



Center for Public
Representation

WRITTEN TESTIMONY OF THE CENTER FOR PUBLIC REPRESENTATION

Informational Only

2022 Regular Session, SENATE BILL 558 “Estates and Trusts - Supported Decision Making”

Submitted by Morgan K. Whitlatch, Director of Supported Decision-Making Initiatives

Hearing before the Senate Judicial Proceedings Committee
Maryland General Assembly

February 17, 2022

Dear Chair William C. Smith, Jr., Vice Chair Jeff Waldstreicher, and Honorable Members of the Senate Judicial Proceedings Committee”

My name is Morgan K. Whitlatch, and I am the Director of Supported-Making Initiatives at the Center for Public Representation (CPR). I am submitting this informational testimony to provide a national perspective on Supported Decision-Making (SDM) across the United States.

CPR is a nationally recognized legal advocacy center that is committed to protecting and advancing the rights of people with disabilities by using legal strategies, systemic reform initiatives, and policy advocacy. We have offices in Massachusetts, New York, and Washington, D.C. Working on state, national, and international levels, CPR is committed to equality, diversity, and social justice in all its activities. CPR is also a national leader in advancing SDM. We lead the State Team Community of Practice for the Center on Youth Voice, Youth Choice,¹ a national resource center that works to increase access to alternatives to guardianship for youth with intellectual and developmental disabilities. We also regularly provide training, consultation, and technical assistance on SDM to people with disabilities, family members, and other advocates around the country. We have established and maintain an SDM virtual library of resources at <https://supporteddecisions.org/>.

Under the SDM model, people can turn to a network of supporters – family members, friends, colleagues, and others they trust – to help them make their own decisions regarding healthcare, finances, jobs, and other personal matters. It is a model that allows people, including adults with disabilities, to exercise their autonomy and promotes self-determination. Based on what we have

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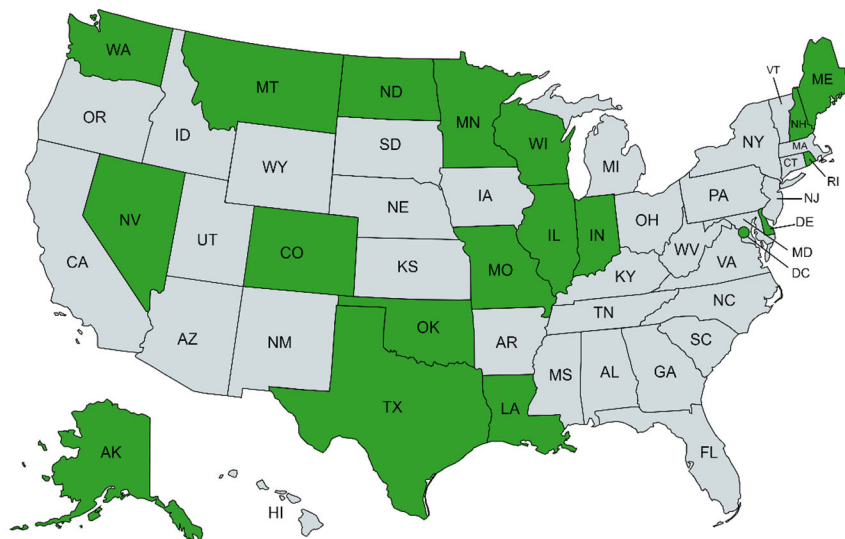
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learned from our work nationally and in individual states, too many people are unnecessarily placed under restrictive guardianships, even when they would be able to make their own decisions with individualized assistance from people they trust. Widespread recognition of their right to use SDM as an alternative would allow them to retain their legal rights and dignity.

CPR launched the nation’s first SDM pilot in 2014 and has since overseen five other pilots in Massachusetts.² From our pilots, which have been independently evaluated, we know that the SDM model works, strengthens support networks, and can transform lives. To see evidence of this, you have only to read some of the powerful stories shared by our pilot participants.³ CPR has expanded our SDM pilot work to Georgia, and we know that other states are also piloting SDM with great success.⁴

Through our national work, we have seen formal recognition of SDM gain momentum across the United States. At least 18 states and the District of Columbia have already passed statutes that formally recognize SDM agreements and/or specifically require courts to rule out SDM as a less-restrictive option before appointing a guardian. These include Texas (2015), Delaware (2016), Wisconsin (2018), Maine (2018), the District of Columbia (2018), Missouri (2018), Alaska (2018), North Dakota (2019), Indiana (2019), Nevada (2019), Rhode Island (2019), Washington (2020), Minnesota (2020), Louisiana (2020), Montana (2021), Colorado (2021), Illinois (2021), Oklahoma (2021), and New Hampshire (2021).⁵



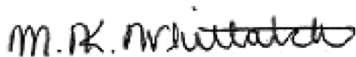
We have heard from partners in a number of these states that implementing these SDM statutes has resulted in people with disabilities improving their decision-making skills and experiencing greater self-esteem and better family relationships. In addition, there has been an apparent decrease in the need for guardianship. For example, since Wisconsin’s SDM law was introduced, the annual number of guardianship requests in that state has decreased by 20 percent.⁶ This suggests that formal recognition of SDM not only benefits people with disabilities

and their supporters by making it easier for them to access and enforce their use of the SDM model. It also benefits the state courts by reducing the financial and administrative burden of having to address guardianship petitions for people who do not need them. That said, SDM does not replace guardianship for those who do need it. Rather, SDM is an additional and less restrictive option -- another legal tool in the decision-making toolbox that people with disabilities and their families can consider using.

SDM has been recommended and endorsed by a number of respected national organizations and federal agencies, including the American Bar Association, the National Guardianship Association, The Arc of the United States, the U.S. Department of Education, the U.S. Department of Health and Human Services, the American Association on Intellectual and Developmental Disabilities, United States Senate Special Committee on Aging, and the National Council on Disability.⁷ SDM is also recognized as a less restrictive alternative in the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA),⁸ a 2017 update to the model guardianship law. Further, at the recent Fourth National Guardianship Summit, leaders in the field of guardianship law and reform from around the country recommended states adopt practices, policies, and laws that promote SDM.⁹

In short, CPR's experience with SDM has shown that it is a viable and beneficial alternative to guardianship that is a nationally and internationally recognized best practice. Formal recognition of Supported Decision-Making would enable many more individuals and families to access and enforce this innovative model.

Sincerely,



Morgan K. Whitlatch
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¹ See Center on Youth Voice, Youth Choice website, <https://youth-voice.org/>

² See Supported Decision-Making Pilots, <https://supporteddecisions.org/supported-decision-making-pilots/>

³ See Supported Decision-Making Stories, <https://supporteddecisions.org/stories-of-supported-decision-making/>

⁴ See Cathy Costanzo, Hon. Kris Glen, & Anna Krieger, *Supported Decision-Making: Lessons Learned from Pilot Projects*, draft available at <http://law.syr.edu/uploads/docs/academics/constanzo-glen-krieger.pdf> (background paper prepared for the Fourth National Guardianship Summit held in May 2021; pending publication in Syracuse Law Review)

⁵ See TEX. EST. CODE ANN. §§ 1357.001 - 1357.102 (2015 & 2017); DEL. CODE ANN. tit. 16, §§ 9401A-9410A (2016); WIS. STAT. ANN. §§ 52.01-52.32 (2018); ME. STAT. tit. 18-C, §§ 5-102, -301, -304, -317, -401, -405, -502, -503, -506 (2018); D.C. CODE ANN. §§ 7-2131 - 7-2134 (2018); MO. REV. STAT. § 475.075(13) (2018); ALASKA STAT. ANN. §§ 13.56.010-13.56.195 (2018); N.D. CENT. CODE ANN. §§ 30.1-36-01 - 30.1-36-08 (2019); IND. CODE ANN. §§ 29-3-14-1 - 29-3-14-13 (2019); NEV. REV. STAT. ANN. §§ 162C.010 - 162C.330 (2019); 42 R.I. GEN. LAWS

ANN. §§ 42-66.13-1 - 42-66.13- 10 (2019); WASH. REV. CODE ANN. §§ 11.130.700 – 11.130.755 (2020, eff. 2022); MINN. STAT. §§ 524.5-102, -310, -409 (2020); LA. STAT. ANN. § 13:4261.101- 13:4261.302 (2020); MONT. CODE ANN. §§ 72-5-305(3), -319, -316 (2021); COLO. REV. STAT. ANN. Sec. 15-14-801 - 15-14-806 (2021); H. Bill 3849, 102nd Gen. Assem., Act 102-0614 (Ill. 2021); N.H. REV. STAT. § 464-D:1 (2021); Sen. Bill 198, 58th Leg., 1st Reg. Sess. (Okla. 2021).

⁶ See WSAW-TV, *Guardianship requests decline as knowledge of alternative legal option grows* (Aug. 9, 2021), available at <https://www.wsaw.com/2021/08/10/guardianship-requests-decline-knowledge-alternative-legal-option-grows/> (stating that, in Wisconsin, “since the [SDM] law was introduced, guardianship requests have declined each year from 5,147 in 2017 to 4,146 by 2020”).

⁷ See Organizations Endorsing Supported Decision-Making, <https://supporteddecisions.org/about-supported-decision-making/organizations-advocating-for-supported-decision-making/>; Tina Campanella & Morgan Whitlatch, *Supported Decision-Making: U.S. Status and Trends*, 32 IMPACT 1 (2019), available at <https://publications.ici.umn.edu/impact/32-1/supported-decision-making-us-status-and-trends>.

⁸ See NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, *Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act* (2017), available at <https://tinyurl.com/b6uzh43k>. UGCOPAA is an update of Article V of the Uniform Probate Code, which is the basis of Massachusetts guardianship law in the Massachusetts Uniform Probate Code, G.L. c. 190B.

⁹ See FOURTH NATIONAL GUARDIANSHIP SUMMIT, *Recommendations Adopted by Summit Delegates (May 2021)*, at p. 1 and Recommendations 2.1, 2.2, 2.3, 2.4, 3.3, 3.4, and 5.2, available at: <http://law.syr.edu/academics/conferences-symposia/the-fourth-national-guardianship-summit-autonomy-and-accountability>.