


# Supported Decision Making Task Force

New Mexico Developmental Disabilities Council  
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# 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

