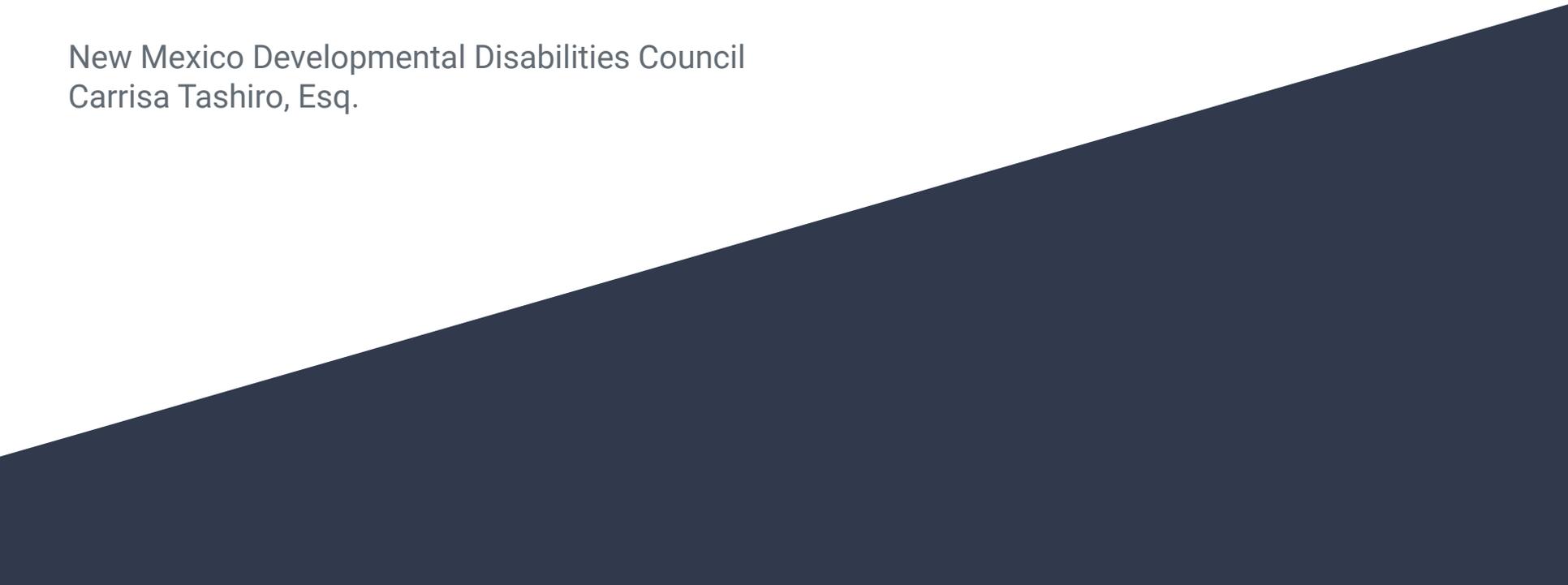


Supported Decision Making Task Force

New Mexico Developmental Disabilities Council
Carrisa Tashiro, Esq.

A dark blue diagonal graphic that starts from the bottom left corner and extends towards the top right corner, creating a triangular shape in the bottom right of the slide.

Agenda

1. Introduction to Supported Decision Making
2. Task Force background, mission, and process
3. Recommendations
4. Proposed legislation

Supported Decision Making



SDM Defined

In Supported Decision Making, an individual (“**principal**”) **makes and communicates her own decisions** with the support of other trusted individuals (“**supporters**”).

A Supported Decision Making Agreement (“**SDMA**”) memorializes that arrangement.

Who uses SDM?

- Often contemplated as a tool for individuals with intellectual/developmental disabilities
- Has also been used for older adults and those with fluctuating capacity
- Remember, WE ALL rely on support from others when making decisions- and, we all sometimes make bad decisions

Who are Supporters?

- Role is to help the Principal understand the situation, choices, and potential consequences of a decision, and to help communicate that decision
- Can be:
 - Family members
 - Friends
 - Professionals
 - Volunteers

Examples of Support

- Helping to ask questions or obtain relevant information during appointments or meetings
- Accessing and explaining medical or financial records
- Providing clear, plain language explanations
- Ensure decisions are made in calm environment
- Using repetition, drawings, field trips, tangibles
- Pro/Cons charts
- Explaining risks and benefits
- Meetings with “circles of support”

Why SDM?

❑ Guardianship often undue and overbroad; a “civil death”

❑ 2018 National Council on Disability Report:

- Proceedings often assume that people with disabilities lack capability to make autonomous decisions and rely upon insufficient capacity determinations.
- Courts often lack adequate resources to monitor guardianships effectively, which can result in exploitation, abuse, and neglect.
- People with disabilities are often denied due process rights.
- Courts do not enforce requirements to consider less-restrictive alternatives. Restoration of rights processes are rarely used.
- There is a lack of data on existing guardianships and newly filed guardianships, which frustrates reform efforts.

[*Beyond Guardianship: Toward Alternatives that Promote Greater Self-Determination for People with Disabilities*](#)

Why SDM?

- **Self-determination is asserting authority in one's life; being a "causal agent" rather than being acted upon**
- **Self-determination results in:**
 - Better quality of life (*McDougall et al, 2010*)
 - Increased likelihood of employment, independence and community living (*Shogren et al, 2015*)
 - In individuals with ID, ability to recognize potentially abusive situations (*Khemka, 2005*)
- **Denial of self-determination can cause people to:**
 - "[F]eel helpless, hopeless, and self-critical" (*Deci, 1975, p. 208*)
 - Experience "low self-esteem, passivity, and feelings of inadequacy and incompetency," decreasing their ability to function (*Winick, 1995, p. 21*)

SDM is **individualized** and designed to maximize **self-determination** as an alternative to guardianship or in conjunction with guardianship.

Supported Decision Making Task Force



Supported Decision Making Task Force

- International movement toward SDM- UN CRPD, Article 12
 - <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-12-equal-recognition-before-the-law.html>
- SDM adopted in other U.S. jurisdictions; National Resource Center established
- In light of these trends, New Mexico DDC funded an SDM Task Force in early 2022

Mission: Review existing SDM models and identify issues particular to New Mexico to develop a strategy for implementing SDM, including any necessary policy changes, education, and legislation.

Task Force Members

- Individuals with disabilities
- Family members of individuals with disabilities
- Judiciary
- Attorneys
- Policy experts
- DRNM
- UNM
- DDC/OOG
- Guardians
- DDW and Mi Via program personnel
- Service providers, including job developers and social workers

Methodology

- Convened three Task Force meetings:
 - March 24
 - April 29
 - June 7
- Multiple subcommittee meetings:
 - Legal
 - Implementation
- Research
- Meetings with experts nationwide

Key Questions

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

Research

- Methods of SDM implementation in other jurisdictions
- SDM statutes in other jurisdictions
- Journal articles and white papers on SDM

Collaboration

- DDCs in MD, NV, IL
- P&As in NV, LA, MO, VT, DC, ND
- SDM expert Morgan Whitlach, Director of SDM at Center for Public Representation

Findings

- Guardianship in New Mexico as the “go-to” and the “wrong answer to the problem” of lack of care coordination and case management
- Pipelines to guardianship:
 - Schools
 - Foster care
 - Medical facilities
 - Criminal justice system
 - Unhoused populations
- SDM can maximize self-determination and foster equality
- SDM can work for multiple populations
- Barriers:
 - Need for culture shift
 - Institutional reluctance
 - Some people lack natural supports

Recommendations

- **Legislation is key**
 - Interim implementation discussed but not pursued because of need for clarity and legitimacy
- Model form
- Facilitation
- Supporters for individuals w/o natural supports
- Pipelines to guardianship
- Education and outreach
 - Judiciary
 - Attorneys
 - Schools
 - State agencies
 - Guardians
 - Families
 - Individuals

Product

- Report: Supported Decision Making in New Mexico
- Proposed legislation

Statutes

- [Alaska Supported Decision-Making Statute \(2018\)](#)
- [Colorado Supported Decision-Making Statute \(2021\)](#)
- [Delaware Supported Decision-Making Statute \(2015\)](#)
- [District of Columbia Supported Decision-Making Statute \(2018\)](#)
- [Indiana Supported Decision-Making Statute \(2019\)](#)
- [Louisiana Supported Decision-Making Statute \(2020\)](#)
- [Nevada Supported Decision-Making Statute \(2019\)](#)
- [North Dakota Supported Decision-Making Statute \(2019\)](#)
- [Rhode Island Supported Decision-Making Statute \(2019\)](#)
- [Texas Supported Decision-Making Statute \(2015\)](#)
- [Washington Supported Decision-Making Statute \(2020\)](#)
- [Wisconsin Supported Decision-Making Statute \(2018\)](#)

Proposed Legislation

- Universally applicable to all adults
- Flexible for customized agreements
- Model form in plain language with releases
- Different form for each supporter
- Some individuals should be barred from acting as supporters, but otherwise Principal should have broad discretion to decide who serves in that role
- Indemnity provision to ensure acceptance

Proposed Changes to Guardianship Code

- 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.

Stakeholder Engagement

- Individuals and families
- State agencies- DDC/OOG, PED, HSD, DOH, CYFD, AG, Governor's Commission on Disability
- Schools, educators, parents, students
- Advocacy groups
- WINGS/State Bar sections
- Judiciary/Courts
- Professional/provider organizations
- Guardians
- MCOs
- NMGA/CGC

Implementation

- Education/outreach
- Resources/materials
- Infrastructure development

Questions/ Discussion

