

Supported Decision-Making: An Alternative to Limited Conservatorships

By Ellen Cookman, Esq.
Cookman Law, PC
Palo Alto, CA



1

Ellen S. Cookman, Esq.

- Certified Specialist, Estate Planning, Trust and Probate Law, The State Bar of California Board of Legal Specialization
- Principal at Cookman Law, PC
- J.D., UC Berkeley School of Law
- LL.M. in Estate Planning, Trust and Probate, Golden Gate University
- Law Clerk, Chief Judge Anthony J. Scirica, Third Circuit Court of Appeals (Philadelphia, PA)
- Mom of 2 boys (older one with high-functioning Autism), plus Siberian husky mix and kitty



2

Main types of decision-making for individuals with disabilities

- a. Surrogate decision-making (i.e. conservator)
- b. Delegated decision-making (i.e. DPA, AHCD)
- c. Shared decision-making
- d. Supported decision-making



3

What is a Limited Conservatorship?

Court appoints substitute decision-maker for individual with *developmental disabilities*

- a. Court decides whether disabled individual can care for their own needs and is able to make decisions about health, food, clothing, finances, shelter, and personal needs.
- b. Proposed conservator petitions court to obtain powers over individual
- c. 7 powers available:
 - i. Fix conservatee's residence
 - ii. Access conservatee's confidential records
 - iii. Enter into contracts on behalf of conservatee
 - iv. Consent or withhold consent to marriage
 - v. Give or withhold medical consent
 - vi. Select conservatee's social and sexual relationships
 - vii. Make decisions to educate the conservatee



4

Some reasons parents pursue Limited Conservatorships:

- a. Protect child from financial predators
- b. Protect child from their own poor or limited decision-making
- c. Helpful for children with lower capacity, who cannot communicate, reason and make decisions
- d. Fear of unknown, situations child cannot handle



5

Drawbacks of Limited Conservatorships:

- a. Expensive
- b. Involves court process
- c. Take away person's rights
- d. Disempowers individuals
- e. Can lead to abuses
- f. Only available for members of Regional Center



4

6



Jenny Got Justice

"I'm so happy to go home today!"

Jenny Hatch, a 28-year-old woman with Down syndrome, can now live the life she wants after a court ruling that gave her the right to marry.

National Association of Public Defenders
 (714) 919-0101 | www.napd.org

Cookman Law
 Estate planning for complex family situations

Example: Jenny Hatch

7

Delegated/Shared Decision-making

- a. Durable Power of Attorney
- b. Advance Health Care Directive
- c. AB 1424 – Information Provided by a Family Member
- d. Social Security representative payee

Drawbacks:

- a. These approaches are voluntary: principal can withdraw powers at any time
- b. Does not empower or train principal to make good decisions

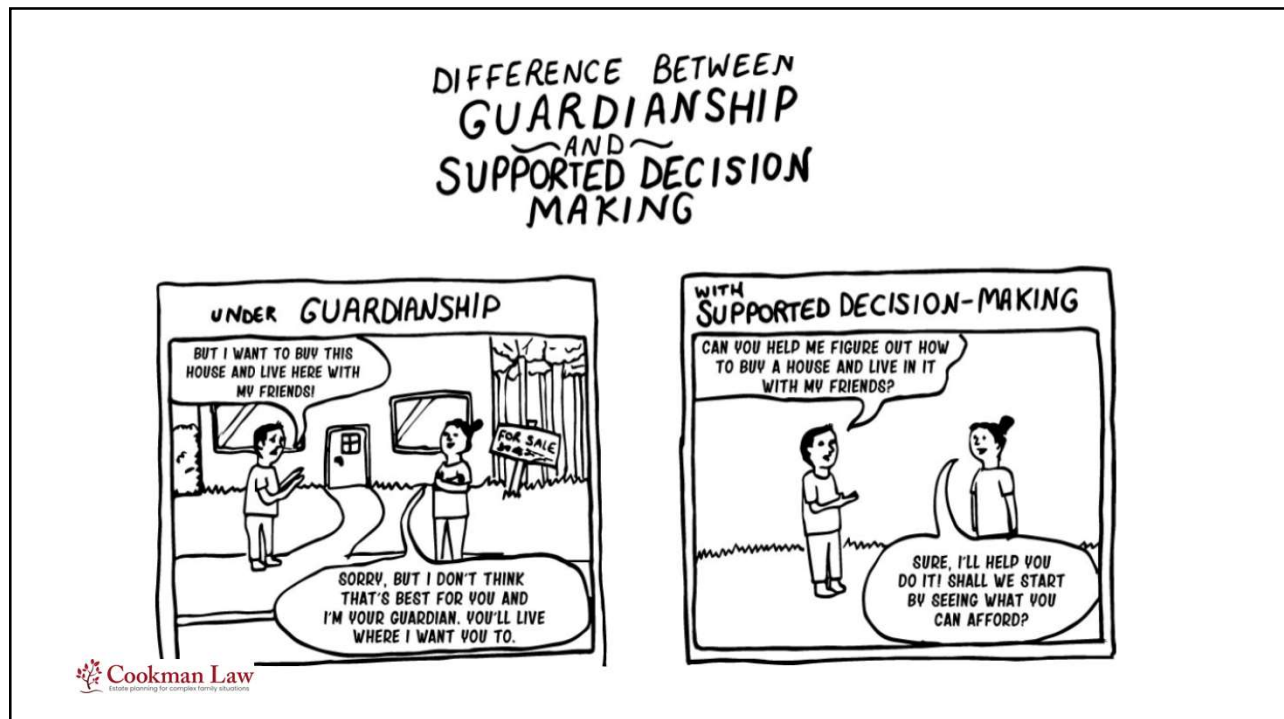
8

What is Supported Decision-Making?

- Helps people with disabilities make their own decisions about their lives with the support of people they trust
- People with disabilities retain their legal rights
- Less restrictive alternative to conservatorship
- Note: SDM describes how many people already make decisions!



9



10

Why is SDM so powerful?

- a. Disabled people are allowed to retain their legal capacity while selecting others to support them in their decision-making
- b. People's choices, preferences and decisions are respected
- c. Helps build a circle of support
- d. Studies show that people with self-determination experience better life outcomes
 - i. Overbroad conservatorship has a "significant negative impact on...physical and mental health, longevity, ability to function, and reports of subjective well-being" (Wright, 2010)
 - ii. Those denied self-determination experience "low self-esteem, passivity, and feelings of inadequacy and incompetency" (Winick, 1995)

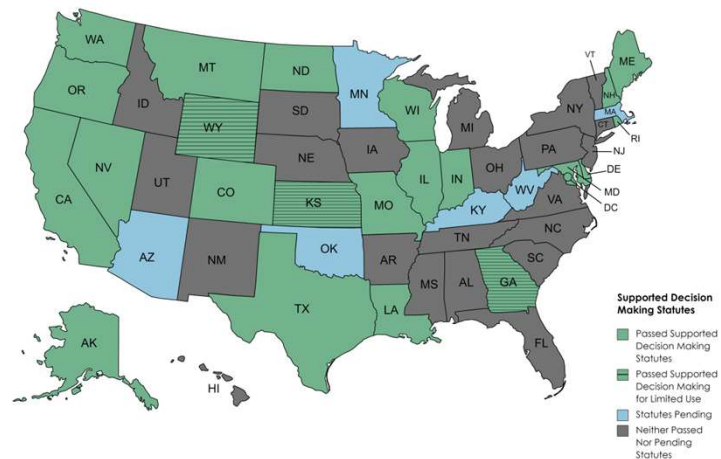


History of SDM Worldwide

- a. SDM model developed in Sweden and Canada in 1980's-1990's
- b. United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2006
 - i. Ratified by or acceded to by 185 countries (not US)
 - ii. Official text:
 1. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
 2. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity

SDM in US

- a. In 2011-2017, several national conferences promoted SDM
- b. Many states have now enacted statutes recognizing SDM:



13

AB 1663 (in CA): Reforms Conservatorship Laws

AB 1663 was introduced in January 2022 by Assemblymember Brian Maienschein, and Governor Newsom signed it into law on September 30, 2022

What AB 1663 does:

- i. Requires conservators to consult with and make decisions aligned with conservatee's communicated wishes, in conservatee's preferred method of communication (PC 2113)
- ii. Applies "order of preference" – ensures court first considers family members or other trusted individuals as conservators before appointing unrelated parties (PC 1812)
- iii. Requires conservatees be provided with understandable information describing their rights and who to contact if they wish to change or end the conservatorship (PC 1835, 1835.5)
- iv. Termination of conservatorship:
 - v. If conservatee requests to terminate conservatorship, court must ensure the conservatee has a lawyer and set a termination hearing (PC 1861.5)
 - vi. Court may terminate conservatorship without hearing if both conservator and conservatee agree to the termination (PC 1863)

14

AB 1663 (in CA): Establishes SDM as Alternative to Conservatorship

What AB 1663 does (cont.):

- i. Recognizes SDM as valid way for people with disabilities to choose trusted supporters to help them understand, make, and communicate their own choices
- ii. Creates statewide SDM Technical Assistance Program (PC 1836)
- iii. Requires Judicial Council to establish a Conservatorship Alternatives Program (PC 1836)
- iv. Details SDM rules, procedures (W&I Code 21000-21008)



15

Diving into the Weeds: CA statutes on SDM (W&I Code 21000-21004)

1. Section 21000: Purpose of SDM
2. Section 21001: Definitions
3. Section 21002: Requirements and guidelines for supporters
4. Section 21003: Entering SDM agreement is voluntary, and adult with disability can still act independently of the agreement
5. Section 21004: It's OK to bring along a supporter to a meeting



16

Diving into the Weeds: CA statutes on SDM (W&I Code 21005-21008)

6. Section 21005: How should the SDM agreement be written
7. Section 21006: How to terminate the SDM agreement
8. Section 21007: SDM is not related to CARE court
9. Section 21008: How CA Health and Human Services Agency should develop educational and training materials on SDM



17

Sample SDM Agreements

- ACLU SDM Agreement
- District of Columbia SDM Agreement
- Texas SDM Agreement
- Massachusetts SDM Agreement

18

Other Resources

- ABA PRACTICAL Tool for Lawyers: Steps in Supporting Decision-Making
- ASAN (Autistic Self Advocacy Network) The Right to Make Choices: International Laws and Decision-Making by People with Disabilities
- ACLU Handout: Guide for Supporters
- Videos: <https://disabilityrightstx.org/en/asl-videos/supported-decision-making/>

19



About Cookman Law, PC

- Palo Alto law firm serving all of California
- 2 attorneys, 9 support staff
- We charge a flat fee for estate planning and special needs planning
- We assist with limited conservatorships in San Mateo and Santa Clara Counties
- We do not assist with applications for public benefits

20

CONNECT WITH US!



YouTube

Ellen Cookman - Special
Needs Trust Attorney



Facebook

@PaloAltoEstatePlanner



LinkedIn

Ellen Cookman, JD, LL.M

21



Please use the QR code to request a copy of the slides for this presentation and be added to our monthly mailing list

Thank you for your attention!
Please contact us for further information:

-
- 650-690-2571
 - info@cookmanlaw.com
 - www.cookmanlaw.com



22