



West Virginia Developmental Disabilities Council

SUPPORTED DECISION-MAKING TALKING POINTS

HB 2505

- Although WV's Guardianship and Conservatorship Act [§44A-2-10(a)] currently states: "In making the determination, the court shall consider the suitability of the proposed guardian or conservator, the limitations of the alleged protected person, the development of the person's maximum self-reliance and independence, the availability of less restrictive alternatives including advance directives and the extent to which it is necessary to protect the person from neglect, exploitation, or abuse," *many people are unnecessarily placed under restrictive guardianships when appropriate tools and processes are not used by those responsible for determining if a person is capable of making decisions that impact various aspects of their lives.*
- Many would be able to make their decisions if they received individualized assistance from people they trust, allowing them to retain their legal rights and dignity.
- Supported decision-making (SDM) enables individuals with disabilities and elders who may require assistance to make their own decisions with support, instead of having someone else, usually, a guardian, make decisions for them.
- SDM is flexible and can change as the needs of the person change in order to provide more opportunities for independence.
- In SDM, the person with a disability or the elder may choose a group of people ("supporters") who help the person make decisions. The person with a disability, however, makes the final decision. The relationship between the person and his or her supporters can be written in a Supported Decision-Making Agreement. The agreement can then be used by other people like schools, doctors, or service providers who can be involved in the decision-making process.
- SDM does not replace guardianship. It is an additional and less restrictive option that is entirely voluntary. If this proposal is enacted, guardianship in its current form would still be available for anyone who wants it.
- People who unnecessarily lose their right under guardianship burden our state's court system and tie up limited resources that could save money that could be used for monitoring against abuse by guardians.
- National organizations and federal agencies have recommended and endorsed using SDM as an alternative to guardianship, including the American Bar Association, National Guardianship Association, The Arc of the United States, the U.S. Department of Education, U.S. Department of Health and Human Services, and the National Council on Disability.
- While SDM is already being practiced in West Virginia, codifying these provisions would make SDM more accessible to more people. Some want to rightfully use this tool but are fearful without legislation.
- Twelve states and the District of Columbia have already passed legislation.

For More Information Contact

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How is Supported Decision Making different from Guardianship?

	Guardianship/Conservatorship	Supported Decision-Making
Who makes the decision?	The guardian/conservator has the right to make the final decisions about the ward's life.	The person with a disability uses support, but ultimately makes the final choice about his/her own life.
What is the role of the court?	<p>All changes have to go through the court.</p> <p>If there is a problem with a conservator or guardian, or if the conservator or guardian dies, the court must approve any changes or appointment of new guardians/conservators.</p> <p>The court can replace a guardian or conservator with someone else if they think it best, or grant the conservator with someone else if they think it best, or grant the conservator/guardian more powers than they requested.</p>	<p>The person with a disability can change the supporters they use anytime they want without a court process.</p> <p>They can easily add supporters and get the insights of many people.</p>
What are the protections against abuse?	<p>Typically, only one conservator/guardian makes all the decisions for one ward.</p> <p>The court technically oversees the relationship but rarely does so in practice.</p>	<p>There will usually be multiple supporters. They may provide support in different areas (i.e., a parent may help with money, while a friend or staff member may help with social decisions); or they may work together to provide support (i.e., two supporters help the person make medical decisions).</p> <p>Having more than one supporter provides a check against abuse or manipulation by any one supporter.</p> <p>A monitor can also be appointed to oversee the supporters and is advisable when finances are included.</p>
How are the person's needs assessed?	<p>The abilities and needs of the person with a disability are determined by a judge based on the person's I.Q. score and diagnosis.</p> <p>The court looks at what the person can do by herself, without any assistance or support.</p> <p>The court assumes that these needs will remain the same over the course of the person's life.</p>	<p>The strengths and needs of a person are discussed by the person and her supporters.</p> <p>The person's abilities are based on what she can do both alone and with supports.</p> <p>The person can modify the supports she needs and the supporters who provide these over the course of her life, as she continues to learn and develop decision-making skills.</p>