sup>, National Guardianship Association<sup>8</sup>, the National Disability Rights Network<sup>9</sup> and many other legal and disability rights organizations<sup>10</sup> have issued position statements acknowledging SDM as a promising emerging practice.

In light of this national trend toward reconceptualizing how individuals with disabilities can be supported in exercising personal agency and legal capacity, the New Mexico Developmental Disability Council (DDC) funded the Supported Decision Making Task Force in 2022 to facilitate the implementation of SDM in the state.

## *Task Force Mission*

The Task Force sought to review existing SDM models and solicit key stakeholder input in order to develop a strategy for implementing SDM in New Mexico, including any necessary legislation, outreach, and education.

As discussion framework, the Task Force considered the following:

- What special characteristics of the state should be considered?
- Should SDM be implemented by policy, by statute, or informally?
- What support is there for SDM in existing NM law and in the community?
- If legislation is needed, what should be included?
- Are there interim ways to implement SDM without legislation?
- What agencies/organizations/stakeholders/partners will be implicated?
- What education/ training is needed, and for whom?

## *Task Force Composition and Methodology*

The Task Force aimed to include representatives from every aspect of the state's guardianship system to develop an inclusive, comprehensive plan for SDM

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<sup>7</sup> Supported Decision Making and the Problems of Guardianship, American Civil Liberties Union. Last visited 7/14/22. <https://www.aclu.org/issues/disability-rights/integration-and-autonomy-people-disabilities/supported-decision-making>

<sup>8</sup> Position Statement on Guardianship, Surrogate Decision Making, and Supported Decision Making, National Guardianship Association, 2018. [https://www.guardianship.org/wp-content/uploads/2018/09/SupportedDecision\\_Making\\_PositionStatement.pdf](https://www.guardianship.org/wp-content/uploads/2018/09/SupportedDecision_Making_PositionStatement.pdf)

<sup>9</sup> Supported Decision Making and Health Care, National Disability Rights Network, 2019. <https://www.ndrn.org/resource/supported-decision-making-and-health-care/#:~:text=Supported%20decision%20making%20allows%20a,care%20and%20medical%20treatment%20decisions.>

<sup>10</sup> Who Supports Supported Decision Making?, Supported Decision-Making New York. Last visited 7/14/22. <https://sdmny.org/who-supports-supported-decision-making/>

implementation tailored to the particular needs of New Mexico. Accordingly, the Task Force solicited participation from the following groups:

- Protected persons subject to guardianship
- Persons relying on alternatives to guardianship
- Persons with disabilities
- Family members of persons with disabilities
- Professional guardians/conservators
- Legal services organizations
- Disability advocates
- Service providers
- Policy experts
- Attorneys
- Judiciary

In all, twenty-five members lent their time and expertise to the Task Force.<sup>11</sup>

From the time of its inception in February 2022 through June 2022, the Task Force convened three virtual meetings. Two subcommittees held additional meetings.

The **Legal Subcommittee** focused on evaluating existing New Mexico law and SDM statutes in other states to propose legislative changes supporting SDM.

The **Implementation Subcommittee** explored considerations related to successful deployment of SDM, including identifying guardianship pipelines in New Mexico, developing solutions for potential barriers to SDM implementation, and creating a plan for education, outreach, and infrastructure development.

The Task Force drew on academic research on SDM, SDM resources and strategies developed in other jurisdictions and internationally, and personal interviews with multiple SDM policy experts, Developmental Disability Councils, and Protection & Advocacy agencies.

*See Appendix A for a non-exhaustive list of sources not otherwise referenced in the Report.*

## *Task Force Findings*

### **Supported Decision Making Defined**

The Task Force defined **Supported Decision Making** as a process by which an individual, called the **Principal**, makes their own decisions with the assistance of a trusted group of friends, family, or professionals called **Supporters**.

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<sup>11</sup> See Page 4 for a list of members.

Supporters may assist the principal by helping them to obtain information relevant to making a decision, to understand that information, to evaluate risks and benefits, and/or to communicate their decisions, but in contrast to substituted decision making models like guardianship, supporters do not make decisions for the principal.

Examples of support might include using releases so that a supporter can obtain medical or financial records; explaining information relevant to a decision by using pictures, tangibles, field trips, or plain language; sitting in on an appointment to help the principal understand, communicate, or ask questions; and helping the Principal evaluate a decision by identifying potential risks and benefits and making a pros-cons chart.

A **Supported Decision Making Agreement** is a document that memorializes that arrangement, and that details the identity of each supporter and their roles. SDM agreements can be used to help the principal think about and develop decision making skills and supports, to legitimize and explain the involvement of supporters to third parties, and to ensure that the principal's decisions are still honored even when they are made with the assistance of supporters.

SDM agreements can be used in conjunction with other instruments, such as releases of information, powers of attorneys, or advance directives. They can be used as an alternative to guardianship or within guardianship, either to supplement a limited guardianship, to prioritize self-determination within a plenary guardianship, or as part of a plan to transition a person out of guardianship.

SDM is inherently a highly individualized process, and SDM agreements should be tailored to the principal's unique needs.

## **Guardianship in New Mexico**

### *Often Undue and Overbroad*

The Task Force examined research suggesting that guardianship is often used when it is unnecessary, including a 2018 National Council on Disability Report<sup>12</sup> finding that guardianship proceedings are often colored by assumptions that people with disabilities lack capacity, and that least-restrictive alternatives are often not considered when they could have been feasible.

This research was consistent with the experience of many Task Force members in New Mexico, who shared that in their estimation, guardianship is often the “go-to” intervention for individuals with disabilities and that guardianships in the state are sometimes ordered with insufficient medical justification or exploration of least-restrictive alternatives.

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<sup>12</sup> Beyond Guardianship, Toward Alternatives, National Council on Disability, 2018. <https://ncd.gov/publications/2018/beyond-guardianship-toward-alternatives>



The Task Force conceptualized guardianship as frequently being “the wrong answer to the problem” in that guardianship is often imposed in cases where there is not true lack of capacity, but rather a need for assistance in accessing appropriate services and supports.

### *Pipelines to Guardianship*

The Task Force identified several **pipelines to guardianship** common in New Mexico:

- **Schools.** Parents of students with disabilities who receive special education services are often encouraged by schools to seek guardianship, on the erroneous belief that guardianship is necessary for students to continue to receive services or for parents to participate in Individualized Education Plan (IEP) meetings.
- **Foster care.** Service providers or case workers may suggest guardianship when a youth with a disability reaches the age of majority to facilitation connection with services.
- **Medical facilities.** Hospitals, psychiatric hospitals, and congregate residential settings often require that a decisionmaker be appointed through the guardianship process to effectuate discharge of individuals from inpatient treatment. This is especially true when facility capacity is strained.
- **Criminal justice system.** Detention centers may petition for guardianship to facilitate a person’s release.
- **Unhoused individuals** who are resistant to accessing services may be referred for guardianship to force treatment.

## **Supported Decision Making to Ensure Equality and Maximize Self-Determination for Multiple Populations**

The Task Force recognized SDM as a valuable mechanism for maximizing the autonomy, agency, and civil rights of people with disabilities in New Mexico; as an alternative to unnecessary guardianships; and as an accommodation to help people with disabilities exercise legal capacity in a manner equal to others.

Although often conceptualized as a tool most beneficial for individuals with developmental or intellectual disabilities, the Task Force acknowledged that SDM could be helpful for other groups, including individuals with fluctuating capacity like those living with mental illness and older adults facing progressive cognitive impairment.

SDM is a flexible model that can be crafted around individual needs. However, the Task Force recognized that SDM may not be an appropriate option for all persons with disabilities.

## Potential Challenges to SDM Implementation

The Task Force identified several barriers that need to be addressed in order to achieve successful implementation of SDM in New Mexico.

First, the group recognized that SDM represents a paradigm shift that challenges paternalistic ideas about the inability of individuals with disabilities to direct their own lives, and about the need to prioritize their protection versus their autonomy. Adoption of SDM will require buy-in from stakeholders and a significant cultural shift.

The Task Force noted that financial, medical, and other institutions may be reluctant to honor SDM agreements, since they are relatively novel instruments. Some Task Force members pointed out that even established instruments such as powers of attorney are sometimes not accepted by banks, unless they conform to particular format requirements.

Another potential barrier to successful SDM implementation is that some individuals who could benefit from SDM lack close family or friends who could serve as supporters.

Additionally, pilot projects in other states have demonstrated the value of trained personnel to help individuals craft SDM agreements, develop decision-making skills, and resolve any issues encountered when the agreements are used,<sup>13</sup> and this infrastructure does not currently exist in New Mexico.

## Implementation Methods

The Task Force considered three methods for implementing SDM in New Mexico, based on the employment of these strategies in other U.S. jurisdictions:

1. By **legislation** codifying requirements for SDM agreements;
2. By **judicial recognition** through individual court cases in which guardianship is terminated in favor of SDM agreements; and
3. By **policy** that facilitates the informal use of SDM.<sup>14</sup>

The Task Force contemplated whether SDM could be implemented prior to or without the passage of legislation, since the practice is essentially an agreement among parties and has been utilized without any kind of formal recognition in other jurisdictions.<sup>15</sup> The group considered strategies such as creating a model form, engaging in outreach

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<sup>13</sup> Costanzo, Glen, & Krieger, Supported Decision Making: Lessons from Pilot Projects.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

and education efforts, organizing a campaign to litigate individual guardianship cases, and funding facilitators to help people execute SDM agreements.

Ultimately though, the Task Force concluded that legislation would be the most effective strategy for SDM implementation in New Mexico. Codifying SDM would clarify how the model works and create a uniform process and form, and would lend the legitimacy necessary for the model's acceptance by individuals, service providers, and institutions.

The Task Force also recognized that the passage of legislation alone will be insufficient to ensure the successful, widespread use of SDM in New Mexico. Engagement of stakeholders, education and outreach, and the development of resources and infrastructure will also be critical components.

## *Recommendations: Proposed Legislation*

### **Supported Decision Making Statute**

Accordingly, the Task Force prioritized the development of proposed SDM legislation. The Legal Subcommittee analyzed existing New Mexico law and SDM statutes from a dozen jurisdictions across the United States, convening multiple times to identify core aspects to be included in the proposed law:

- SDM should not be restricted to individuals with disabilities, or to those with developmental or intellectual disability. Any adult who wants to use SDM should be eligible to do so, including older adults and adults with fluctuating capacity.
- The SDM statute should be flexible enough to allow for the creation of highly individualized and customizable agreements, and for individuals to be able to easily execute those agreements.
- The SDM statute should include a model form, to facilitate access for individuals who cannot hire an attorney or facilitator to draft an SDM agreement. The form should be optional to allow for customization, should be written in plain language and explain what SDM is, and should contain information about any FERPA, HIPAA, or other releases and about how to report suspected abuse, neglect, or exploitation.
- Each supporter should execute a different form to promote ease of execution. This way, not all individuals have to be present at once to sign the document, and the structure more readily allows for modification, addition, or removal of individual supporters. It also protects privacy because the principal does not have to disclose in all contexts all areas in which they receive support.
- Individuals with certain criminal convictions, restraining orders, or abuse/neglect histories should be disqualified from being supporters, but otherwise the principal should have broad discretion to select their own supporters in keeping with the model's emphasis on self-determination. This

could include paid providers, who may be some individuals' most trusted supports. Potential conflicts of interest will be managed by supporters' duty of care as outlined in the statute.

- An indemnity provision will be important to ensure third-party acceptance of SDM agreements.

*The proposed SDM legislation is included in Appendix B.*

## **Guardianship Code Changes**

The Task Force also recommended amending the guardianship code to:

- Specifically identify SDM as a less restrictive alternative to guardianship;
- Require a petition for guardianship to name and provide notice to any supporters in a known SDM agreement;
- Require court visitors and guardians ad litem to state in their reports whether SDM is a feasible alternative to guardianship; and
- Require the Court to consider whether SDM is a feasible alternative to guardianship at the hearing on the petition, and if not and guardianship is warranted, to specifically state the reasons in the Order.

*The proposed modifications to the guardianship code are included in Appendix C.*

## **Stakeholder Engagement**

The Task Force recognizes that the proposed legislation will be further refined through ongoing engagement with stakeholders to ensure that it best serves individuals with disabilities in New Mexico while acknowledging systemic parameters. To that end, the Task Force recommends that the DDC send the proposed legislation to key stakeholders along with a cover letter and SDM fact sheet to solicit feedback.

Stakeholders will also be implicated in education and outreach efforts that will be needed following the passage of legislation.

*A list of key stakeholders is included in Appendix D.*

# Recommendations: Other Implementation Measures

## Education and Outreach

Successful implementation of SDM depends on a robust education and outreach campaign. This will stymie the guardianship pipelines by providing information about SDM and other alternatives, ensure that individuals and families have access to the assistance needed to execute SDMs, and facilitate the understanding and acceptance of SDM agreements by third parties like educational, financial, and medical institutions.

**Schools** will need training to correct the assumption that guardianship is a legal necessity for students receiving special education services when they reach the age of majority. Adult students with disabilities can sign releases so that their parents can receive educational records and participate in IEP meetings. Some jurisdictions have developed an SDM policy and form specific to this context.

*See Appendix E for an example.*

Schools are also in a prime position to help students with disabilities develop their decision-making skills. Pilot projects implementing SDM in other jurisdictions found that individuals with disabilities had often been conditioned to defer to others instead of making their own decisions, so exercising self-determination in the SDM process required some initial coaching.<sup>16</sup> It is well-documented that self-determination leads to better outcomes, including increased life satisfaction, a greater likelihood that the person will recognize and report abuse or neglect, and decreased risk of depression.<sup>17</sup> Accordingly, teaching decision-making skills and emphasizing autonomy should be part of transition planning for students with disabilities.

Key stakeholders implicated in these efforts will be students, parents, teachers, administrators, Special Education Directors, individual schools and school districts, the Public Education Department, and the Division of Vocational Rehabilitation. The Special Education Ombudsman or advocacy organizations could potentially be engaged to facilitate trainings.

**Hospitals, detention centers, and other facilities** should have policies on the use of SDM as an alternative to guardianship in the discharge planning process. Managed Care Organization Care Coordinators should also receive training on SDM.

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<sup>16</sup> *Id.*

<sup>17</sup> Tamar Heller, Abigail Schindler, Susan B. Palmer, Michael L. Wehmeyer, Wendy Parent, Ronda Jenson, Brian H. Abery, Wendy Geringer, Ansley Bacon & David M. O'Hara (2011) Self-Determination across the Life Span: Issues and Gaps, *Exceptionality*, 19:1, 31-45, DOI: [10.1080/09362835.2011.537228](https://doi.org/10.1080/09362835.2011.537228)

High Fidelity Wraparound services should be available to all youth in foster care pending approval of a CMS waiver<sup>18</sup>, so **wraparound teams** could be an excellent vehicle for providing information about SDM and guardianship alternatives to youth aging out of the foster care system, and for helping individuals to locate and develop supports, to develop decision-making skills, and to execute SDM agreements. Similarly, **DD waiver Interdisciplinary Teams** could facilitate implementation of SDM for individuals with developmental and intellectual disabilities.

Outreach to foster youth, individuals with disabilities, families, service providers, and partnership with state agencies such as the Children Youth and Families Department (CYFD) and the Developmental Disabilities Services Division (DDSD) will be important in this area.

Entities that will be expected to rely on SDM agreements, including **financial and medical institutions** and other **service providers** will also need training and access to information about what SDM is and how it works. Professional organizations could be partners in this endeavor.

The bench and bar will need education on the mechanics of SDM agreements and their viability as alternatives to guardianship, which could be accomplished through outreach to relevant State Bar sections and the Working Interdisciplinary Group of Guardianship Stakeholders (WINGS), as well as through presentations at conferences such as Children’s Law Institute and the New Mexico Guardianship Association Symposium.

Lastly, “Town Hall” meetings could be convened in-person statewide or via Zoom to additionally engage stakeholders and keep them apprised of SDM implementation progress.

## Materials

Drawing on success in other states, the Task Force identified resources and materials that should be developed to further SDM education and outreach in New Mexico. These include:

- A **bench card** to educate the judiciary. See Appendix F for an example from Nevada.
- A **fillable form** and **worksheets** to help Principals and Supporters plan for and create SDM agreements. See Appendix G for examples. These resources could also be part of an **SDM Self Help Packet** available at Self Help Centers in New Mexico Courts.

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<sup>18</sup> 2021 1115 Waiver Application, New Mexico Human Services Department.  
<https://www.hsd.state.nm.us/wp-content/uploads/Appendix-C-Public-Notices.pdf>.

- **Guides to SDM and Guardianship Alternatives** specifically tailored to Principals, Supporters, Families, Attorneys, Educators, and Service Providers/Third Parties.
- An **FAQ** or high level overview of the SDM model, to introduce stakeholders who are unfamiliar with the topic.
- A **postcard mailer** to announce the implementation of SDM in New Mexico following the passage of legislation and to direct recipients to additional resources. Target audiences could include medical and financial institutions, service providers, and individuals with disabilities and their families.
- Promotional **video** explaining the SDM model and directing viewers to resources.

*Additional examples of materials developed in other states is available in Appendix H.*

## Infrastructure

The Task Force also considered the infrastructure that will be required to facilitate effective SDM implementation.

The group determined that a **central repository for SDM resources** and information will be important, like the website developed in Nevada that contains links to the SDM statute, forms, guides, and contact information for organizations that can provide additional assistance.<sup>19</sup>

The Task Force envisioned the creation of an **Office of Supported Decision Making within the Developmental Disabilities Council’s Office of Guardianship**. The Office would be responsible for maintaining the website and assisting individuals with drafting SDM agreements and alternatives to guardianship such as powers of attorney and mental health advance directives. The Office would also provide information and training to the public and stakeholders about SDM, develop and update SDM materials and resources, and troubleshoot when any difficulties arise, such as the failure of third parties to honor SDM agreements. Additionally, a program to train and manage volunteer SDM facilitators and supporters could expand access to SDM for individuals who otherwise lack natural supports to create and use SDM agreements.<sup>20</sup>

Lastly, the Task Force indicated a need for the **enhancement of case management, care coordination, and discharge planning** in New Mexico, because improvement of these processes will reduce overreliance on guardianship in cases where assistance in accessing services is needed.

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<sup>19</sup> <https://sdmnevada.org/>

<sup>20</sup> See, for example, the Georgia DDC’s Citizen Advocacy program: <https://gcd.org/partnerships/supported-decision-making.html>

## **Continued SDM Meetings**

Although the Task Force formally concluded on July 1, 2022, members believe continued meetings will be important as SDM implementation unfolds in New Mexico. Many Task Force members expressed interest in continuing these meetings, and the group planned additional conversation via email and virtual meetings.

As implementation progresses, the group plans to include other interested stakeholders.

## *Conclusion*

SDM offers a path for individuals with disabilities to exercise legal capacity to make their own decisions and direct their own lives. The model should be introduced to New Mexico in alignment with the international movement toward maximizing self-determination.

The Task Force recommends that the state pass legislation codifying SDM, and that legislation should keep at the forefront core values of person-centeredness and autonomy for individuals with disabilities, while duly considering the systems in which SDM will be used. Continued stakeholder engagement and partnership will be important as the Task Force's draft legislation is refined and formally proposed.

However, successful implementation of SDM in New Mexico will not end with the passage of legislation. The novelty and paradigm-shifting nature of SDM will require education, outreach, and infrastructure development. Fortunately, the myriad of resources from other jurisdictions that have already embraced SDM will provide guidance as New Mexico embarks on the SDM implementation path.

With the combination of SDM legislation and a thorough implementation plan, the Task Force hopes that SDM will offer individuals with disabilities in New Mexico independence and dignity in the years to come.



# Appendix A

## List of Additional Resources

National Resource Center for Supported Decision Making

<http://www.supporteddecisionmaking.org/>

ABA PRACTICAL Tool for Lawyers

[https://www.americanbar.org/groups/law\\_aging/resources/guardianship\\_law\\_practice/practical\\_tool/](https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool/)

ACLU SDM Resource Library

<https://www.aclu.org/other/supported-decision-making-resource-library>

Center for Public Representation's SDM Pilot Project

<https://supporteddecisions.org/>

Supported Decision Making New York- How We Do It

<https://sdmny.org/the-sdmny-project/how-we-do-it/the-3-phase-facilitation-model/>

Supported Decision Making Symposium 2019

<http://www.supporteddecisionmaking.org/sdm-symposium-2019-dc-materials>

Laurens, et al. Good Practice in Supported Decision-Making for People with Disability: final Report. 2021.

<https://apo.org.au/node/313465>

National Guardianship Network. Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability. 2021.

<http://law.syr.edu/academics/conferences-symposia/the-fourth-national-guardianship-summit-autonomy-and-accountability/>

## *Appendix B*

### Proposed SDM Act

#### **New Mexico Supported Decision Making Act**

##### **Short Title**

This Act may be cited as the New Mexico Supported Decision Making Act.

##### **Purpose**

The purpose of this chapter is to establish supported decision-making as a less restrictive alternative to guardianship that empowers adults who seek assistance with making decisions to exercise self-determination and to acknowledge, create, and maintain circles of supporters.

##### **Scope**

An adult may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with one or more supporters under which the adult authorizes the supporter(s) to do any or all of the following:

- (1) Provide supported decision-making, including assistance in understanding the options, responsibilities, and consequences of the adult's life decisions, without making those decisions on behalf of the adult;
- (2) Assist the adult in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or treatment records, from any person;
- (3) Assist the adult in understanding the information described in subsection (2) of this section; and
- (4) Assist the adult in communicating the adult's decisions to appropriate persons.

##### **Definitions**

As used in this Act:

“Adult” means a person who is at least 18 years of age.

“Principal” means an who seeks to enter, or has entered, into a supported decision-making agreement with one or more Supporters under this Act.

“Supported decision-making agreement” means an agreement between a Principal and a Supporter under this Act.

“Supporter” means an adult who has entered into a supported decision-making agreement with a Principal under this Act.

##### **Presumption of Capacity**

- (1) All adults are presumed to have capacity and to be capable of managing their affairs unless otherwise determined by a court. A diagnosis of mental illness, intellectual disability, or developmental disability, of itself, does not void the presumption of capacity.
- (2) The manner in which an adult communicates with others is not grounds for determining that the adult is incapable of managing the adult's own affairs.

- (3) The execution of a supported decision-making agreement may not be used as evidence of capacity or incapacity in any civil or criminal proceeding and does not preclude the ability of the adult who has entered into a supported decision-making agreement to act independently of the agreement.

### **Supporter Disqualifications**

The following persons are disqualified from acting as a supporter:

- (1) an individual who is the subject of a civil or criminal order prohibiting contact with the principal;
- (2) an individual who has been placed on the Employee Abuse Registry pursuant to NMAC 7.1.12.1-7.1.12.18; and
- (3) an individual who has been convicted of a crime involving violence or dishonesty.

### **Supporter Duties/Authority of Supporter**

A supporter must:

- (1) Act in good faith;
- (2) Act with the care, competence, and diligence ordinarily exercised by supporters in similar circumstances;
- (3) Act only within the scope of authority granted in the supported decision-making agreement;
- (4) Avoid self-dealing; and
- (5) Support the will and preference of the principal, and not the supporter's opinion of the principal's best interests.

### **Supporter Prohibition**

A supporter is prohibited from:

- (1) Making decisions on behalf of the principal.
- (2) Obtaining, without the consent of the principal, information that is not reasonably related to matters with which the supporter is authorized to assist under the supported decision-making agreement.
- (3) Using, without the consent of the principal, information acquired for a purpose other than assisting the principal to make a decision under the supported decision-making agreement.

### **Access to Personal Information**

- (1) If a supporter assists a principal in accessing, collecting, or obtaining personal information, including financial information, protected health information under the Health Insurance Portability and Accountability Act of 1996, or educational records under the Family Educational Rights and Privacy Act of 1974, the supporter shall ensure that the information is kept privileged and confidential, as applicable, and is not subject to unauthorized access, use, or disclosure.
- (2) The existence of a supported decision-making agreement does not preclude a principal from seeking personal information without the assistance of the supporter.

## **Supported Decision Making Agreement Requirements**

- (1) A supported decision-making agreement may be in any form but must:
  - (a) Be in writing;
  - (b) Be dated;
  - (c) Be signed voluntarily, without coercion or undue influence, by the principal and the supporter;
  - (d) Designate a supporter;
  - (e) List the types of decisions with which the supporter is authorized to assist the principal;
  - (f) List the types of decisions, if any, with which the supporter is not authorized to assist the principal;
  - (g) Contain a consent signed by the supporter indicating the supporter's:
    - i. relationship to the adult;
    - ii. willingness to act as a supporter; and
    - iii. acknowledgement of the duties of a supporter.
- (2) Be signed by each party to the agreement in the presence of at least two adult witnesses or a notary public.

## **Optional Statutory Form**

A document substantially in the following form may be used to create a supported decision-making agreement that has the meaning and effect prescribed by the Supported Decision-Making Act:

### NEW MEXICO STATUTORY FORM SUPPORTED DECISION-MAKING AGREEMENT IMPORTANT INFORMATION

This Supported Decision-Making Agreement allows you (called the “principal”) to choose a person (called your “supporter”) to help you make decisions in your life.

Your supporter might help you to think about the options, responsibilities, and consequences of decisions, to get information like medical, financial, or educational records, to help you understand those records, and/or to help you communicate your decisions.

Your supporters do not make decisions for you.

You can have more than one supporter, but there must be a separate form for each supporter.

This form provides for the designation of an alternate supporter, who can act if the supporter is unable or unwilling, or if you remove them as supporter.

You and your supporter must sign this form in front of two witnesses or a notary.

This agreement is effective immediately unless you say otherwise in the form.

If you wish to end this agreement, notify your supporter by telling them verbally or in writing. If your supporter no longer wants to be part of this agreement, they should tell you in writing.

If you have questions about the supported decision-making agreement, you should seek legal advice before signing this form.

## SUPPORTED DECISION-MAKING AGREEMENT

(1) INTRODUCTION. I, \_\_\_\_\_ (insert principal's name), want to have a person I trust help me make decisions, get and understand the information I need to make my decisions, and tell other people about my decisions. The person who will help me is my "supporter."

This is a written agreement between me ("principal") and my supporter. I can say in this agreement what kind of help my supporter will give me.

### A SUPPORTER APPOINTED UNDER THIS AGREEMENT DOES NOT MAKE DECISIONS FOR ME.

I know that I do not have to sign this agreement. I am entering into this agreement voluntarily. I understand what this agreement will do and how it works. I know that I can change this agreement at any time.

### (2) ROLE OF SUPPORTER.

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may:

Help me access, collect, or obtain information that is related to a decision, including medical, psychological, financial, educational, or treatment records;

Help me understand my options so I can make an informed decision; and

Help me communicate my decision to appropriate persons.

If I have more than one supporter, my supporters may share information with each other (select one of the following):

Yes [ ]

No [ ]

(3) DURATION AND TERMINATION OF AGREEMENT. I can end all or part of this agreement at any time by giving notice to my supporter. This agreement starts immediately if I do not say a specific date. Otherwise, the agreement starts on \_\_\_\_\_ (date). The agreement continues until the agreement is terminated by me or my supporter.

(4) NOTICE TO THIRD PARTIES. This is a summary of the rights and obligations of a supporter under NMSA XX-X-XX et seq., the chapter that authorizes supported decision-making agreements. A supporter does not make decisions for the principal, but a supporter may provide a principal with help when making decisions, obtaining

information for decisions, communicating decisions, and understanding the options, responsibilities, and consequences of decisions. A supporter may accompany the principal and participate in discussions with other persons. The principal sets out in this agreement the areas in which the supporter may help the principal with decisions. A third party must recognize a decision or request of the principal that is made or communicated with the assistance of a supporter as the decision or request of the principal ([NMSA XX-X-XX](#)). A principal may act without the help of the supporter. A third party is not subject to liability for reasonable reliance on this agreement.

**WARNING: PROTECTION FOR THE PRINCIPAL**  
IF A PERSON HAS CAUSE TO BELIEVE THAT THE PRINCIPAL IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE ADULT PROTECTIVE SERVICES HOTLINE: 1-XXX-XXX-XXXX.

(5) SUPPORTER.  
Supporter Name:

Address:

Telephone number:

E-mail address:

I want this supporter to help me with (mark any of the following you want):

- Making choices about food and clothing
- Making choices about where and with whom I live
- Making choices about my health and health care
- Making choices about how I spend my time
- Making choices about where I work
- Making choices about my support services
- Making choices about how I spend my money and how I save my money
- Making choices about legal matters
- Making choices about other matters (list other areas the supporter will help you with):

I do not want this supporter to help me with (list items):

(YES/NO) A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, is attached.

(YES/NO) A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Sec. 1232g, is attached.

(YES/NO) A release allowing my supporter to see other records is attached.

CONSENT OF SUPPORTER. I, \_\_\_\_\_ (Supporter), am the principal's \_\_\_\_\_ (relationship to the principal). I am willing to act as the principal's supporter. I acknowledge my duties as a supporter under NMSA XX-X-XX.

I understand that my job as a supporter is to help the principal make decisions, obtain and understand information for decisions, communicate decisions, and understand the options, responsibilities, and consequences of decisions. My support may include giving the principal information in a way that the principal can understand, discussing pros and cons of decisions, and helping the principal communicate the principal's decisions. I will act with care, competence, and diligence. I know that I may not make decisions for the principal. I will not exert undue influence on the principal. I will keep the principal's information confidential. I will not use information I receive under this agreement for a purpose other than as authorized by the principal for decision making, unless the principal consents to another use.

Supporter Signature:

Printed name:

Date:

Principal Signature:

Printed name:

Telephone number:

E-mail address:

Date:

1. Witness signature:

Printed name:

Date:

2. Witness signature:

Printed name:

Date:

(6) ALTERNATE SUPPORTER (Optional).

CONSENT OF ALTERNATE SUPPORTER. I, \_\_\_\_\_ (Alternate Supporter), am the principal's \_\_\_\_\_ (relationship to the principal). I am willing to act as the principal's supporter in the place of another supporter. I acknowledge the duties as a supporter under NMSA XX-X-XX.

I understand that my job as a supporter would be to help the principal make decisions, obtain and understand information for decisions, communicate decisions, and understand the options, responsibilities, and consequences of decisions. My support may include giving the principal information in a way that the principal can understand, discussing pros and cons of decisions, and helping the principal communicate the principal's decisions.

I will act with care, competence, and diligence. I know that I may not make decisions for the principal. I will not exert undue influence on the principal. I will not sign for the principal or provide an electronic signature of the principal to a third party. I will keep the principal's information confidential. I will not use information I receive under this agreement for a purpose other than as authorized by the principal for decision making, unless the principal consents to another use.

Alternate Supporter Signature:

Printed name:

Telephone number:

E-mail address:

Date:

Principal Signature:

Printed Name:

Date:

1. Witness signature:

Printed name:

Date:

2. Witness signature:



Printed name:

Date:

### **Reliance on Agreement; Limitation of Liability**

- (1) A person who receives an original or a copy of a supported decision-making agreement shall rely on the agreement.
- (2) A person is not subject to civil or criminal liability for an act or omission done in good faith and in reliance on a supported decision-making agreement, or in complying with or attempting to comply with the provisions of this chapter.

### **Recognition of Decisions Made with Assistance of Supporter**

A decision or request made or communicated with the assistance of a supporter in conformity with this Act shall be recognized for the purposes of any provision of law as the decision or request of the principal and may be enforced by the principal or supporter in law or equity on the same basis as a decision or request of the principal.

### **Term of Agreement; Termination/Revocation**

- (1) Except as provided by subsection (2) of this section, the supported decision-making agreement extends until terminated by either party or by the terms of the agreement.
- (2) The supported decision-making agreement is terminated as to a particular supporter if:
  - (a) Adult Protective Services finds that the principal has been abused, neglected, or exploited by the supporter;
  - (b) the supporter is the subject of a civil or criminal order prohibiting contact with the principal;
  - (c) the supporter has been placed on the Employee Abuse Registry pursuant to NMAC 7.1.12.1-7.1.12.18;
  - (d) the supporter has been convicted of a crime involving violence or dishonesty;
  - (e) The principal gives notice to the supporter orally, in writing, through an assistive technology device, or by any other means or act showing a specific intent to terminate the agreement; or
  - (f) The supporter provides written notice of the supporter's resignation to the principal.

### **Reporting of Suspected Abuse, Neglect, or Exploitation**

If a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement has cause to believe that the principal is being abused, neglected, or exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to the Adult Protective Services Hotline.

## Appendix C

### Proposed Modifications to Guardianship Code

#### **Proposed Changes to the New Mexico Guardianship Code, NMSA 45-5-301 et seq.**

##### **§ 45-5-301.1. When guardianship is to be used**

Guardianship for an incapacitated person shall be used only as is necessary to promote and to protect the well being of the person, shall be designed to encourage the development of maximum self reliance and independence of the person and shall be ordered only to the extent necessitated by the person's actual functional mental and physical limitations **when less restrictive alternatives, including supported decision-making, are not feasible**. An incapacitated person for whom a guardian has been appointed retains all legal and civil rights except those which have been expressly limited by court order or have been specifically granted to the guardian by the court.

##### **§ 45-5-303. Procedure for court appointment of a guardian of an incapacitated person**

A. An interested person may petition for appointment of a guardian for an alleged incapacitated person.

B. A petition under Subsection A of this section shall state the petitioner's name, principal residence, current street address, if different, relationship to the alleged incapacitated person, interest in the appointment, the name and address of any attorney representing the petitioner and, to the extent known, the following:

(1) the alleged incapacitated person's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the alleged incapacitated person will reside if the petition is granted;

(2) the name and address of the alleged incapacitated person's:

(a) spouse, or, if the alleged incapacitated person has none, an adult with whom the alleged incapacitated person is in a long-term relationship of indefinite duration in which the individual has demonstrated an actual commitment to the alleged incapacitated person similar to the commitment of a spouse and in which the individual and the alleged incapacitated person consider themselves to be responsible for each other's well-being;

(b) adult children or, if none, each parent and adult sibling of the alleged incapacitated person or, if none, at least one adult nearest in kinship to the alleged incapacitated person who can be found with reasonable diligence; and

(c) adult stepchildren whom the alleged incapacitated person actively parented during the stepchildren's minor years and with whom the alleged incapacitated person had an ongoing relationship in the two-year period immediately preceding the filing of the petition;

(3) the name and current address of each of the following, if applicable:

(a) a person responsible for care of the alleged incapacitated person;

(b) any attorney currently representing the alleged incapacitated person;

- (c) any representative payee appointed by the federal social security administration for the alleged incapacitated person;
- (d) a guardian or conservator acting for the alleged incapacitated person in New Mexico or in another jurisdiction;
- (e) a trustee or custodian of a trust or custodianship of which the alleged incapacitated person is a beneficiary;
- (f) any fiduciary for the alleged incapacitated person appointed by the federal department of veterans affairs;
- (g) an agent designated under a power of attorney for health care in which the alleged incapacitated person is identified as the principal;
- (h) an agent designated under a power of attorney for finances in which the alleged incapacitated person is identified as the principal;
- (i) a person nominated as guardian by the alleged incapacitated person;
- (j) a person nominated as guardian by the alleged incapacitated person's parent or spouse in a will or other signed record;
- (k) a proposed guardian and the reason the proposed guardian should be selected; and
- (l) a person **known to be designated by the alleged incapacitated person as a supporter in a supported decision-making agreement, or who is otherwise** known to have routinely assisted the alleged incapacitated person with decision making during the six months immediately preceding the filing of the petition;
- (4) the reason a guardianship is necessary, including a brief description of:
  - (a) the nature and extent of the alleged incapacitated person's alleged need;
  - (b) ~~any~~ least restrictive alternatives for meeting the alleged incapacitated person's alleged need that **has have** been considered or implemented, **including supported decision-making**;
  - (c) if no least restrictive alternative has been considered or implemented, the reason it has not been considered or implemented; and
  - (d) the reason **supported decision-making and any other** least restrictive alternatives instead of guardianship is insufficient to meet the alleged incapacitated person's alleged need;
- (5) whether the petitioner seeks a limited guardianship or full guardianship;
- (6) if the petitioner seeks a full guardianship, the reason a limited guardianship or protective arrangement instead of guardianship is not appropriate;
- (7) if a limited guardianship is requested, the powers to be granted to the guardian;
- (8) the name and current address, if known, of any person with whom the petitioner seeks to limit the alleged incapacitated person's contact;
- (9) if the alleged incapacitated person has property other than personal effects, a general statement of the alleged incapacitated person's property, with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and
- (10) whether the alleged incapacitated person needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings.

C. Notice of a petition under this section for the appointment of a guardian and the hearing on the petition shall be given as provided in [Section 45-5-309 NMSA 1978](#).

D. After the filing of a petition, the court shall set a date for hearing on the issues raised by the petition. Unless an alleged incapacitated person already has an attorney of the

alleged incapacitated person's own choice, the court shall appoint an attorney to represent the alleged incapacitated person. The court-appointed attorney in the proceeding shall have the duties of a guardian ad litem, as set forth in [Section 45-5-303.1 NMSA 1978](#).

E. The person alleged to be incapacitated shall be examined by a qualified health care professional appointed by the court who shall submit a report in writing to the court. The report shall:

(1) describe the nature and degree of the alleged incapacitated person's incapacity, if any, and the level of the alleged incapacitated person's intellectual, developmental and social functioning; and

(2) contain observations, with supporting data, regarding the alleged incapacitated person's ability to make health care decisions and manage the activities of daily living.

F. The court shall appoint a **visitor** who shall interview the person seeking appointment as guardian and the person alleged to be incapacitated. The visitor shall also visit the present place of abode of the person alleged to be incapacitated and the place where it is proposed the alleged incapacitated person will be detained or reside if the requested appointment is made. The visitor shall evaluate the needs of the person alleged to be incapacitated and shall submit a written report to the court. The report shall include a recommendation regarding the appropriateness of the appointment of the proposed guardian, **including an assessment of whether the alleged incapacitated person could implement supported decision-making and any other appropriate less restrictive alternatives to guardianship**. The report to the court shall also include recommendations regarding:

(1) those aspects of personal care that the alleged incapacitated person can manage without supervision or assistance;

(2) those aspects of personal care that the alleged incapacitated person could manage with the supervision or assistance of support services and benefits; and

(3) those aspects of personal care that the alleged incapacitated person is unable to manage without the supervision of a guardian.

Unless otherwise ordered by the court, the appointment of the visitor terminates and the visitor is discharged from the visitor's duties upon entry of an order appointing a guardian and acceptance of the appointment by the guardian.

G. A person alleged to be incapacitated shall be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person or others as determined by the court. At a hearing conducted pursuant to this section, the person alleged to be incapacitated may:

(1) present evidence and subpoena witnesses and documents;

(2) examine witnesses, including a court-appointed guardian ad litem, qualified health care professional and visitor; and

(3) otherwise participate in the hearing.

H. The court upon request or its own motion may conduct hearings at the location of the alleged incapacitated person who is unable to be present in court.

I. The rules of evidence shall apply and no hearsay evidence that is not otherwise admissible in a court shall be admitted into evidence except as otherwise provided in

this article. There is a legal presumption of capacity, and the burden of proof shall be on the petitioner to prove the allegations set forth in the petition. Such proof shall be established by clear and convincing evidence.

J. The existence of a proceeding for or the existence of a guardianship for an adult is a matter of public record unless the court seals the record after:

(1) the alleged incapacitated person or individual subject to guardianship requests that the record be sealed; and

(2) either:

(a) the petition for guardianship is dismissed; or

(b) the guardianship is terminated.

K. An alleged incapacitated person or the protected person subject to a proceeding for a guardianship, whether or not a guardian is appointed, an attorney designated by the alleged incapacitated person or the protected person and a person entitled to notice are entitled to access court records of the proceeding and resulting guardianship. A person not otherwise entitled to access court records under this subsection for good cause may petition the court for access to court records of the guardianship. The court shall grant access if access is in the best interest of the alleged incapacitated person or the protected person or furthers the public interest and does not endanger the welfare or financial interests of the alleged incapacitated person or the protected person.

L. A report pursuant to Subsections E and F of this section or a written report filed pursuant to [Section 45-5-303.1](#) or [45-5-314 NMSA 1978](#) is confidential and shall be sealed on filing, but is available to:

(1) the court;

(2) the alleged incapacitated person who is the subject of the report or evaluation, without limitation as to use;

(3) the petitioner, visitor, guardian ad litem and an attorney of record for purposes of the proceeding;

(4) unless the court orders otherwise, an agent appointed under a power of attorney for health care or power of attorney for finances in which the alleged incapacitated person is the principal; and

(5) any other person if it is in the public interest, as determined by the court, or for a purpose the court orders for good cause.

M. Notwithstanding the provisions of Subsection J of this section, a disclosure of information shall not include diagnostic information, treatment information or other medical or psychological information.

N. The issue of whether a guardian shall be appointed for the alleged incapacitated person shall be determined by the court at an open hearing unless, for good cause, the court determines otherwise.

O. Upon request of the petitioner or alleged incapacitated person, the court shall schedule a jury trial.

### **§ 45-5-303.1. Duties of guardian ad litem**

A. The guardian ad litem shall:

(1) interview in person the alleged incapacitated person prior to the hearing;

(2) present the alleged incapacitated person's declared position to the court;

- (3) identify and present all available less restrictive alternatives to guardianship, including an assessment of whether the alleged incapacitated person could implement supported decision-making and any other appropriate less restrictive alternatives to guardianship;
  - (4) interview the qualified health care professional, the visitor and the proposed guardian;
  - (5) review both the medical report submitted by the qualified health care professional and the report by the visitor;
  - (6) obtain independent medical or psychological assessments, or both, if necessary; and
  - (7) file a written report with the court prior to the hearing on the petition for appointment.
- B. Unless otherwise ordered by the court, the duties of the guardian ad litem terminate and the guardian ad litem is discharged from duties upon entry of the order appointing the guardian and acceptance of the appointment by the guardian.

#### **§ 45-5-304. Findings; order of appointment**

- A. The court, at the hearing on the petition for appointment for a guardian pursuant to provisions of Chapter 45, Article 5 NMSA 1978, shall:
- (1) inquire into the nature and extent of the functional limitations of the alleged incapacitated person; ~~and~~
  - (2) ascertain the alleged incapacitated person's capacity to care for the alleged incapacitated person's own self; ~~and~~
  - (3) determine whether the alleged incapacitated person could implement supported decision-making in accordance with the New Mexico Supported Decision-Making Act, NMSA XX-X-XX, or any other appropriate less restrictive alternatives to guardianship.
- B. If it is determined that the alleged incapacitated person possesses the capacity to care for the alleged incapacitated person's own self, the court shall dismiss the petition.
- C. Alternatively, the court may appoint a full guardian as requested in the petition or a limited guardian and confer specific powers of guardianship after finding in the record based on clear and convincing evidence that:
- (1) the person for whom a guardian is sought is totally incapacitated or is incapacitated only in specific areas as alleged in the petition;
  - (2) the guardianship is necessary as a means of providing continuing care, supervision and rehabilitation of the incapacitated person;
  - (3) there are no available alternative resources that are suitable with respect to the alleged incapacitated person's welfare, safety and rehabilitation;
  - (4) the guardianship is appropriate as the least restrictive form of intervention consistent with the preservation of the civil rights and liberties of the alleged incapacitated person;
  - (5) supported decision-making is not an appropriate alternative to guardianship for specific reasons detailed in the order; and
  - ~~(5)~~ (6) the proposed guardian is both qualified and suitable, has reviewed the proposed order of appointment and is willing to serve.
- D. The court may enter any other appropriate order consistent with the findings of this section.

E. A copy of the order appointing the guardian shall be furnished to the proposed guardian, the incapacitated person and the incapacitated person's counsel.

F. The order shall contain the name and address of the guardian as well as notice of the incapacitated person's right to appeal the guardianship appointment and of the right to seek alteration or termination of the guardianship at any time.

## Appendix D

### List of Stakeholders

Developmental Disabilities Council  
Office of Guardianship  
Special Education Ombudsman  
Special Education Transformation Team

Department of Health (DOH)  
Developmental Disabilities Supports Division (DDSD)

Aging & Long-Term Services Department  
Aging & Disability Resource Center  
Long-Term Care Ombudsman

Human Services Department (HSD)  
Medical Assistance Division  
Behavioral Health Division  
Behavioral Health Planning Council  
Office of Peer Recovery and Engagement

Children, Youth, & Families Department (CYFD)

Public Education Department (PED)  
Division of Vocational Rehabilitation  
Options for Parents and Families  
Special Education  
Policy & Legislative Affairs

Governor's Commission on Disability

Attorney General

Albuquerque Public Schools (APS)

Special Education Directors- statewide

Parents Reaching Out

Disability Rights New Mexico

Native American Disability Law Center

New Mexico AARP

Working Interdisciplinary Group of Guardianship Stakeholders (WINGS)

New Mexico Guardianship Association

Judiciary

Administrative Office of the Courts

Court Self-Help Centers

New Mexico State Bar  
Real Property, Estates and Trusts Section  
Children's Law Section  
Elder Law section  
Health Law section

Senior Citizen's Law Office

Pegasus Legal Services for Children

New Mexico Legal Services

Arc of New Mexico

UNM Center for Development and Disability



New Mexico Health Care Association/ New Mexico Center for Assisted Living  
Statewide Independent Living Council  
Independent Living Resource Center  
NAMI New Mexico  
New Mexico Brain Injury Alliance  
New Mexico Hospital Association  
New Mexico Behavioral Health Providers Association  
New Mexico Medical Society  
Heading Home/ABQ StreetConnect  
Education for Parents of Indian Children with Special Needs  
Association of Developmental Disabilities Community Providers  
New Mexico Caregivers Coalition  
New Mexico Direct Caregivers Association  
National Guardianship Association- New Mexico  
Center for Guardianship Certification  
Managed Care Organizations  
    Blue Cross Blue Sheild  
    Western Sky Community Care  
    Presbyterian  
Professional guardians—based on CGC search

# Appendix E

## Supported Decision Making Form Example



### Supported Decision Making Form

Adult Student: \_\_\_\_\_

Cell Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

Address: \_\_\_\_\_

I understand that I may create a network of individuals to help me inform my educational decisions related to my Individualized Education Program (IEP) once I reach the age of majority. I would like the following individual(s) to assist me with making educational decisions. I understand that my parent or other individuals may support me in the decision making process and may have access to the documents listed below.

NAME	RELATIONSHIP	HOME ADDRESS	EMAIL ADDRESS	PHONE NUMBER
1.				
2.				

Members in my network may have access to the following educational documents if I have checked the box next to it:

DOCUMENT	ACCESS
IEP meeting invitations, and agendas	
Requests for assessments	
Requests for changes in placement	
Requests for changes in services	
Exit requests	
Progress reports	
Report cards	
Attendance information	
Assessment results	
Other	

It is my understanding that I make the final decisions about my educational future after communicating with members in my network, and can remove a member from my network, or their access to my educational documents at any time.

Adult Student: \_\_\_\_\_  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Network Member: \_\_\_\_\_  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Network Member: \_\_\_\_\_  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## *Appendix F*

### Supported Decision Making Bench Card



# Supported Decision-Making

Administrative Office of the Courts  
Guardianship Compliance Office

A GUIDE FOR JUDGES  
AND COURT STAFF

## Supported Decision-Making

Supported decision-making (SDM) is an alternative to guardianship that is less restrictive. SDM allows adults with a disability to retain their decision-making capacity by choosing supporters to help them make choices. A person using SDM selects trusted advisors, such as friends, family, and professionals, to serve as supporters. The supporters agree to help the person with a disability understand, consider, and communicate decisions, giving the person with a disability the tools to make her own, informed, decisions.

### Authority

NRS 162A was amended through the Supported Decision-Making Act (AB480) during the 80<sup>th</sup> Legislative Session. This act authorizes an adult with disability to enter into a supported decision-making agreement in which he or she designates one or more supporters to provide assistance when making decisions. This bench card will provide you with information on the Supported Decision Making Act and how courts can utilize this act to provide less restrictive alternatives to guardianship for adults with disability.

## Purpose of the Supported Decision-Making Act

- Provide person-centered and directed assistance to an adult with a disability to gather and assess information, make informed decisions and communicate decisions.
- Give supporters legal status to be with such an adult and participate in discussions with others when the adult is making decisions or attempting to gain information.
- Enable supporters to assist in making and communicating decisions for such an adult, but not substitute as the decision-maker for the adult.

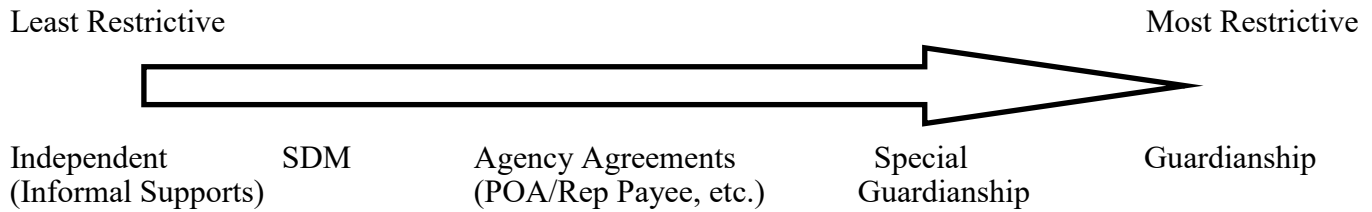
## Principles of the Supported Decision-Making Act

- An adult should be able to live in the manner in which he or she wishes and to accept or refuse support, assistance or protection as long as the adult does not harm others and is capable of making decisions about such matters.
- An adult should be able to be informed about and, to the best of his or her ability, participate in the management of his or her affairs.
- An adult should receive the most effective, yet least restrictive and intrusive, form of support, assistance or protections when the adult is unable to manage his or her affairs alone.
- The values, beliefs, wishes, cultural norms and traditions that an adult holds should be respected in managing his or her affairs.

## Requirements for a Supported Decision-Making Agreement

1. Per NRS 162A, an adult can enter into a supported decision-making agreement at anytime as long as:
  - It is voluntary and without coercion or undue influence;
  - The adult understands the nature and effect of the agreement.
2. The supported decision-making agreement must:
  - Be in writing;
  - Be dated;
  - Designate one or more supporters;
  - List the types of decisions with which the supporter is authorized to assist the adult with disability;
  - List the types of decision, if any, with which the supporter is not authorized to assist the adult with disability;
  - Be signed by each party to the agreement in the presence of at least two adult witnesses.
3. The adult with disability or their supporter can terminate a supported decision-making agreement at anytime, either verbally or in writing, and with notice to other parties to the agreement.

### Continuum of Decision Making Supports



When a person presents with diminished capacity, guardianship is not the only option. There are many ways to support a person in decision making that maintains the person’s independence and self determination. These options can be used in combination with one another, or independently, depending on the needs of the person. When assessing capacity during a guardianship proceeding, the American Bar Association Commission on Law and Aging and the American Psychological Association has developed six factors and five steps for judges to consider in their guide Judicial Determination of Capacity of Older Adults in Guardianship Proceedings, available at [www.americanbar.org](http://www.americanbar.org).

Medical Condition	Cognition	Everyday Functioning	Values and Preferences	Risk and Level of Supervision	Means to Enhance Capacity
-------------------	-----------	----------------------	------------------------	-------------------------------	---------------------------

### Six Pillars of Capacity Assessment

1. Screen Case	2. Gather Information	3. Conduct Hearing	4. Make Determination	5. Ensure Oversight
<ol style="list-style-type: none"> <li>1. What is bringing this case?</li> <li>2. Is guardianship potentially appropriate? Will guardianship solve the issue? If not use less restrictive alternatives.</li> <li>3. Are the triggering concerns for the protection of the person, or a third party (family, heir, hospital or nursing home)?</li> </ol>	<ol style="list-style-type: none"> <li>1. Receive Reports</li> <li>2. Ascertain if more information is necessary</li> <li>3. Obtain additional reports if information is not available on all six pillars of capacity assessment, or has other shortcomings.</li> </ol>	<ol style="list-style-type: none"> <li>1. Take judicial note of reports</li> <li>2. Receive testimony</li> <li>3. Accommodate, observe and engage the individual</li> </ol>	<ol style="list-style-type: none"> <li>1. Analyze evidence in relation to the elements of state law</li> <li>2. Categorize judgement                             <ul style="list-style-type: none"> <li>• If minimal or no diminished capacity use less restrictive alternatives</li> <li>• If severely diminished capacities, on all fronts, use general guardianship</li> <li>• If mixed strengths and weaknesses, use special (limited) guardianship</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>1. Monitor changes in capacity and guardian actions.                             <ul style="list-style-type: none"> <li>• If condition may improve, use time limited guardianship</li> </ul> </li> <li>2. Instruct guardian</li> </ol>

## *Appendix G*

### SDM Fillable Form and Worksheets

# IDENTIFICATION OF SUPPORTER(S) WORKSHEET

(TO BE COMPLETED BY THE INDIVIDUAL SEEKING SUPPORT)

You have decided to get help making some decisions. You may already know what things you want help deciding and what kind of help you want when deciding. Now it's time to decide **who** you may want to help you make a decision.

**Kind of decision I want help making:**

---

Who helps me make this decision now:

---

Who do I trust?

---

Whose thoughts and opinions do I want about this decision?

---

Who can I say "no" to?

---

Who listens to me on a regular basis?

---

Who is easy to talk to?

---

Remember:

- You do not have to take the advice of your Supporter(s).
- You may have multiple Supporters on the same decision or have different Supporters for different decisions. For example, you can have a Supporter help you choose where to live and a different Supporter help you choose where to work.
- You do not have to choose someone as your Supporter who has made decisions for you in the past.
- You can end a Supported Decision-Making Agreement at any time.
- You may ask a Supporter to support you and he or she can say no.

**Supporter(s) I will ask to Support me:** \_\_\_\_\_



# SUPPORTED DECISION-MAKING WORKSHEET

(TO BE COMPLETED BY THE INDIVIDUAL SEEKING SUPPORT)

You make your own decision about something when you choose what you want to do.

Supported decision-making is identifying a decision you want help with and choosing one or more people to help support you in making a decision. Your supporter(s) can help you:

- Gather information to make the decision.
- Understand information to make the decision.
- Explain what happens when you say yes or no to a decision.
- Tell other people about the decision you have made.

Supporters cannot make decisions for you.

## Healthcare

I want to make my own decisions about:

I want help making decisions about:

To make my decisions, I need:

- Information in ways I can understand
- Time to make the decision How much: \_\_\_\_\_
- Information about what happens when I say yes or no
- To see, do, meet with, or visit: \_\_\_\_\_

## Where I Live (my home)

I want to make my own decisions about:

I want help making decisions about:

To make my decisions, I need:

- Information in ways I can understand
- Time to make the decision How much: \_\_\_\_\_
- Information about what happens when I say yes or no
- To see, do, meet with, or visit: \_\_\_\_\_

## Money and Property (my things)

I want to make my own decisions about:

I want help making decisions about:

To make my decisions, I need:

- Information in ways I can understand
- Time to make the decision How much: \_\_\_\_\_
- Information about what happens when I say yes or no
- To see, do, meet with, or visit: \_\_\_\_\_

## Education

I want to make my own decisions about:

I want help making decisions about:

To make my decisions, I need:

- Information in ways I can understand
- Time to make the decision How much: \_\_\_\_\_
- Information about what happens when I say yes or no
- To see, do, meet with, or visit: \_\_\_\_\_

## Employment (job)

I want to make my own decisions about:

I want help making decisions about:

To make my decisions, I need:

- Information in ways I can understand
- Time to make the decision How much: \_\_\_\_\_
- Information about what happens when I say yes or no
- To see, do, meet with, or visit: \_\_\_\_\_

# *Appendix H*

## Additional SDM Examples

# **SUPPORTED DECISION-MAKING AGREEMENT**



**775-325-6731**

**Second Judicial District Court  
1 S. Sierra Street  
Reno, NV 89501**

**Supported Decision-Making Act NRS 162C**

## **THIS PACKET CONTAINS:**

### **Information:**

How do you make a Supported Decision-Making Agreement?

How do you end a Supported Decision-Making Agreement?

Where can you get more information about Supported Decision Making?

Supported Decision-Making Agreements: Information Sheet for a Person with a Disability

When Do You Want Support? Worksheet

Supported Decision-Making Agreements: Information Sheet for Supporters

### **Forms:**

Supported Decision-Making Agreement

Notice of Termination of Supported Decision-Making Agreement

Sharing My Medical Information Sheet (HIPAA Authorization)

Sharing My School Information Sheet (FERPA Authorization)

Washoe County School District  
Supported Decision Making Form and Frequently Asked Questions

# HOW DO YOU MAKE A SUPPORTED DECISION-MAKING AGREEMENT?

## ① choose

---

Pick the people who will support you. These people will need to agree to support you. They will be your Supporters.

## ② discuss

---

Talk with your Supporters about how you want to be supported. You can choose to have support in some areas but not in others. Each Supporter can help you in different ways or in the same way.

## ③ make a plan

---

Write down the Supporters that you want to help you and how you want each Supporters to help you. This is the Supported Decision-Making Agreement. If you want them to help you with medical information or school information, you will need to fill out an extra form telling your doctor or school that you want your Supporter to help you.

There are forms in this handbook to do all of this.

## ④ sign

---

You and your Supporters will need to sign the Supported Decision-Making Agreement. If you need, you can change the agreement in the future. Everyone should keep a copy of the agreement.

# HOW DO YOU END A SUPPORTED DECISION-MAKING AGREEMENT?

## ① choose

---

If you decide you no longer want the Supported Decision-Making Agreement, you can end the agreement at any time. If you want it to end right away, you can verbally tell the other person that you want to end the agreement. If you tell them verbally, you will also need to follow step 2. If you want to end the agreement just in writing you can just complete step 2.

## ② inform

---

After you decide that you want end the Supported Decision-Making Agreement, you will need to tell everyone whose name is on the agreement. To tell them, you must fill out a form called a Notice of Termination of Supported Decision-Making Agreement. After you have filled out the form you need to hand or mail a copy of that form to everyone whose name is on the agreement.

# WHERE CAN YOU GET MORE INFORMATION ABOUT SUPPORTED DECISION-MAKING?

## Second Judicial District Court

Supported Decision Making – FAQ  
Template Forms  
Support for Caregivers  
Guardianship Information

[www.washoecourts.com](http://www.washoecourts.com)

## National Resource Center for Supported Decision-Making

Presentations  
Research & Resource Library  
Nationwide Information  
Latest Supported Decision Making News

[www.supporteddecisionmaking.org](http://www.supporteddecisionmaking.org)

## Washoe County School District

Supported Decision Making – FAQ  
Transfer of Educational Rights  
Template Forms

[www.washoeschools.net/Page/12010](http://www.washoeschools.net/Page/12010)





# SUPPORTED DECISION-MAKING AGREEMENTS

## Information Sheet for Person With a Disability

### HOW DO YOU MAKE YOUR CHOICES?

- Talk about it? Who do you talk with?
- Write down your options?
- Write down a list of the good and bad things about each choice?  
A pro con list
- Visit places?
- Do research?
- Talk to people who have made the same choice before?

Knowing how you make decisions can help you know what help you'll need from your Supporters.

### WHAT IS SUPPORTED DECISION-MAKING?

Supported Decision-Making is a way to get help making choices.

You can choose, family, friends, or staff who you want to help you make your choices. We all use Supported Decision-Making. Many people ask their family and friends before making a big decision, such as where to live. Sometimes people ask an expert to help make complicated decisions, such as talking to a doctor about medical decisions. Talking to an expert can help us understand complicated information, even though the final decision is up to us, not the doctor.

---

*“A Supported Decision-Making Agreement lets others know who will help you ... It gives your Supporter the legal status to be with you and participate in discussions with others...”*

---

### WHAT DOES A SDM AGREEMENT DO?

A Supported Decision-Making Agreement lets other know who will help you, with what areas you need support, and what kind of support you would like. It gives your Supporter the legal status to be with you and participate in discussions with others or get information, that you want them to have, about you.

Supported Decision-Making can be as formal or as informal as you would like it to be.

By signing a Supported Decision-Making Agreement, you are not saying you cannot act independently of the agreement or that you are incapacitated in any way. We all make bad decisions sometimes. If this happens, it does not mean you are unfit to make decisions altogether.



## HAVE MORE QUESTIONS?

### CONTACT US

Second Judicial District Court  
75 Court Street & 1 S. Sierra  
Reno, NV 89501  
775-328-3250  
775-325-6731  
[www.washoecourts.com](http://www.washoecourts.com)

## CHOOSING SUPPORTERS

Everyone has to agree to do Supported Decision-Making. You have to ask your Supporters if they can help you. They might say no. They can still be your friends and part of your life even if they don't feel like they can be your supporter.

You may want help gathering information, understanding information, or communicating your decisions to others. The possibilities are endless.

## WHAT SHOULD YOU TALK TO SOMEONE YOU WANT TO BE YOUR SUPPORTER ABOUT?

Talk about:

- What kind of support or help you want from this person.
- Whether or not this person agrees to be a Supporter.
- How you want to communicate with this person.
- How you want to get support.
- Whether your Supporters can talk to each other when you are not there.

## WHAT IF YOU DON'T KNOW WHO TO CHOOSE AS A SUPPORTER?

Sometimes it can be difficult to identify Supporters. Not everyone has a solid network of support in place.

If this is the case, it will be important to think about how to make those relationships and build a network of people who could provide support. Think about ways in which relationships are made. Is there family who might make good Supporters? What about attending community events, seeking out organizations that match people up with mentors, looking for supporters at places of worship or school, or other places where relationships can be made? It can take time to build healthy and trusting relationships, but it can be very worthwhile.

---

*"It can take time to build healthy and trusting relationships, but it can be very worthwhile."*

---

## READY TO MAKE YOUR OWN SDM?

A template Supported Decision-Making Agreement is available at the Second Judicial District Court. Visit [www.washoecourts.com](http://www.washoecourts.com) or the courthouses at 1 S. Sierra St. or 75 Court St. Reno, Nevada. A Support Worksheet is also available to help you determine what sort of decisions you need help with.

# When Do You Want Support? Worksheet

This activity will help you think about all the choices you have to make in your life. You can make many choices on your own. But you might need or want support making some kinds of choices, especially difficult or important choices.

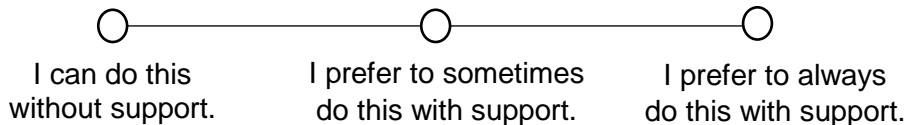
This will help you decide how you want to use Supported Decision-Making.

You do not need to check a box for every category. Some of them might not be important to you. You might want to think more about some of them before you decide.

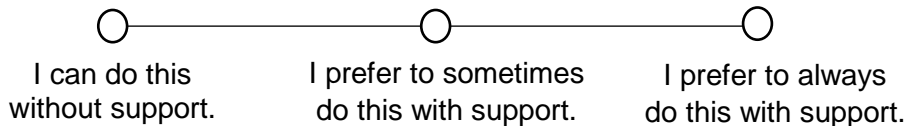
If you want support, you might want to write down the kinds of support that you want.

## Health Choices

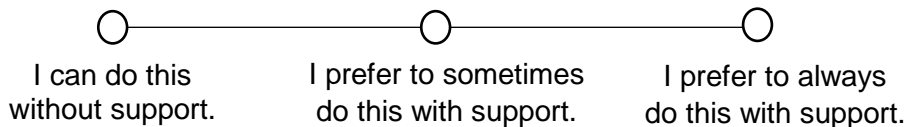
1. Choosing when to go to the doctor or the dentist.



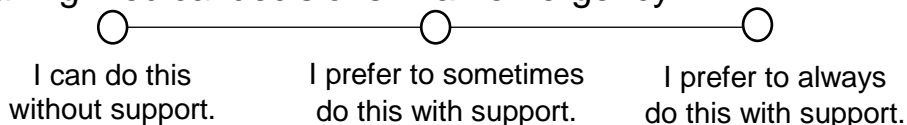
2. Making medical choices in everyday situations. Like check-ups and getting medicine from the drug store.



3. Making medical choices in serious situations. Like surgery or big injuries.

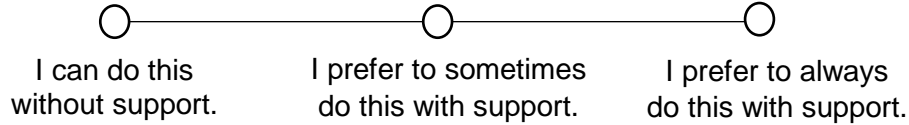


4. Making medical decisions in an emergency.

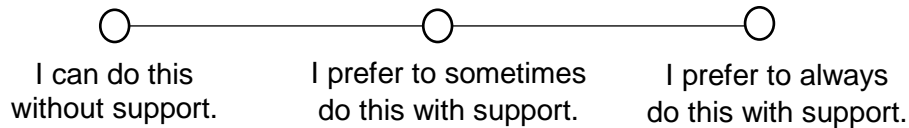


## Communication

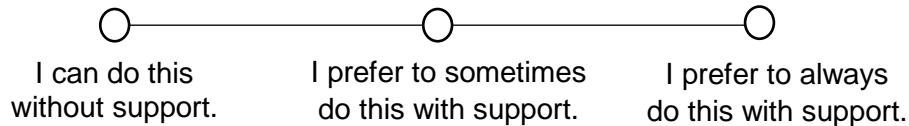
1. Telling people what I want and what I don't want.



2. Telling people how I make choices.

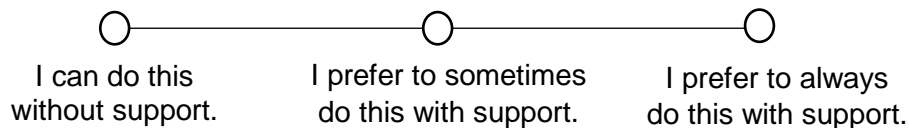


3. Making sure people understand what I am saying.

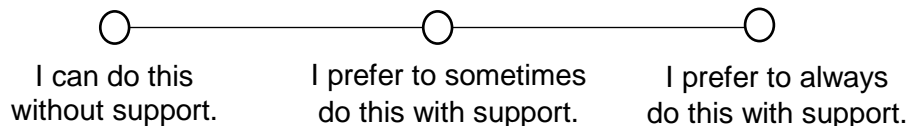


## Personal Care

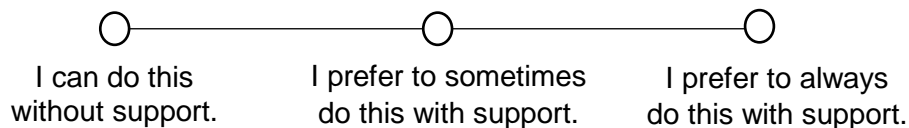
1. Choosing what I wear.



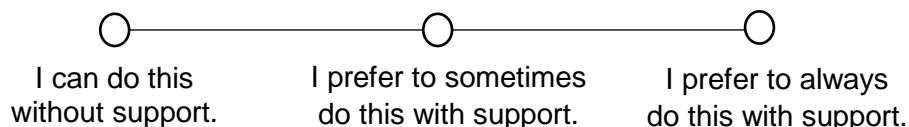
2. Getting dressed.



3. Choosing what to eat and when to eat.

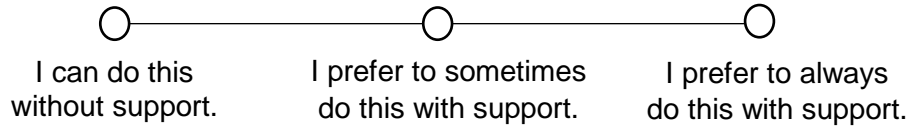


4. Taking care of my personal hygiene. Like showering or brushing my teeth.

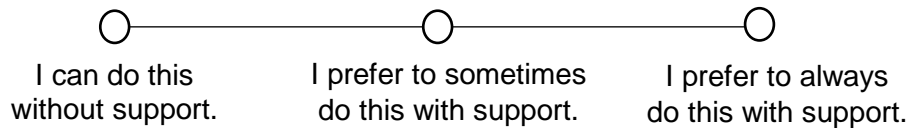


## Staying Safe

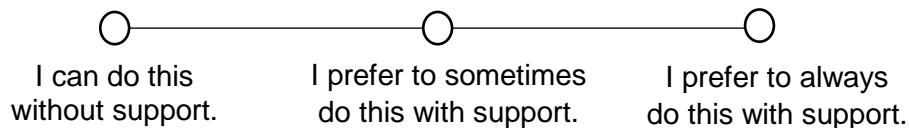
1. Making safe choices around the house. Like turning off the stove and having fire alarms.



2. Understanding and getting help if I am being treated badly (abuse or neglect).

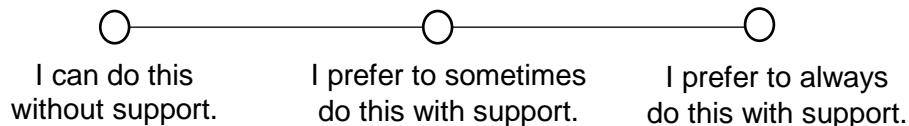


3. Making choices about drugs or alcohol.

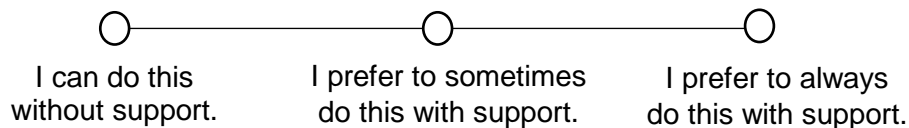


## Home and Friends

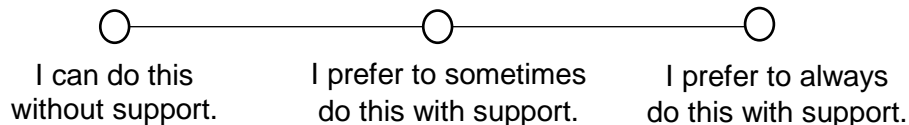
1. Choosing where I live and who I live with.



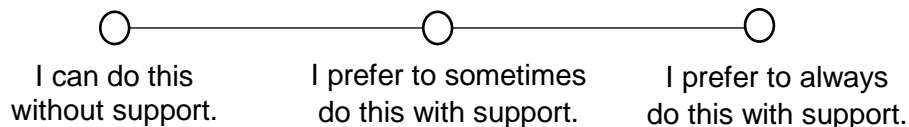
2. Choosing what to do and who I see in my free time.



3. Keeping my room or home clean.

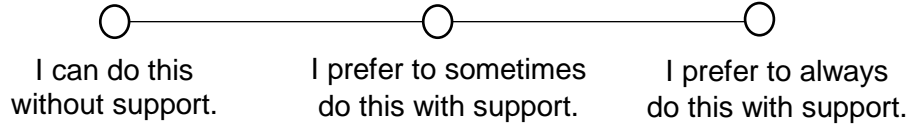


4. Finding support services and hiring and firing support staff.

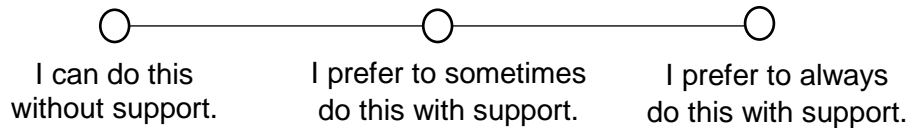


## Travel

1. Traveling places I go often. Like work, stores, and friend's homes.

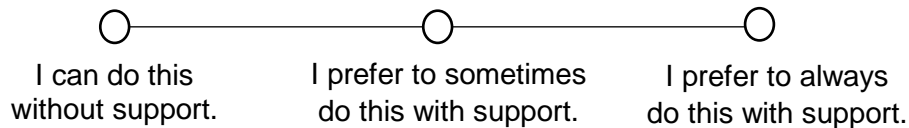


2. Traveling places I don't go often. Like the doctors or special events.

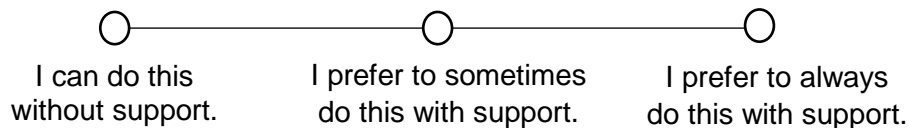


## Partners

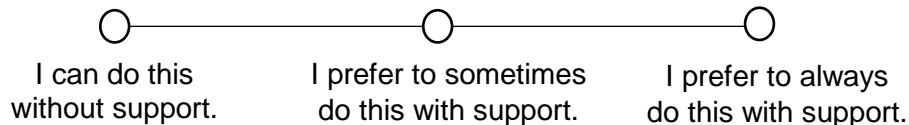
1. Choosing if I want to date and who I want to date.



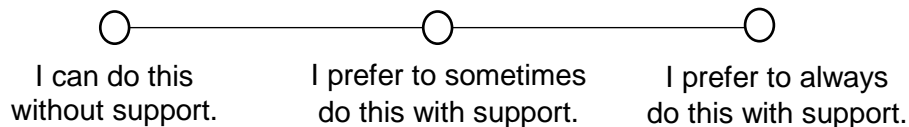
2. Making choices about sex.



3. Making choices about birth control and pregnancy.

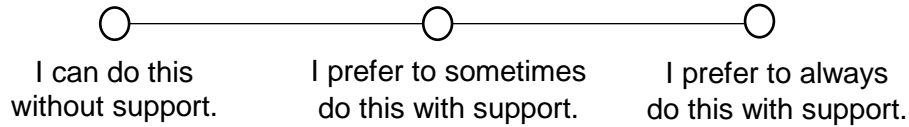


4. Making choices about marriage.

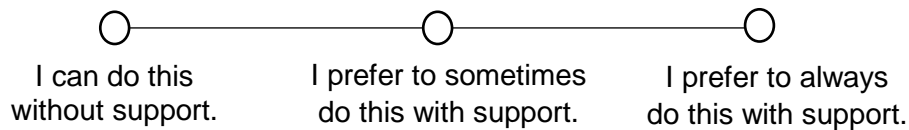


## Being a Citizen

1. Signing a contract and formal agreements.

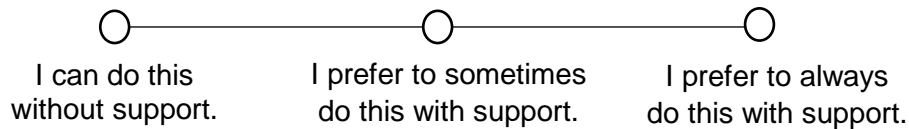


2. Choosing who to vote for and voting.

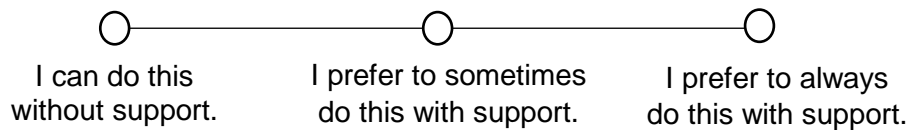


## Jobs

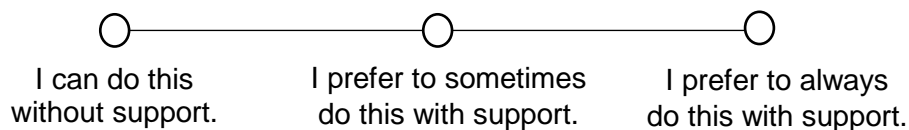
1. Choosing if I want to work.



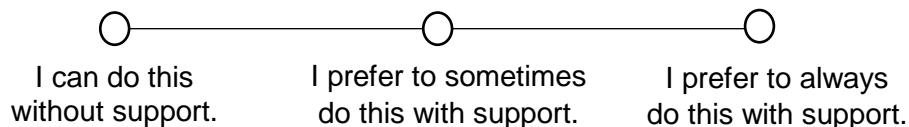
2. Understanding my work choices.



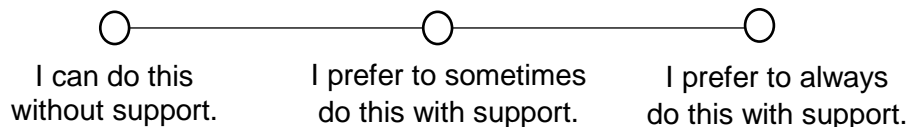
3. Choosing classes or training I need to get a job I want, and taking these classes.



4. Apply for a job.



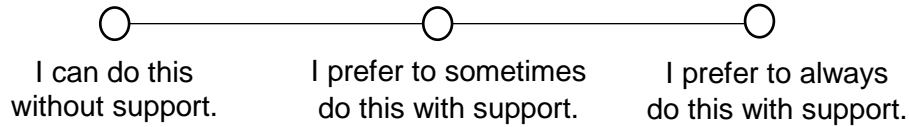
5. Going to my job every work day.



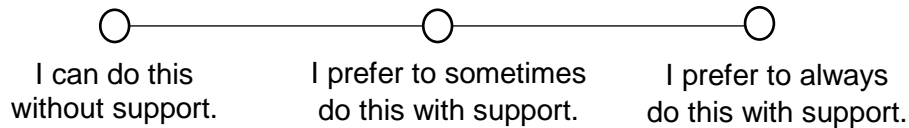


## Money

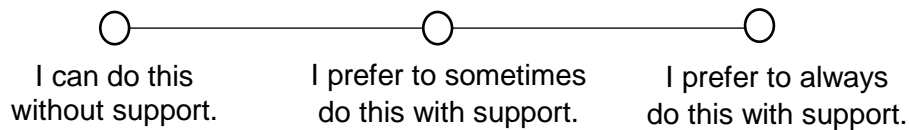
1. Paying the rent and bills on time.



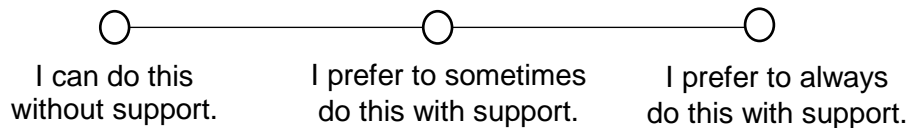
2. Keeping a budget so I know how much money I can spend.



3. Making big decisions about money. Like opening a bank account or signing a lease.

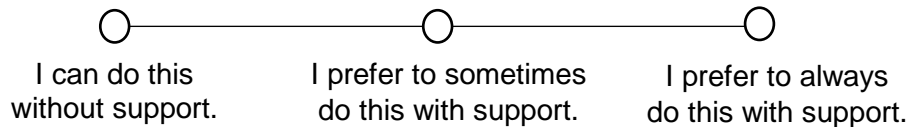


4. Making sure no one is taking my money or using it for themselves.

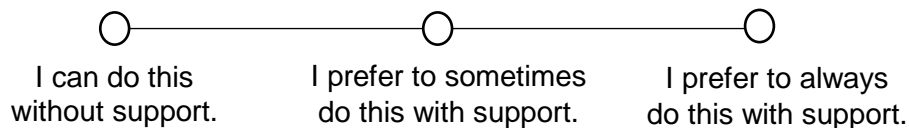


## Other

1. \_\_\_\_\_



2. \_\_\_\_\_



# SUPPORTED DECISION-MAKING AGREEMENTS

## Information Sheet for Supporters

### SUPPORTER BASIC RESPONSIBILITIES

1. Act only in the persons best interest
2. Help the person make good decisions
3. Keep personal information private
4. Help communicate the person's decisions, as necessary

### WHAT IS SUPPORTED DECISION-MAKING?

Supported Decision-Making is a way to get help making choices.

A person with a disability can choose, family, friends, or staff who they want to help make their choices. We all use Supported Decision-Making. Many people ask their family and friends before making a big decision, such as where to live. Sometimes people ask an expert to help make complicated decisions, such as talking to a doctor about medical decisions. Talking to an expert can help us understand complicated information, even though the final decision is up to us, not the doctor.

### WHAT DOES A SDM AGREEMENT DO?

A Supported Decision-Making Agreement lets other know

who is legally allowed to help the person with a disability, with what areas they need support, and what kind of support they would like. It gives the Supporter the legal status to be with the person with a disability and participate in discussions with others or get information about them.

By signing a Supported Decision-Making Agreement, the person with a disability is not saying they cannot act independently of the agreement or that they are incapacitated in any way.

---

*“A Supported Decision-Making Agreement ...gives the Supporter the legal status to ...participate in discussions with others or get information ...”*

---

### SO YOU'VE BEEN ASKED TO BE A SUPPORTER...

Congratulations! If a person with a disability has asked you to be one of their Supporters, it means that they trust and value your relationship and advice.

You have a choice whether or not to be a Supporter. Before you make your own decision, fully consider what your role would be and discuss what kinds of support the person with a disability needs. There are many kinds of support to help the person understand, make, and communicate choices.



## HAVE MORE QUESTIONS?

### CONTACT US

Second Judicial District Court  
75 Court Street & 1 S. Sierra  
Reno, NV 89501  
775-328-3250  
775-325-6731  
[www.washoecourts.com](http://www.washoecourts.com)

## WHAT DOES IT MEAN TO BE A SUPPORTER?

Supported Decision-Making is a way for people with disabilities to get help in making their own choices. Unlike a guardianship, the person with a disability is still the ultimate decider. The person with a disability selects trusted family, friends, or staff to serve as Supporters.

You will probably be a part of a team of Supporters. You should ask the person with a disability who else is supporting them, and try to meet the other Supporters.

## WHAT DO I DO AS A SUPPORTER?

Help, support, and advise the person with a disability. You are not making choices for them, even if you think the person isn't making the best choice. People learn by making bad choices. They are safer and more protected if they can make their own choices. It is important to respect this. If you think you would want to substitute your judgment, you should not be a Supporter.

## DO I HAVE TO BE A SUPPORTER FOREVER?

No. You can stop at any time.

## AM I LEGALLY LIABLE FOR THE PERSON'S CHOICES?

No. You are not making the choices. You are helping this person make their own choices.

## WHAT SORT OF DECISIONS MIGHT THE PERSON NEED?

- **Personal Care:** clothing choices, personal hygiene, what and when to eat, remembering to take medicine
- **Living and Working:** choosing where to live, keeping their home clean, getting to work or programs, choosing work or day programs, and finding, hiring, and firing staff
- **Staying Safe:** choices about sex, helping if the person is being abused, choices about alcohol and drugs, making safe decisions around the home like installing fire detectors
- **Money:** paying rent and bills, budgeting, protecting the person from exploitation
- **Friends and Partners:** choices about free time, dating and sex, marriage, birth control
- **Health Choices:** when to go to the doctor, over the counter medicine, non-emergency care, emergency care
- **Communication:** expressing likes and dislikes, expressing choices

# FORMS

## Supported Decision-Making Agreement

*This is a template form, if you want to change it you can. Examples of how you may want to change it are: add more Supporters, change what the Supporters are able to help you with, or write how your Supporters will help you.*

## Notice of Termination of Supported Decision-Making Agreement

*You only need this form if you want to end the agreement. You or a Supporter can end the agreement at any time.*

## Sharing My Medical Information Sheet (HIPAA Authorization)

*Fill out this form if you want a Supporter to be able to see your medical information. For each Supporter who you want to have see, you will need to fill a form out.*

## Sharing My School Information Sheet (FERPA Authorization)

*Fill out this form if you want a Supporter to be able to see your school information. For each Supporter who you want to have see, you will need to fill a form out.*

## Washoe County School District Supported Decision Making Form

*Fill out this form if you want a Supporter to be able to see your Washoe County school information.*



# Supported Decision-Making Agreement

My name is: \_\_\_\_\_

I understand what this agreement does, what kind of help my Supporters can give me, and what kind of help my Supporters cannot give me.

## Making Decisions

My Supporters do not make decisions for me.

To help me make decisions, my Supporters may:

- Help me get the information I need to make decisions;
- Help me understand my choices so I can make a good decision for me;
- Help me tell other people about my decision.

## Supporters

I want to have people I trust help me make decisions.

I choose the people listed below to be my supporters.

### Supporter 1 Name:

This Supporter may help me with life decisions about:

Yes \_\_\_ No \_\_\_ getting food, clothing, or a place to live

Yes \_\_\_ No \_\_\_ my health

Yes \_\_\_ No \_\_\_ managing my money or property

Yes \_\_\_ No \_\_\_ getting an education or other training

Yes \_\_\_ No \_\_\_ choosing and maintaining my services and supports

Yes \_\_\_ No \_\_\_ finding a job

Yes \_\_\_ No \_\_\_ scheduling my appointments

Yes \_\_\_ No \_\_\_ other: \_\_\_\_\_

This Supporter may see my private records for:

Yes \_\_\_ No \_\_\_ private health information under the Health Insurance Portability and Accountability Act of 1996 (HIPPA). If yes, I will provide a signed release.

Yes \_\_\_ No \_\_\_ educational records under the Family Educational Rights and Privacy Act of 1974 (FERPA). If yes, I will provide a signed release.



**Supporter 2 Name:**

This Supporter may help me with life decisions about:

Yes \_\_\_ No \_\_\_ getting food, clothing, or a place to live

Yes \_\_\_ No \_\_\_ my health

Yes \_\_\_ No \_\_\_ managing my money or property

Yes \_\_\_ No \_\_\_ getting an education or other training

Yes \_\_\_ No \_\_\_ choosing and maintaining my services and supports

Yes \_\_\_ No \_\_\_ finding a job

Yes \_\_\_ No \_\_\_ scheduling my appointments

Yes \_\_\_ No \_\_\_ other: \_\_\_\_\_

This Supporter may see my private records for:

Yes \_\_\_ No \_\_\_ private health information under the Health Insurance Portability and Accountability Act of 1996 (HIPPA). If yes, I will provide a signed release.

Yes \_\_\_ No \_\_\_ educational records under the Family Educational Rights and Privacy Act of 1974 (FERPA). If yes, I will provide a signed release.

If you need, you can add more Supporters to this agreement.

**Release of Liability**

**NOTICE:** The person with a disability, the Supporters, and anyone following the direction of a Supporter named in this agreement accept and rely on this agreement in good faith. They are not subject to civil or criminal liability or professional discipline.

Report suspected abuse, neglect, exploitation, isolation or abandonment of an older or vulnerable person:

Adult Protective Services:

**1-888-729-0571**

or contact your local police department or sheriff's office.





## Ending this Agreement

My Supporters or I can end this agreement at any time.

I know that I can change this agreement if I want to.

The agreement can be ended verbally or in writing.

The person ending the agreement must send a notice to everyone involved.

Forms for terminating this Supported Decision-Making Agreement are available at the Washoe County Courthouse.

## Signature

This agreement must be signed in front of two witnesses.

I know I do not have to sign this agreement. I am entering this agreement voluntarily.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

## Supporters' Signatures

Supporter 1: I consent to act as a Supporter under this agreement. I understand that information I receive on behalf of the person I support must be kept confidential when required by law.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Supporter 2: I consent to act as a Supporter under this agreement. I understand that information I receive on behalf of the person I support must be kept confidential when required by law.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

## Witnesses

\_\_\_\_\_  
Witness 1 Signature

\_\_\_\_\_  
Witness 2 Signature

\_\_\_\_\_  
Witness 1 Printed Name

\_\_\_\_\_  
Witness 2 Printed Name



## Notice of Termination of Supported Decision-Making Agreement

My name is: \_\_\_\_\_

I am the:

Principal

A Supporter

The Supported Decision-Making Agreement between *(Person you wish to end the agreement with)* \_\_\_\_\_ and myself is ended.

The Supporter is no longer allowed to help the Principal with:

- Getting the information the Principal need to make decisions;
- Understanding choices so they can make a good decision for themselves;
- Telling other people about their decision.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

You must give a copy of this form to the Principal and all of the Supporters.



**Sharing My Medical Information**  
(HIPPA Authorization to Disclose Health Information)

My name is: \_\_\_\_\_

My doctor's office or hospital is: \_\_\_\_\_

I want to share my medical records. My medical records include tests doctors and nurses do and the notes they write about me.

The person who can see my records is:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

This person can see:

*Check one box*

All of my medical records.

Only some records. The records this person can see are:

\_\_\_\_\_  
\_\_\_\_\_

This person can see my records until:

*Check one box*

This date: \_\_\_\_\_

When I sign a form to say they can no longer see my records.

I have decided to share my medical records with \_\_\_\_\_

I know that I do not have to share these records.

I know I can end this agreement at any time.

My doctors and nurses have to be very careful with my medical records. They cannot usually show my records to other people. The person who I am sharing my records cannot share them with other people unless I agree.

I trust the person I am sharing my records with.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

## Sharing My School Information

(FERPA Authorization to Disclose Educational Information)

My name is: \_\_\_\_\_

My school is: \_\_\_\_\_

I have an IEP. (Individualized Education Program)

I want someone to help me make choices about school.

The person I want to help me is:

Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

I want this person to be able to come to my IEP meetings.

I want this person to get all of the information that I get from my school.

It is okay for this person to see information that my school had about me.

I know that I do not have to share this information.

I know I can end this agreement at any time.

This agreement will continue until I say it should stop.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_







## SUPPORTED DECISION MAKING FORM

Adult Student Name: \_\_\_\_\_

Address (Street/City/Zip): \_\_\_\_\_

I understand that I may create a network of individuals to help me inform my educational decisions related to my Individualized Education Program (IEP) once I reach the age of majority (18 years old). I would like the following people to assist me with making educational decisions. I understand that my parent or other individuals listed below may support me in the decision-making process related to my IEP. **However, I understand that such support is only intended to assist and inform my decisions, and that I alone represent my interests in any IEP decisions, educational decisions, and in any formal proceedings, including any administrative, state, or federal complaints or other legal proceedings.**

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Home Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Home Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

*(Multiple forms may be used if there are more than two individuals identified to assist)*





## SUPPORTED DECISION MAKING FORM

These members may have access to the following educational documents if I have initialed the box next to it:

Document	Access
IEP Meeting Invitations and Agendas	
Requests for Assessments	
Requests for Changes in Placement	
Requests for Changes in Services	
Exit Requests	

Document	Access
Progress Reports	
Report Cards	
Attendance Information	
Assessment Results	
Other:	

I acknowledge and understand that I make the final decisions about my educational future after talking to members in my network, and can remove a member from my network, or their access to my educational documents at any time. I also understand that although I may designate a person as a support team member, I alone must be the direct contact for WCSD employees regarding my IEP and all education decisions and I must take lead in all discussions and decisions regarding my IEP. A support team member is not permitted to speak on my behalf and/or represent my interests in any educational decisions or legal proceedings. I further understand that WCSD is under no obligation to notice, invite, or gain consent from a support team member and that only I have the right to receive such notices and invitations and only I can provide consent for services or for other educational supports. I further understand that if I have any questions regarding this form, I can contact WCSD Office of Student Services at 775-789-4633.

In signing below, I acknowledge that I have read the foregoing supported decision-making form, that my handwritten entries are a true and correct reflection of my intent to designate a supported decision maker and that I was not influenced from any third-party person or entity in consenting herein.

\_\_\_\_\_

Adult Student Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Network Member Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Network Member Signature

\_\_\_\_\_

Date





## SUPPORTED DECISION MAKING FORM

### **Frequently Asked Questions**

#### After the Age of Majority (18)

**Q: Does the Washoe County School District require students to submit a Supported Decision-Making Form?**

**A:** No, it is not a requirement and is one of many available options. Rather, the SMS form is meant to provide guidance and support for students and families. When students turn 18 years of age, they have the right to bring anyone to an IEP meeting. By completing the SDM form and submitting it to the WCSD, the student is notifying district staff of the adult network members who are able to assist the student in making educational decisions as well as accessing the student's educational records.

**Q: *What is the role of the Adult Student in the Supported Decision Making (SDM) process?***

**A:** Once a student reaches the age of majority, they can decide all educational decisions, including who attends the IEP with them. This is important as students learn to advocate for themselves and make decisions through their teens before they reach the age of majority. However, many students with disabilities need people who they trust to participate in the IEP process and help them to make decisions. The student will always make the final decision but will rely upon the individuals in the SDM process to help them make the best educational decisions for them.

**Q: *Is the Supported Decision Making (SDM) process the same as Guardianship?***

**A:** No, SDM is significantly different than guardianship. With SDM, students still make their own decisions. However, the student identifies adults to help them to make decisions rather than making decisions for them. Obtaining guardianship is a legal process within the court system and is outside the authority or purview of the WCSD.

**Q: *Who can be a member of the Supported Decision Making (SDM) network?***

**A:** The student determines who are trusted supporters in their lives and who can support them make educational decisions. The only qualification the WCSD requires is that the members are over the age of 18 years.

**Q: *What does a member of a Supported Decision Making (SDM) network do?***

**A:** The members only guide the student and provide recommendations; the student is the final decision maker. In order for network members to support the student, a copy of the SDM form must be completed and submitted to the WCSD.



## SUPPORTED DECISION MAKING FORM

***Q: What documents are needed to begin a Supported Decision Making (SDM) process?***

**A:** The Washoe County School District created a form necessary for the SDM process. Students choose their adult network members based on who they believe can support them to make educational decisions. Both the student and network member(s) must complete and sign the SDM form. The SDM form does not allow the SDM members to make decisions on behalf of the student.

***Q: How do I become involved in the Supported Decision Making (SDM) process?***

**A:** There is no formal process that the student or the supportive member needs to follow. The SDM form needs to be completed by the student and signed by all participants and submitted to the WCSD. Everyone should receive a copy of the form and the WCSD will keep a copy of the form as part of the student's records. The agreement can be terminated at any time by the student or any supportive member.

# Supported Decision-Making

## A Guide to Independence

For Individuals with Disabilities & the Elderly



Published by the  
**Protection & Advocacy Project**  
August 2021

If you need this Guide in an alternative format, please contact the Protection & Advocacy Project.

Updated 3.7.2022



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# The North Dakota Supported Decision-Making Project

In 2017, after learning about the “Supported Decision-Making” (SDM) model, the North Dakota Protection & Advocacy Project (P&A) helped form a steering committee to develop a SDM program in North Dakota with a grant funded by the ND State Council on Developmental Disabilities. The ten members, representing communities of the young and the elderly, people with various types of disabilities, and agencies with diverse agendas, met for over a year to study this model.

The committee reviewed other states’ Supported Decision-Making models and met with national and state leaders who shared knowledge, resources, and recommendations. The committee also collected information from other states pursuing or implementing SDM either legislatively or through legal processes.

Locally, the committee gathered input from additional stakeholders across the state via Interactive Video Conferences (IVN) meetings. Participants from local communities could ask their questions and provide their ideas for the future SDM model. Public media (radio, TV, newspaper) was also used to create awareness and seek responses.

The committee continually sought responses, concerns, and suggestions, to enhance the program development process. It was unclear whether the SDM model would be accepted by clinicians, banks, or other providers. After much deliberation, the group found that in many states a legislative statute was used to provide that necessary validity. The committee decided to pursue legislation. P&A’s legal staff drafted a proposal that was presented to the stakeholders. Revisions continued until members came to agreement.

The next step was to find a sponsor for the bill and work with the legislator to guide it through the legislative process. A House Representative supported the bill and assisted P&A in finding eleven more legislators to endorse this program. The bill was received strong endorsement, with 86 yeas & 6 nays in the House Chamber and unanimous support in the Senate Chamber. The Governor signed the bill into law on March 19, 2019.

**EVERYONE has the right to make choices and  
EVERYONE needs a little help.**

## Jenny Hatch Story

In 2013, the Jenny Hatch case received national attention when she became the first person in the country to have a court order the use of supported decision-making instead of a guardianship for a person with a disability. The previous year, Jenny Hatch, a 29-year-old woman with Down Syndrome, was placed under guardianship, and lost her right to do many things she loved including seeing her friends and using her cell phone and laptop. With the help of Quality Trust for Individuals with Disabilities, Jenny won back her right to make her own decisions using supported decision-making. She now lives and works where she wants and has the friends she chooses. Jenny has been the inspiration for supported decision-making laws across the United States, including here in North Dakota.



To learn more about Jenny Hatch's story, you can visit [The Jenny Hatch Justice Project](#)<sup>1</sup> to read her words and listen to her tell her story.

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<sup>1</sup> A project of Quality Trust for Individuals with Disabilities

# What is Supported Decision-Making?

## Supported Decision-Making is...

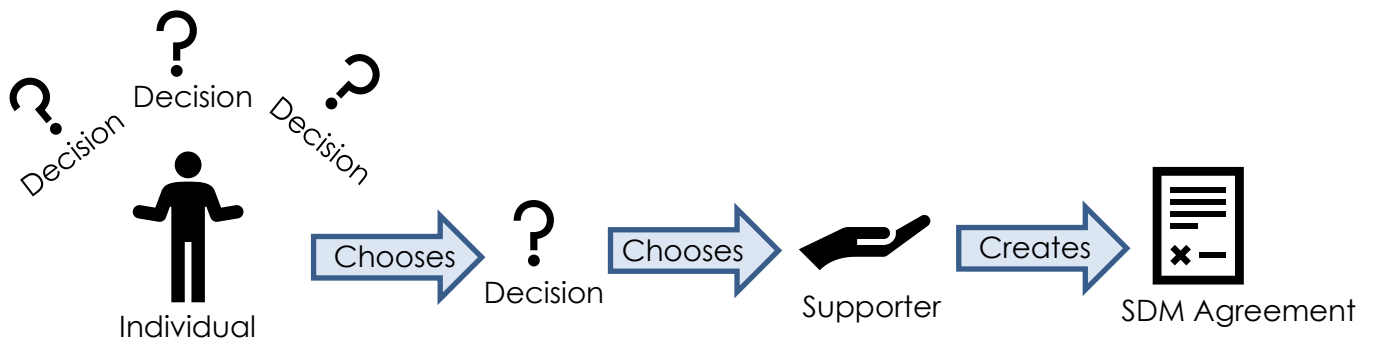
- a **flexible alternative to guardianship** and can provide more opportunities for independence. Many elderly individuals or individuals with disabilities can manage their own affairs with assistance and guidance from a Supporter whom they trust.
- **often defined as “Supports and Services”** that help an older adult or an adult with a disability make his or her own **decisions** by relying on trusted friends, family members, professionals, and others.
- a **process** for making well-informed voluntary decisions by methods less restrictive than guardianship or conservatorship and that allows individuals to make their own decisions and stay in charge of their lives, while receiving the help and assistance they need.

## How does Supported Decision-Making Work?

All people need and use support to make important life decisions (where to work, which friends or family members to spend time with, and help with medical or financial decisions). Using the SDM model, older adults and people with disabilities choose someone they trust - often a friend, family member, or professional, to serve as their “Supporter.”

There are three components in the Supported Decision-Making process:

- 1) The Individual
- 2) The Supporter
- 3) The Supported Decision-Making Agreement



The **Individual** selects a Supporter to help make decision(s):

- from someone they trust; and
- with whom they can discuss choices and decisions.

The **Supporter** can help the Individual to:

- understand the options, responsibilities, and consequences of their decisions,
- obtain and understand information relevant to their decisions, and
- communicate their decision to the appropriate people.

**The Supporter cannot make the decision.  
The Individual makes the final decision.**

A written **Supported Decision-Making Agreement** between the **Individual** and the **Supporter** defines the assistance the Individual is requesting and the help the Supporter is providing.

**Individual → Supported Decision-Making Agreement ← Supporter**

- The form is signed, dated, and requires witnesses or a notary public.
- This document can help doctors, bankers, lawyers, and other third parties to understand and accept the decisions of the person with a disability.

# The Principals of Supported Decision-Making

- 1) People with disabilities have the right to make decisions about things that impact their lives.
- 2) People with disabilities are presumed to have the capacity to make their own decisions and give informed consent, when needed.
- 3) People with disabilities have the right to be supported in making decisions.
- 4) People with disabilities have the right to choose who will provide them decision-making support, what types of decisions they want support to make, and how this support will be provided.

There is no “one size fits all” in supported decision-making. It is about working with an individual to identify if help is needed, where help is needed, and then how any needed help can be provided. This will look different for every individual.

Supported decision-making should be considered when a person can take part in the decision-making process. Supported decision-making recognizes the individual’s independence (autonomy), presumes the individual is capable of making decisions (capacity), and preserves the individual’s right to make decisions (self-determination) while recognizing that the individual may need assistance in making decisions.

Capacity, when it comes to decision-making, is not “all or nothing.”

A person may be capable of:

- making some decisions, but not others;
- making some decisions at some times, but not others;
- making decisions only if they get help understanding the decision to be made (informed consent).

Informed consent is an important consideration in decision-making.

There are three components to informed consent, all of which are necessary:

- 1) information to the Individual,
- 2) understanding by the Individual, and
- 3) choice by the Individual.

# Supported Decision-Making Law in North Dakota

North Dakota supported decision-making laws can be found at [North Dakota Century Code Chapter 30.1-36](#). These laws:

- define important supported decision-making terminology,
- list what information is confidential,
- discuss liability of a Supporter,
- set out legal requirements and presumptions for supported decision-making, and
- talk about termination of an agreement.

## Supported Decision-Making Agreement Requirements

The Individual and his/her Supporter can use the sample Supported Decision-Making Agreement template produced by the North Dakota Protection & Advocacy Project, or any other form consistent with the requirements found at N.D.C.C. Chapter 30.1-36. A version of the template can be found [here](#).

Completing the Supported Decision-Making Agreement does not require going to court, having an attorney, or paying a fee.

The Supported Decision-Making Agreement is a **written, signed, dated, and witnessed** understanding between an Individual and a trusted adult (Supporter) who agrees to aid with decision-making to maximize the Individual's ability to make informed, voluntary choices.

For the agreement to be valid, the Agreement needs to be witnessed by a notary public or two qualified adults.

Witnesses must:

- not be a party to the agreement,
- be at least eighteen years of age,
- be competent,
- not be an employee or agent of a Supporter in the agreement, and
- cannot be a creditor of the named Individual.

On the Supported Decision-Making Agreement:

- the Individual can specify what kinds of decisions he/she wants help making, and
- whether he/she wants the Supporter to be able to access his/her private health and education records.

The Individual can have multiple Supporters to help with different kinds of decisions. It is recommended the Individual fill out a separate agreement with each Supporter. Multiple agreements are allowed.

**The Supported Decision-Making Agreement...**

May **NOT** be used as evidence of incapacity or incompetence.

Does **NOT** give a Supporter the ability to act as a surrogate decision-maker.

Does **NOT** give a Supporter the authority to sign documents on behalf of the Individual.

The Individual or the Supporter should keep the original form. Copies can be provided to professionals who work with the Individual, such as doctors, teachers, service providers, and others. People who receive a copy of the Supported Decision-Making agreement cannot be held to criminal or civil liability or professional misconduct as long as they act in good faith to what is in the agreement.

Having a Supported Decision-Making Agreement does not guarantee that someone can provide informed consent. The Individual with a disability still needs to demonstrate that he/she has the capacity to make a particular decision. The Supporter's role is to help the Individual understand and communicate what is needed to provide informed consent.



# Terminating a Supported Decision-Making Agreement

Supported Decision-Making Agreements can be Terminated by the:			
	Individual notifying Supporter	Supporter notifying Individual	Court
Orally	x		
Through an assistive technology (AT) device	x		
By any other act showing intent	x		
In writing	x	x	
By any additional method specified in the SDM Agreement	x	x	x
Convicting Supporter of a crime involving abuse, neglect, or exploitation			x
Issuing a restraining order to protect the Individual from the Supporter			x
Determining that the Supporter lacks capacity to make or communicate responsible decisions concerning matters affecting the health or safety of the Individual			x

## Reliance on Agreement

Any third person receiving a copy of the Supported Decision-Making Agreement shall rely on the Agreement, unless the third person:

- has cause to believe the Individual is being abused, neglected, or exploited by the Supporter;
- has actual knowledge or notice the Supported Decision-Making Agreement is invalid or has been terminated.

A third person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act of omission, if the act or omission is done in good faith, and in reliance on a Supported Decision-Making Agreement.

An entity, custodian, or organization that discloses personal information about an Individual to a Supporter who has written authorization to access, collect, or obtain, or to assist an Individual to access, collect, or obtain that information, is immune from any action alleging the entity, custodian, or organization improperly or unlawfully disclosed information to the Supporter unless the entity, custodian, or organization:

- Had actual knowledge or notice that the Individual had revoked the authorization; or
- Had actual knowledge or notice the Supported Decision-Making Agreement is invalid; or
- Knowingly or recklessly disclosed information beyond the scope of the authorization.

A third person is not protected from charges of professional misconduct and is not immune from liability for:

- Acting inconsistently with the known expressed wishes of an Individual; or
- Failing to provide documents, records, or other information to either an Individual or a Supporter who has written authorization for lawful access to or copies of the information.

A Supported Decision-Making Agreement does not relieve a person of legal obligations to provide services to an Individual with a disability.

# Advice for Individuals

## Making My Own Choices

Self-determination is making your own choices. You make decisions every day.

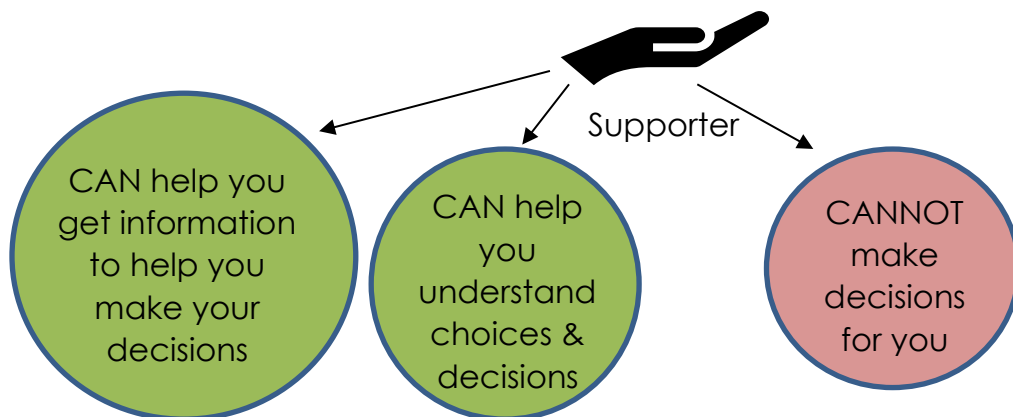
You choose things like:

- What to wear
- Where to work
- Which friends or family members to spend time with
- And more!

All people need help to make important decisions. You have the right to make your own choices, even if you need help. Your right to make choices should not be taken away just because you need help.

## Choosing a Supporter

Supported Decision-Making means choosing someone you trust to help you make a decision. Your Supporter can be someone like your parents, a family member, a good friend, a neighbor, or a service provider.



Your **Supporter CANNOT** make decisions for you.

Your **Supporter CAN**:

- help you understand your choices and decisions and
- help you get and understand information to help you make your decisions.

With Supported Decision-Making, **you** make your own choices with help. This lets you be more independent.

You can choose to listen or not listen to the advice of your Supporter. You can also get advice from other people you trust. **You are in charge.**

### **Who Might Make a Good Supporter?**

Picking a good Supporter is very important. You might have your own beliefs about who would be a good Supporter for you. Consider these qualities.

#### **Good Supporters:**

- Believe that you have the right to make your own decisions;
- Support you in speaking for yourself;
- Like to listen to what other people think and are interested in others;
- Are patient;
- Respect the privacy of others, especially your privacy;
- Are able to put aside their own opinion, values, and influences;
- Know you and what is important to you;
- Listen to you and communicate in the way you want;
- Help when there is a problem.

#### **Steps to Follow When Choosing a Supporter...**

- ✓ Think of people in your life that you trust.
- ✓ Think of decisions you need help making. Your Supporter can help you choose things like where to live, where to work, what medical help you want, and more.
- ✓ Choose people you trust to help you make decisions.
- ✓ Ask them to be your Supporter. You can change your mind and say you do not want this person to support you whenever you want.
- ✓ Complete a written plan...the Supported Decision-Making Agreement.

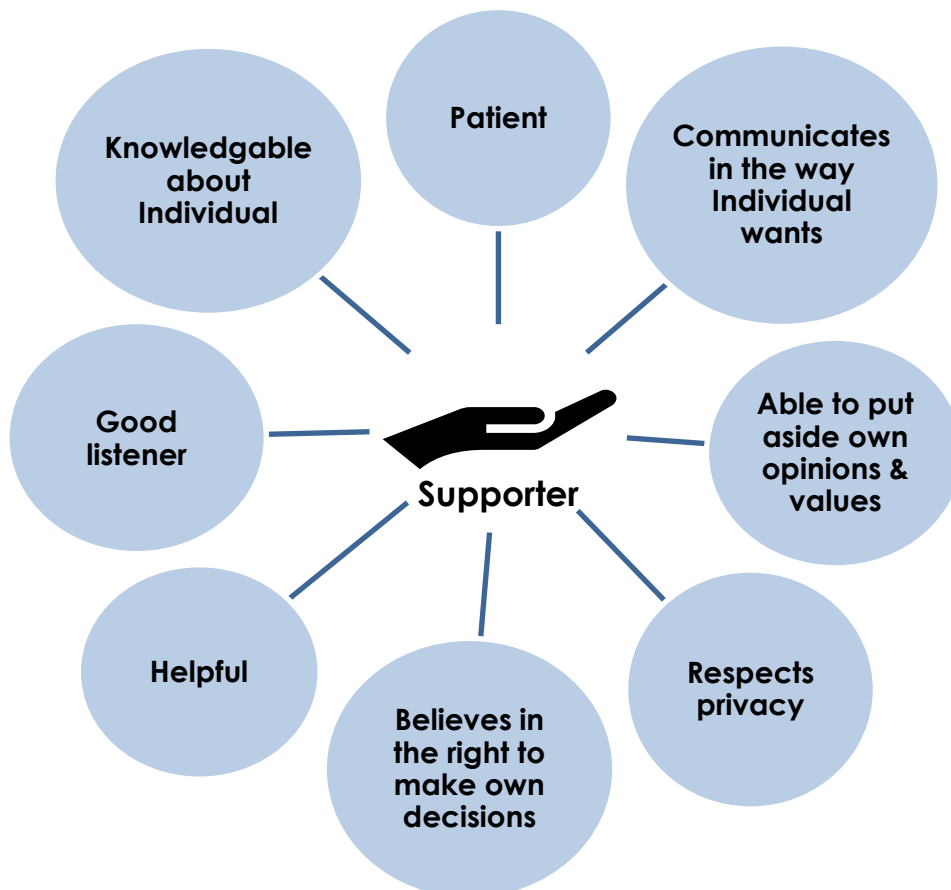
## Advice for Supporters

Being a Supporter is hard work. The relationship between the Individual and Supporter is one of trust. It works best when the Supporter knows and understands the Individual's preferences and values.

A Supporter could be someone who helps the Individual do other things in their life, like a family member, advocate, friend, or in some cases, even a service provider. The Individual can have more than one Supporter and can have a lot of people working together to help them make decisions.

Supporters may find information, help the Individual consider consequences, and communicate the decision on behalf of the Individual. Supporters must put aside their own opinions, values, and influences to ensure the Individual is the one deciding. Supporters must be very careful not to unduly influence the Individual and should keep in mind that the Individual is exercising his or her right to seek the opinion of Supporters and to use their help in decision-making.

While no two Supporters are alike, there are some things that good Supporters have in common.



### **Tools for Supporters to use with Individuals**

- Remember you are only giving advice to the Individual...the Individual is the decision-maker!
- Provide plain language materials or information in visual or audio form;
- Provide extra time to discuss choices;
- Create lists of pros and cons;
- Create reminders for appointments and due dates;
- Help the Individual visit places and try out different choices to see what Individual likes;
- Role-play activities to help Individual understand choices;
- Go to appointments with the Individual to take notes and help the Individual to remember and discuss options;
- Help the Individual use assistive technology for bills and/or payments
- Help communicate the Individual's choices to others (with the Individual's permission).

## **Supported Decision-Making and Guardianship**

Supported Decision-Making is a less restrictive alternative to legal guardianship. Guardianship is when the court grants a person or entity legal authority to make decisions for an individual. These decisions can be limited to certain areas or extend to all aspects of an individual's life. Guardianships can be temporary or permanent, and they are always court ordered. Guardianships, by their very nature, strip an individual of their primary decision-making rights. They are generally inflexible and require court action to be changed.

**Supported decision-making and other guardianship alternatives should be considered prior to establishment of a legal guardianship.**

This guide should facilitate conversations about an Individual's decision-making capacity and assist in establishing a SDM Agreement between an Individual and his or her Supporters.

## Other Alternatives to Guardianship...

- **Medical Directives:** Written statements allowing you to make arrangements ahead of time and express your desires for specific medical treatments during instances when you cannot communicate consent.
- **Power of Attorney:** You give someone else permission to make some decisions for you, but you keep your right to make decisions without this person, e.g., medical, school, money, or other decisions.
- **Durable Power of Attorney:** You give someone else permission to make decisions for you even if you become incapacitated and unable to handle matters on your own.
- **Mental Health Advance Directives:** Document outlining mental health care instructions for treatment and care and a decision-maker who can make those decisions.
- **Fiduciary or Representative Payee:** If you receive SSI, other social security, or benefits, someone will keep track of and manage your money.
- **Joint Bank Account:** An account you and someone else share. You and the other person can both put money in and take money out.
- **ABLE Account:** A special bank account you have control over. You can save money in an ABLE Account and still get all of your Medicaid or SSI benefits.
- **Special Needs Trust:** A trust is an account where you and others save money for your benefit, and you will not lose your Medicaid or SSI benefits.

## Guardianship Resources

For more information about guardianship, contact:

Rose Nichols

Guardianship Monitoring Program

North Dakota State Court System

600 E Boulevard Avenue, Mailstop 180

Bismarck ND 58505-0530

701-328-2212

[guardianshipmonitor@ndcourts.gov](mailto:guardianshipmonitor@ndcourts.gov)

North Dakota Courts has a Legal Self Help Center with information on this process, as well as, the rights of the proposed incapacitated person: <https://www.ndcourts.gov/legal-self-help/adult-guardianship>.

This site has information and free fillable forms for starting and maintaining guardianships. There is also online training for guardians.



# **Supported Decision-Making Agreement**

## **Template for North Dakota**

The following format is not mandatory, but any Supported Decision-Making Agreement template must be substantially equivalent as described in North Dakota Century Code: [N.D.C.C. Chapter 30.1-36](#)



## Supported Decision-Making Agreement

This is a Supported Decision-Making Agreement of the following Named Individual:

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (work) \_\_\_\_\_ (home) \_\_\_\_\_ (cell) \_\_\_\_\_

Email: \_\_\_\_\_

I am voluntarily entering into this Agreement with the following Supporter whom I have chosen, and we agree will help me make some decisions. **My Supporter does not have authority to make decision(s) for me.**

Supporter's Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (work) \_\_\_\_\_ (home) \_\_\_\_\_ (cell) \_\_\_\_\_

Email: \_\_\_\_\_

Relationship to me: \_\_\_\_\_

My Supporter will help me, as I request, by:

1. Collecting records, documents, and other information so I can consider them to better understand the issues;
2. Organizing my records, documents, and other information so I can more easily understand the issues;
3. Identifying choices available to me and how each choice might lead to advantages and disadvantages;
4. Showing me ways to compare the advantages and disadvantages of each available choice;
5. Telling other people my decision(s) when I ask my Supporter to tell them; and,
6. Explaining how I am using the decision-making process, as allowed under N.D.C.C. Chapter 30.1-36, to the court in any proceeding to help me create or modify a guardianship or conservatorship.

I understand that:

- I must be at least eighteen years old to make an effective Supported Decision-Making Agreement;
- This Supported Decision-Making Agreement is effective only if I understand its meaning and what the Agreement does;
- I can have more than one Supported Decision-Making Agreement with different Supporters at the same time. I understand that a separate SDM Agreement is recommended for each Supporter.

This Agreement takes effect as soon as the Agreement is signed by me, my Supporter, and a notary public or the required witnesses.

The Agreement may be terminated:

- By the Named Individual giving notice to the Supporter orally, in writing, through an assistive technology device, or by showing specific intent to terminate the Agreement;
- By the Supporter providing written notice of resignation to Named Individual; or
- As to a specific Supporter when one or more of the following occurs:
  - a) A court has convicted the Supporter of a crime involving abuse, neglect, or exploitation.
  - b) A restraining order has been issued by a court to protect the Named Individual from the Supporter.
  - c) A court has determined the Supporter lacks capacity to make or communicate responsible decisions concerning residential or educational matters, medical treatment, legal affairs, or vocational, financial, or other matters affecting the health or safety of the Named Individual.

A Supported Decision-Making Agreement may be terminated by any additional method specified below.

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**Some areas I want my Supporter to help me decide:**

(Initial those that apply)

**Healthcare** - Managing my physical health and mental health

- Yes \_\_\_ No \_\_\_ When to seek healthcare
- Yes \_\_\_ No \_\_\_ Which health care professionals to consult
- Yes \_\_\_ No \_\_\_ Which health care professionals to use for treatment purposes
- Yes \_\_\_ No \_\_\_ Which, if any, legally, available, over the counter or prescribed medications to take
- Yes \_\_\_ No \_\_\_ When to provide a signed authorization, so my Supporter may see my private health information under the Health Insurance Portability and Accountability Act (HIPAA)

**Residence** - Managing my home

- Yes \_\_\_ No \_\_\_ Where I live
- Yes \_\_\_ No \_\_\_ Who I live with
- Yes \_\_\_ No \_\_\_ What I need to live independently

**Finances** - Managing my money and property

- Yes \_\_\_ No \_\_\_ How much money I save and how to save it
- Yes \_\_\_ No \_\_\_ How much money to spend and how I spend it
- Yes \_\_\_ No \_\_\_ Whether to have a representative payee
- Yes \_\_\_ No \_\_\_ How and when to pay legitimate bills

**Education** - Getting an education or other training

- Yes \_\_\_ No \_\_\_ Whether to get additional education
- Yes \_\_\_ No \_\_\_ Where to get additional education
- Yes \_\_\_ No \_\_\_ Assistance in determining goals of additional education
- Yes \_\_\_ No \_\_\_ Choosing support services

**Legal Affairs - Getting legal advice**

Yes \_\_\_ No \_\_\_ Whether to get legal representation

Yes \_\_\_ No \_\_\_ Whether to get help with suspicious offers

**Vocation - Finding a job**

Yes \_\_\_ No \_\_\_ Assistance in determining employment decisions

Yes \_\_\_ No \_\_\_ Additional training to get employment and to advance  
in employment

Yes \_\_\_ No \_\_\_ Choosing support services for employment, as needed

**This list is not exclusive or does not identify all areas the Named Individual might request support from the Supporter.**

**Other areas in which I would like assistance from my Supporter are:**

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**Areas I DO NOT want my Supporter to help me with are: (if any)**

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## Signatures of Named Individual and Supporter

### Named Individual's Signature

I am at least 18 years of age and I understand the nature and effect of this Agreement. I have chosen the Supporter listed on this page to help me make some decisions.

\_\_\_\_\_

(Print Name)                      (Signature of Named Individual)                      (Date)

### Consent of Supporter

My relationship to the Named Individual is: \_\_\_\_\_

I agree to act as a Supporter for the Named Individual for decision-making under this Agreement.

\_\_\_\_\_

(Print Name)                      (Signature of Supporter)                      (Date)

### Notary Public or Statement of Witnesses

This document must be either:

- Notarized **OR**
- Witnessed by two qualified adult witnesses who verify the signing of a Supported Decision-Making Agreement.

Each witness must:

1. Not be a party to the Agreement;
2. Be at least eighteen (18) years of age;
3. Be competent;
4. Not be an employee or agent of the Supporter in the Agreement;
5. Not be a creditor of the Named Individual.



(Required – Option 1 OR Option 2)

**Option 1: Notary Public for Verification of Named Individual’s Signature**

State of \_\_\_\_\_

County of \_\_\_\_\_

Signed in my presence on \_\_\_\_\_ (date) \_\_\_\_\_  
(Named Individual) acknowledges his/her signature on this document or  
acknowledges that he/she directed the person signing this document to  
sign on the Named Individual’s behalf.

\_\_\_\_\_ Signature of Notary (stamp)

\_\_\_\_\_ Title of office

My commission expires: \_\_\_\_\_

**Option 1: Notary Public for Verification of Supporter’s Signature**

State of \_\_\_\_\_

County of \_\_\_\_\_

Signed in my presence on \_\_\_\_\_ (date) \_\_\_\_\_  
(Supporter) acknowledges his/her signature on this document or  
acknowledges that he/she directed the person signing this document to sign  
on the Supporter’s behalf.

\_\_\_\_\_ Signature of Notary (stamp)

\_\_\_\_\_ Title of office

My commission expires: \_\_\_\_\_

## Option 2: Two Witnesses for Verification of Named Individual's Signature

**Witness one:**

In my presence on \_\_\_\_\_ (date),

\_\_\_\_\_ (Named Individual) signed this document. I acknowledge the Named Individual's signature on this document or acknowledge that the Named Individual directed the person signing this document to sign on the Named Individual's behalf.

\_\_\_\_\_

(Signature of Witness #1)

\_\_\_\_\_ (Address)

**Witness two:**

In my presence on \_\_\_\_\_ (date),

\_\_\_\_\_ (Named Individual) signed this document. I acknowledge the Named Individual's signature on this document or acknowledge that the Named Individual directed the person signing this document to sign on the Named Individual's behalf.

\_\_\_\_\_

(Signature of Witness #2)

\_\_\_\_\_ (Address)

## Option 2: Two Witnesses for Verification of Supporter's Signature

**Witness one:**

In my presence on \_\_\_\_\_(date),

\_\_\_\_\_(Supporter) signed this document. I acknowledge the Supporter's signature on this document or acknowledge that the Supporter directed the person signing this document to sign on the Supporter's behalf.

\_\_\_\_\_

(Signature of Witness #1)

\_\_\_\_\_ (Address)

**Witness two:**

In my presence on \_\_\_\_\_(date),

\_\_\_\_\_(Supporter) signed this document. I acknowledge the Supporter's signature on this document or acknowledge that the Supporter directed the person signing this document to sign on the Supporter's behalf.

\_\_\_\_\_

(Signature of Witness #2)

\_\_\_\_\_ (Address)

## Supported Decision-Making Committee

2018-2019

COMMITTEE MEMBER	AFFILIATION
Judy DeWitz, Project Dir.	P&A Project
Teresa Larsen	P&A Project
David Boeck	P&A Project
Steven L. Beard	Advocates Leading Their Lives (ALL)
Mike Chaussee	AARP
Kirsten Dvorak	The Arc of Bismarck
Lori Garnes	ND Center for Persons with Disabilities
Julie Horntvedt	State Council Developmental Disabilities
Matthew McCleary	Youth Move BeyoND
Shelly Peterson	Long Term Care Association
Vicki Peterson	Family Voices of ND
Rebecca Rosenkranz	P&A Project

### North Dakota Protection & Advocacy Project

The Protection & Advocacy Project (P&A) is an independent State agency that protects and advocates for the rights of people with disabilities within established priorities.

P&A serves eligible individuals, of all ages with all types of disabilities, at no cost. P&A also advocates for individuals to receive disability-related assistive technology devices and services.

P&A works exclusively for the person with a disability. P&A's efforts focus on the expressed wishes of the client, within his or her legal rights.

P&A believes that people with disabilities should be empowered to advocate on their own behalf to the extent possible and should have the greatest opportunity to shape his or her personal destiny.

Services provided by P&A shall promote client control in decision-making. P&A focuses on the empowerment of people with disabilities in order to foster independence, productivity, and integration into the community.

Administrative Office:  
Protection & Advocacy Project  
400 E. Broadway, Suite 409  
Bismarck, ND 58501  
Phone: (701) 328-2950  
Toll Free: 1-800-472-2670  
E-mail: [panda@nd.org](mailto:panda@nd.org)  
[www.ndpanda.org](http://www.ndpanda.org)

North Dakota [Supported Decision-Making Information](#)

The North Dakota Protection & Advocacy Project appreciates information and support from Disability Rights Texas's *The Right to Make Choices: A Supported Decision-Making Toolkit for People with Disabilities and Their Supporters* (January 2018 Edition).

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