

Supported Decision- Making: My Choice Kentucky

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Supported Decision-Making

Definition used by the 4th
National Guardianship Summit:

...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.



In Other Words-

Supported decision-making is the practice of working with people you trust to get the information you need to help you make decisions.



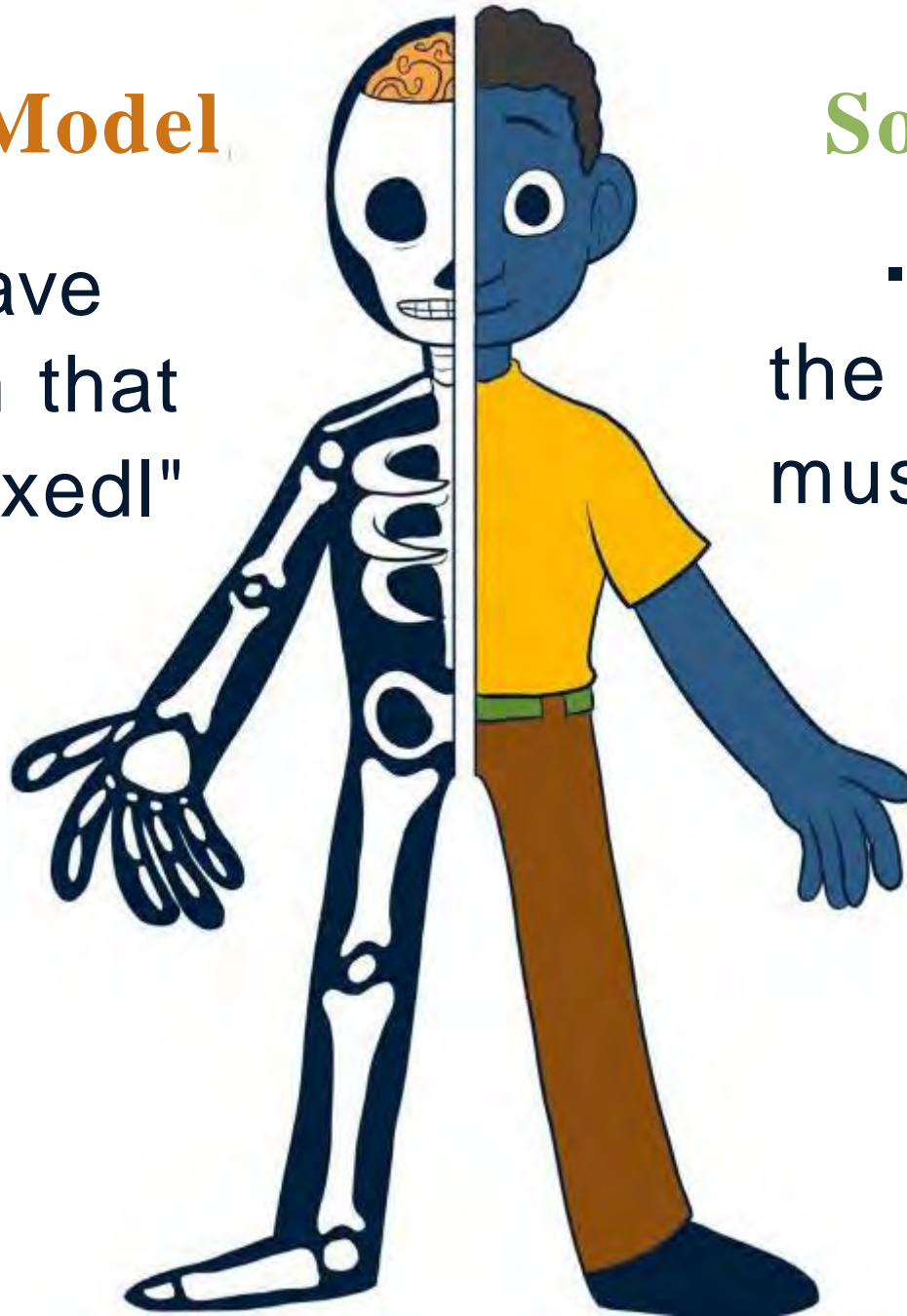
Everyone Uses SDM

- What should I have for dinner?
- Do these shoes match my outfit?
- What electives would be most beneficial to me?
- I don't understand the diagnosis my doctor gave me. Can you help me?



Medical Model

•they have
a problem that
must be fixed!"



Social Model

•society is
the problem that
must be fixed!"



Redefining Independence

- No one does everything completely independently.
- Don't assume a person is not competent just because a person needs help.
- Understand that all of us are actually INTERdependent.

Why is Supported Decision-Making important?

- When denied self-determination, people experience “low self-esteem, *passivity*, and feelings of inadequacy and incompetency,” *decreasing their ability to function* (Winick, 1995, p. 21).
- People subjected to overbroad or undue guardianship can experience a “significant *negative impact on their physical and mental health*, longevity, ability to function, and reports of subjective well-being” (Wright, 2010, p. 354).





Addressing Safety

Nothing including guardianship and supported decision-making is 100% "safe."

Supported decision-making increases self-determination (Blanck & Martinis, 2015), which is correlated with *increased safety...*

Women with intellectual disabilities exercising more self-determination are *less likely to be abused...* (Khemka, Hickson, and Reynolds, 2005)

People Without
Guardianship
are Most Likely
to do the
Following
Compared to
Those With
Guardianship*

*Based on NCI
data

Live in their own
homes or
apartments

Be involved in
making choices
about their lives

Be included in
their community

Have their rights
respected

Have community
jobs or service
plans with this
goal

Be supported to
communicate with
friends

Be able to go on
dates

Be married

Options

Full guardianship is not the only way.

Consider:

- Limited guardianship
 - Power of attorney
 - Representative Payee
 - Trusts & other financial options
 - Circles of support
-



Preparing people to be better decision-makers



- Allow them to make age-appropriate decisions and experience the consequences
- Redirect questions to them- "I don't know. What do you think about that?"
- Be on the same page about goals
- Discuss what guardianship or alternatives will mean for them



Make sure the person is taking the lead in meetings and appointments.

Make sure that questions and comments about the person are directed to the person.

Make sure the person has a communication system to use at all times.



Kentucky Statute

KRS 387.640 Duties of limited guardian or guardian.

It shall be the general duty of the limited guardian or guardian to carry out diligently and in good faith the specific duties and powers assigned by the court and to:

- (1) Assure that the personal, civil, and human rights of the ward are protected; and
- (2) **Encourage the ward to:**
 - (a) Participate to the maximum extent of his abilities in all decisions which affect him;
 - (b) Act in his own behalf on all matters in which he is able to do so; and
 - (c) Develop or regain, to the maximum extent possible, his capacity to meet the essential requirements for his physical health or safety, and, if impaired, his capacity to manage his financial resources.

Effective: July 1, 1982

History: Created 1982 Ky. Acts ch. 141, sec. 15, effective July 1, 1982.



Kentucky Statute

KRS 387.660

Specific powers and duties of guardian.

A guardian of a disabled person shall have the following powers and duties, except as modified by the order of the court:

(2) To make provision for the ward's care, comfort, and maintenance and arrange for such educational, social, vocational, and rehabilitation services as are appropriate and as will assist the ward in the **development of maximum self-reliance and independence;**

(4) To act with respect to the ward **in a manner which limits the deprivation of civil rights and restricts his personal freedom only to the extent necessary to provide needed care and services to him;** and [...]

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 13, sec. 8, effective July 14, 2018. -- Created 1982 Ky. Acts ch. 141, sec. 17, effective July 1, 1982.

Kentucky Statute

387.620 Petition for relief -- Hearing on petition -- Judgment or modification.

1. A partially disabled or disabled person, his limited guardian, guardian, limited conservator, or conservator, or any other interested person may petition the court for:

- (a) Termination or modification of an order of partial disability or disability;
- (b) Removal and/or replacement of a limited guardian, guardian, limited conservator or conservator; or
- (c) Renewal of the appointment of a limited guardian, guardian, limited conservator, or conservator.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 425, sec. 7, effective July 14, 1992. – Amended 1984 Ky. Acts ch. 395, sec. 5, effective July 13, 1984. -- Created 1982 Ky. Acts ch. 141, sec. 13, effective July 1, 1982.

National Guardianship Association Statement

- Guardianship should be utilized only when lesser restrictive supports are not available. Alternatives to guardianship, including supported decision-making, should always be identified and considered whenever possible prior to the commencement of guardianship proceedings.
- Whenever guardianship is necessary to assist a person, the guardianship must be limited, allow the maximum retention of individual rights, and be customized to the individual needs of the person under guardianship.



Resources and Tools

- My Choice Kentucky
 - Resource Guide
- [PRACTICAL Tool](#)
- [The Arc- Guardianship Myths](#)
- [Finding the Right Fit web tool](#)
- [National Resource Center on SDM](#)
- [Center on Youth Voice/Youth Choice](#)
- Supported decision-making book and textbook



My Choice Kentucky Resource Guide

*SUPPORTED DECISION-MAKING
RESOURCE GUIDE*

MY
CHOICE
KENTUCKY





Guardianship Myths

Don't Most People With Intellectual and Developmental Disabilities (IDD) Need a Guardian?

Though each state creates its own rules for guardianship, there are some general rules:



To become someone's guardian, you must go to court.



A judge will decide whether the person can make their own decisions or needs a guardian.



The judge will decide who the guardian will be and what decisions the guardian will make.

Guardianship can be expensive and time-consuming. It invites the court into the lives of the person with a disability, their family, and caregivers, for as long as the person is under guardianship. Guardianship typically lasts until the person under guardianship dies or has their right to make their own decisions restored. Guardianship can make it harder for a person to learn how to make good decisions on their own.



PRACTICAL Tool

- Presume
- Reason
- Ask
- Community
- Team
- Identify abilities
- Challenges
- Appoint
- Limit

**PRACTICAL Tool for Lawyers:
Steps in Supporting Decision-Making**

The PRACTICAL Tool aims to help lawyers identify and implement decision-making options for persons with disabilities that are less restrictive than guardianship. It is a joint product of four American Bar Association entities—the Commission on Law and Aging, Commission on Disability Rights, Section on Civil Rights and Social Justice, and Section on Real Property, Trust and Estate Law, with assistance from the National Resource Center for Supported Decision-Making. Learn more about the PRACTICAL Tool and Resource Guide at www.americanbar.org/practicaltool.

PRESUME guardianship is not needed.		Observations and Notes:
<ul style="list-style-type: none">Consider less restrictive options like financial or health care power of attorney, advance directives, trust, or supported decision-making.Review state statute for requirements about considering such options.		

REASON. Clearly identify the reasons for concern.		Observations and Notes (List supports needed.):
<p>Consider whether the individual can meet some or all of the following needs:¹</p> <p>Money Management:</p> <ul style="list-style-type: none">Managing accounts, assets, and benefits.Recognizing exploitation. <p>Health Care:</p> <ul style="list-style-type: none">Making decisions about medical treatment.Taking medications as needed.Maintaining hygiene and diet.Avoiding high-risk behaviors. <p>Relationships:</p> <ul style="list-style-type: none">Behaving appropriately with friends, family, and workers.Making safe decisions about sexual relationships. <p>Community Living:</p> <ul style="list-style-type: none">Living independently.Maintaining habitable conditions.Accessing community resources.	<p>Personal Decision-Making:</p> <ul style="list-style-type: none">Understanding legal documents (contracts, leases, powers of attorney).Communicating wishes.Understanding legal consequences of behavior. <p>Employment:</p> <ul style="list-style-type: none">Looking for, gaining, and retaining employment. <p>Personal Safety:</p> <ul style="list-style-type: none">Avoiding common dangers.Recognizing and avoiding abuse.Knowing what to do in an emergency.	

¹Adapted from University of Missouri-Kansas City Institute for Human Development.
²NO Guardianship: Understanding Your Options & Alternatives, <http://www.no-guardianship.com>.

https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool

Setting the Wheels in Motion

Supported Decision-Making Teams: Setting the Wheels in Motion

By: Suzanne M. Francisco, Special Education and Disability Rights Advocate with Jonathan G. Martin, Esquire

Introduction:

For thousands of years – going back to Ancient Rome – society treated people with intellectual disabilities as if they were unable to take care of or make decisions for themselves. Today, it is still expected that someone else – usually called a guardian, but in California, a conservator – will be appointed to make decisions for them. In fact, that is often the advice parents get when their children with disabilities turn 18: become their guardian/conservator as soon as possible. It doesn't have to be that way. This paper is about your options and actions you can take to help your children make their own decisions and direct their own lives to the maximum of their abilities.



I share this from my own experience. I am the proud mother of three children with disabilities. We have navigated our way through many systems, advocating for the tools, methods and resources they need to lead their best lives. I am the sister to a person with physical and mental illness. I watched with sadness when she was placed in a group home against her will, then shared her joy after she successfully fought to be related to her own supported apartment. I carry their experiences, their strength and their values with me as contributing author and an educational advocate where I help children and young adults receive the support and services they need to transition to adulthood.

In this paper, I will present ways to help your children Set the Wheels in Motion toward lives of independence. The journey starts with a question.

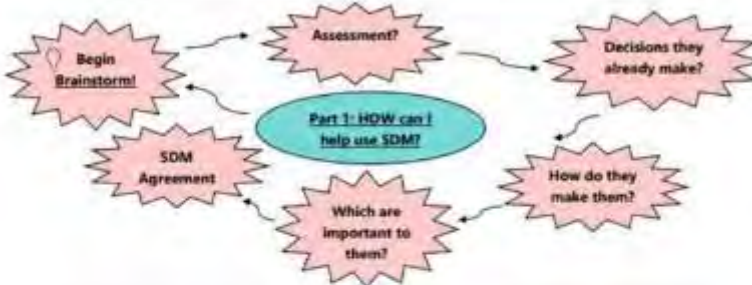
WHY NOT Guardianship/Conservatorship?

The difficulty with guardianship/conservatorship is that it takes away the person's Right to Make Choices, the basic right we all have to direct our lives to the maximum of our abilities. When people lose the right to control their lives, it's like they don't exist – someone else has the power to make

Supported Decision-Making Teams: Setting the Wheels in Motion

Date: _____ Individual with Exceptional Abilities: _____

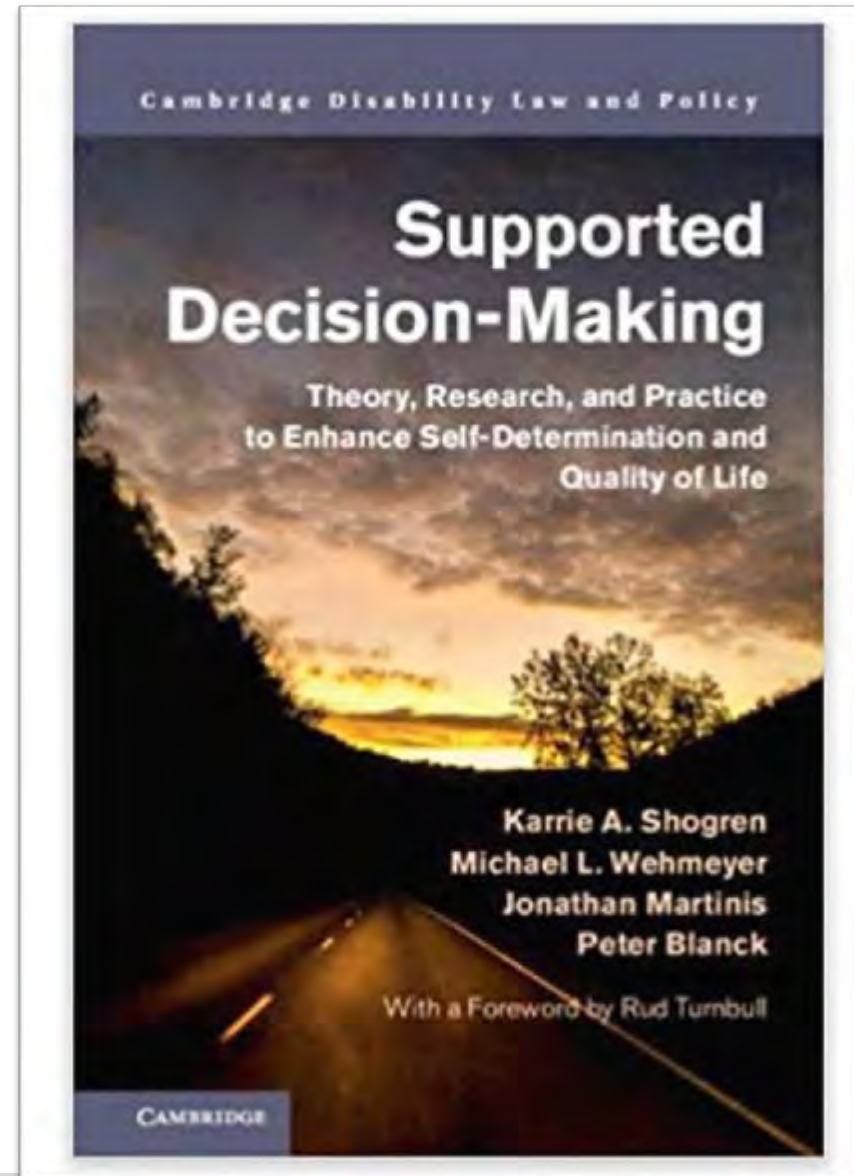
Current SDM Team Members or Assistants: _____



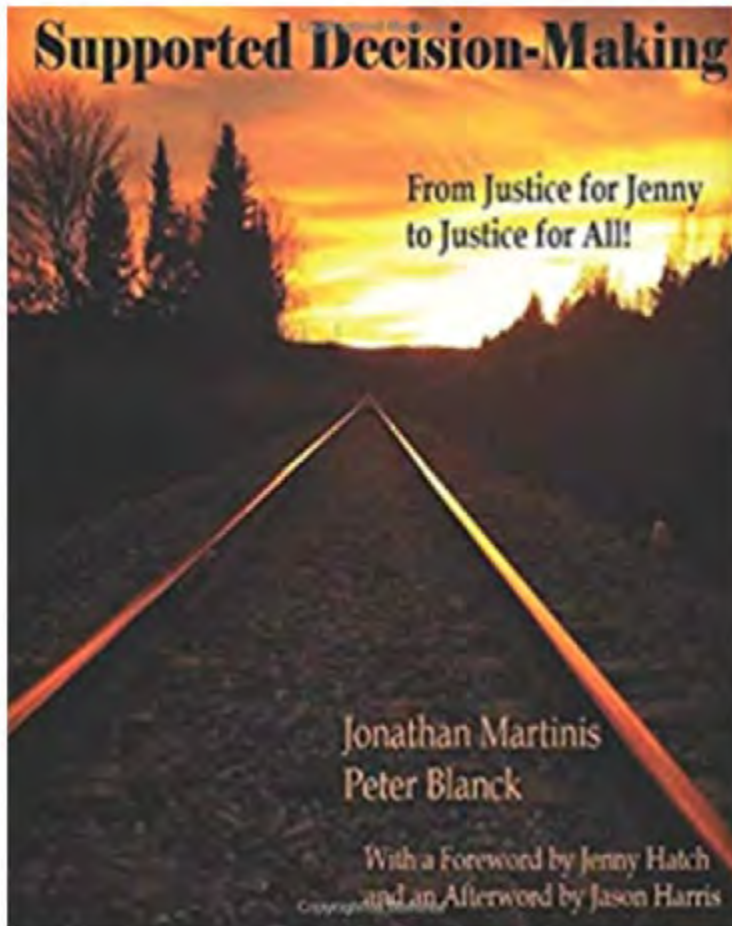
Part 1: HOW can I help my Friend or Family Member use SDM?
Start by BRAINSTORMING! (This can be free form or See ACLU Brainstorming Guide or others included in the SDM Toolkit attached.)
Is it necessary to have the individual assessed? Would it be beneficial? Are there assessments already completed that can help determine this person's current decision making skills? (See suggested SDM Assessments in the SDM Toolkit attached.)
What decisions can and does the person already make?
How are these decisions made?
What decisions are important to the person? (See suggested sample SDM Agreements in the SDM Toolkit.)

Supported Decision-Making: Theory, Research, and Practice to Enhance Self-Determination and Quality of Life

First textbook on supported decision-making.



Another Book on SDM



Supported Decision-Making: From Justice for Jenny to Justice for All!

-Jonathan Martinis & Peter Blanck
with forward by Jenny Hatch

Plain(er) language, easy to read information for using supported decision-making in different real life settings.



 Human Development
Institute

- Adair

- Fayette

- Jefferson

- Jessamine

- Mercer

- Pulaski

- Todd



Counties in Kentucky |

SDM at Work in Kentucky

Judith





Dawn



SDM at Work in Kentucky



Dawn: used SDM to
avoid guardianship

<https://youtu.be/80D-VQfAZeg>

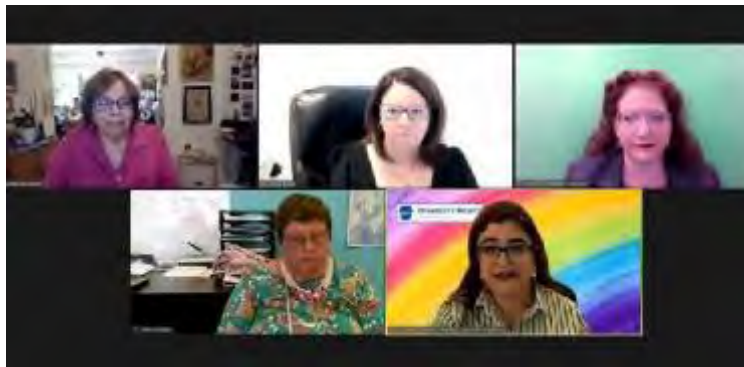
Clayton: had rights
restored

<https://youtu.be/6ls4ifO4dmM>

Stella:
parent/former
guardian

<https://youtu.be/hbDjso6utCw>

My Choice Kentucky: National Activities



<http://www.supporteddecisionmaking.org/guardianship-hearing-videos>

Questions?



Contact

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www.mychoiceky.org

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