What is Supported Decision-Making (SDM)?

Supported Decision-Making (SDM) is an alternative to guardianship that lets adults with disabilities make their own decisions with the support of people they trust. We all use SDM every day to get advice from family and friends. We may ask for help deciding what laptop to buy or whether to repair our car.

A person with a disability (“decision-maker”) can formalize how they use SDM in an agreement. They can say what things they want support with, like money, health, education, or housing. They can also say who they want to support them (“supporters”) and how they do and do not want to be supported. This is called a Supported Decision-Making Agreement (SDMA).

For example, a decision-maker named Carla asks her uncle to be her supporter and help her decide where to live. Carla and her uncle agree that he will help her make a list of things she wants in an apartment, find a realtor, visit apartments, and set up automatic rent payments. Carla also asks her uncle for help telling the landlord about repairs. Once the SDM Bill becomes law, Carla will be able to use her SDMA to authorize her uncle to communicate her decisions to her landlord.

What is guardianship?

Guardianship is a legal tool that allows the State of Florida to remove a person’s rights and appoint someone else to make decisions for them. This happens when a judge decides that a person is “incapacitated.”

For example, a judge decides Carla is “incapacitated.” The judge removes Carla’s rights to choose where she lives and manage her property and gives them to her guardian. Even if Carla disagrees, Carla’s guardian can now decide to sell Carla’s apartment and move Carla into a group home.

Under guardianship a person can lose the right to:

- Sign a contract
- Vote
- Marry
- Work
- Choose where to live
- Sue or defend lawsuits
- Travel, including taking the bus or an Uber
- Say yes or no to medical treatments
- Choose who to spend time with, including seeing friends and family

If a person loses all of these rights, it’s called a “plenary guardianship.” If they lose only some of their rights, it is called a “limited guardianship.”

How we use our rights makes us who we are. Although guardianship may be appropriate for some people, it should always be the last resort.
Why do we need a Supported Decision-Making (SDM) law?

In the 2017-2018 fiscal year alone, 7,317 new guardianship cases were filed in Florida. When people with disabilities are put under guardianships they do not need, everyone loses. People with disabilities lose the ability to make their own decisions. The courts waste time and money.

Unnecessary guardianships occur when loved ones and judges believe they have no other option. Parents of children with disabilities are often told they need to seek guardianship as soon as their child turns 18. Meanwhile, Florida’s guardianship law states that you cannot put someone under guardianship if there is a less restrictive alternative. But the law does not offer a meaningful alternative. Judges and loved ones need more information.

Once passed, the proposed Supported Decision Making (SDM) law will:

1. Avoid unnecessary guardianships
2. Make SDM easier to use and more accessible

The proposed SDM law will avoid unnecessary guardianships by:
- Listing alternatives to guardianship, including SDM
- Requiring anyone trying to put another person under guardianship or guardian advocacy to show why an alternative, including SDM, will not work
- Requiring guardians to state in their annual reports whether they have tried SDM
- Requiring schools to tell parents and others in charge of students about SDM

The law will also make it easier for people in Florida to use SDM by:
- Giving supporters legal status
- Requiring third parties like doctors, banks, and records custodians to accept Supported Decision-Making Agreements (SDMAs)
- Allowing supporters to assist decision-makers with obtaining information or communicating their decisions without the need for additional legal documents
- Providing a form that people with disabilities can use to execute their own SDMAs
- Clarifying what supporters can and cannot do

In sum, the law will provide judges and loved ones with the information and tools to support people with disabilities without taking their rights. Visit decideflorida.org/bill to read a draft and summary of the proposed SDM Bill, as well as the "10 Reasons to Support an SDM Law."

Aren’t guardian advocates a less restrictive alternative to guardianship?

No. As the National Council on Disability stated in its report “Beyond Guardianship,” Florida’s guardian advocate statute is essentially a limited guardianship with fewer protections for the person with a disability. Indeed, the guardian advocate statute states that guardian advocates have all the same “powers, duties, and responsibilities” as guardians.

The difference between guardian advocacy and guardianship is who it is for and the legal process used to set it up. While guardianship can be used for people with all types of disabilities, guardian advocacy is only for people with developmental disabilities.
Here is a more detailed comparison of the two:

**Guardianship**
- Chapter 744, Florida Statutes
- All disabilities
- Person seeking to be guardian needs an attorney
- Person with a disability can lose all their rights
- Person with a disability must be found “incapacitated”
- Person with a disability must be evaluated by three experts (one must be a medical doctor, the others could be psychologists, nurses, etc.) before rights are removed
- Person with a disability has right to counsel

**Guardian Advocacy**
- Chapter 393, Florida Statutes
- Developmental disabilities only
- Person seeking to be guardian advocate only needs an attorney if seeking right to manage property
- Person with a disability must keep at least one right
- Person with a disability does not need to be found “incapacitated”
- No expert evaluations; person with a disability can lose rights based only on documents that detail their disability (such as IEPs or family plans)
- Person with a disability has right to counsel

**Can I currently use Supported Decision-Making (SDM) in Florida?**

Yes! Every time you ask someone you trust for advice you are using Supported Decision-Making (SDM). Even without an SDM law, you can draft your own Supported Decision-Making Agreement (SDMA). This will help others understand how you want to be supported. Until the SDM Bill becomes law, you may need additional documents to allow your supporters to obtain information for you or communicate your decisions to others. Additional documents could include a Power of Attorney or an information release.

**What is a decision-maker?**

A decision-maker is a person with a disability who uses Supported Decision-Making (SDM). Decision-makers make their own decisions with the help of people they trust (“supporters”).

**What is a supporter?**

A supporter is a person who supports and advises a decision-maker.

Supporters can help decision-makers by:
- Helping them understand and explore options
- Explaining the risks and benefits of options
- Assisting with getting information
- Giving guidance and ideas
- Helping them communicate and carry out a decision
Is Supported Decision-Making (SDM) for people with all types of disabilities?

Yes! People with intellectual and developmental disabilities were the first to use Supported Decision-Making (SDM) to end their guardianships. Since then, people with all types of disabilities have used SDM. This includes people with mental illnesses and learning disabilities. Older adults are also starting to use SDM.

Can older adults use Supported Decision-Making (SDM)?

Yes! Older adults are starting to embrace Supported Decision-Making (SDM). This is because people need more support as they age. The proposed SDM Bill is for all people over the age of 18 who have a disability. This includes older adults. The Bill uses the same definition of “disability” as the Americans with Disabilities Act: “a physical or mental impairment that substantially limits one or more major life activities or a record of such an impairment.” Any older adult who has an impairment—including impairments associated with aging like diabetes, osteoporosis, arthritis, and dementia—will qualify as a person with a disability and will be able to use SDM under the proposed law.

Can people under guardianship or who have a guardian advocate use Supported Decision-Making (SDM)?

Yes! Supported Decision-Making (SDM) can help someone learn how to make decisions. The proposed SDM Bill allows people under guardianship and guardian advocacy to sign Supported Decision-Making Agreements (SDMA). If the SDMA involves a right the decision-maker lost, the guardian or guardian advocate must approve. If it does not, the decision maker does not need permission. Guardians and guardian advocates who want to use SDM must understand that SDM is different from guardianship and guardian advocacy. They will need to give the decision-maker more freedom to make decisions.

What happens if a decision-maker wants to make a decision their supporters disagree with?

If a decision-maker is not under guardianship or guardian advocacy, they can make any decisions they want. This includes decisions their supporters disagree with. Supporters can assist decision-makers by helping them understand the bad things that can happen if they make a choice. But the final choice is always the decision-maker’s. We have all made decisions that our parents, siblings, or friends disagree with. This is part of being an adult and controlling our lives.

What if a decision-maker makes a bad decision?

Most of us, whether or not we have a disability, have learned a lot from our bad decisions. People with disabilities have the right to make mistakes and learn from them.

Sometimes people with disabilities are unfairly held to a higher standard. If someone without a disability makes an expensive late-night purchase online, it might be a funny story to tell at a party. But if a person with a disability does the same, people might think they cannot manage their own money. People with disabilities should not have to be perfect in order to prove they are capable of making their own decisions.
When a decision-maker makes a bad decision, their supporters can help them learn and grow from that mistake. They can help the decision-maker understand what went wrong, manage any consequences, and learn how to avoid the same mistake in the future.

**What about abuse, neglect, and exploitation?**

There are no studies that prove people with disabilities who are under guardianship are safer. In fact, in the past few years in Florida we have seen many cases of guardians abusing the people under their care.

People with disabilities who use SDM have more freedom to protect themselves than people under guardianship. Decision-makers who have their rights can say “no.” They can come and go freely. They can “break up” with their supporter at any time. They can ask for help. In contrast, a person under guardianship might be isolated. They may not even be allowed to speak to their loved ones.

SDM promotes self-determination. Studies show that people who have greater self-determination are more likely to identify abusive situations and less likely to experience abuse. SDM also allows people with disabilities to have more than one supporter and stronger ties to the community. This makes it harder for one person to abuse them.

Texas has had an SDM law since 2015. Seven other states and Washington D.C. also have SDM laws. There is no evidence of an increase in cases of abuse of people with disabilities in those states. The proposed SDM Bill also has safeguards to protect decision-makers. Supported Decision-Making Agreements (SDMAs) include a warning that notifies anyone who reads it of how to report suspected abuse. Supporters are required to sign a declaration. The declaration states that they understand all of their duties and obligations under the law. It states that they understand the criminal penalty for abusing, neglecting, or exploiting a vulnerable adult. These safeguards go beyond what is required for powers of attorney. This is significant because powers of attorney grant much more authority than SDMAs.

In sum, any tool in the toolbox can be used by bad actors. But SDM enables people with disabilities to protect themselves. The SDM Bill also includes important safeguards.

**As a parent, wouldn’t a guardianship give me the same control that I have now over my child after they turn 18?**

No, guardianship will give the court control over both your child and you as a guardian. When a child is under 18, their parents are responsible for their welfare. The courts are not supposed to intervene unless there is abuse or neglect. When a person is put under guardianship, the court becomes responsible for their welfare. The court is involved at all times to prevent abuse or neglect. The court appoints a guardian and the guardian is accountable to the court. The court can change the guardian. The guardian must submit annual reports. The guardian must ask the court for permission to take certain actions. For example, if the person under guardianship does not have the right to travel, the guardian must ask the court before taking them outside of the county. This includes a trip from Miami to the beach in Ft. Lauderdale. Court oversight is essential to protect people under guardianship from being mistreated by their guardians. But when the guardianship was unnecessary in the first place, the oversight can feel very intrusive. The same is true for guardian advocacy.
Can I get a guardianship over a person and then reverse it when they are ready to be independent?

It’s hard to get out of a guardianship. You have to prove to the court that the person under guardianship can exercise their rights. It can be done. But it takes time and money. If a person under guardianship wants to get their rights back, they may need to pay an attorney. If they have a private guardian who disagrees, they also have to pay their guardian and their guardian’s attorney to oppose the case. Some people under guardianship have trouble finding an attorney or understanding how to initiate the process. This is often due to isolation. It’s much better to try less restrictive alternatives first. You should only pursue guardianship after alternatives like Supported Decision-Making (SDM) have not worked. The same is true for guardian advocacy.

What is the difference between Supported Decision-Making (SDM) and a power of attorney?

A power of attorney allows a person (“principal”) to authorize another person (“agent”) to act on their behalf. It is like making a photocopy of your rights and sharing it with another person. Both you and your agent can exercise your rights. If you don’t like how your agent acts, you can terminate the power of attorney. A power of attorney can be used as part of Supported Decision-Making (SDM) or on its own.

SDM allows a person (“decision-maker”) to appoint people they trust (“supporters”) to help them make decisions. Each decision-maker is different. Each decision-maker has their own preference for how they want to be supported. Supporters generally give decision-makers advice rather than acting for them. But a decision-maker might ask their supporters to do things for them. A decision-maker may want their supporter to sell a property or deposit a check for them. They may also want their supporter to decide for them entirely. Indeed, many people trust others to make decisions for them. For example, a person might hire a financial expert to invest their money for them.

A Supported Decision-Making Agreement (SDMA) details what the supporter will do. A power of attorney gives the supporter any additional authority needed to actually do it. For example, a decision-maker named Carla wants her mother, acting as her supporter for finances, to write checks for her. Carla signs an SDMA where she details how her mother will assist her. Carla also signs a power of attorney giving her mother the authority to write checks for her.

Once the SDM Bill becomes law, the need for powers of attorney to supplement SDMAs will be greatly reduced. However, authorizing a supporter to take actions other than requesting information or communicating the decision-maker’s decisions will still require a power of attorney.

What is the difference between Supported Decision-Making (SDM) and a health care surrogate designation?

A healthcare surrogate designation allows a person (“principal”) to appoint another person (“health care surrogate”) to receive their healthcare information and/or make healthcare decisions for them. These decisions include saying yes or no to treatments and deciding
to donate the principal’s organs. A health care surrogate designation can take effect immediately or when the principal loses capacity. Even if a person signs a health care surrogate designation, so long as they have capacity and do not have a guardian or guardian advocate in charge of their health, they can overrule their health care surrogate or terminate the designation at any time. A health care surrogate designation can be used as part of Supported Decision-Making (SDM) or on its own.

SDM allows a person ("decision-maker") to appoint people they trust ("supporters") to assist them in making decisions. This includes healthcare decisions. Each decision-maker is different. Each decision-maker will have their own preferences for how they want to be supported. Supporters generally give decision-makers advice rather than acting for them. But a decision-maker might decide they want their supporter to make some or all healthcare decisions for them. If so, the decision-maker may want to sign a health care surrogate designation in addition to a Supported Decision-Making Agreement (SDMA).

For example, a decision-maker named Carla wants her sister to be her supporter for healthcare decisions. In her SDMA, Carla states that she wants to make her own decisions about her day-to-day health needs. She wants to decide which medications to take for her anxiety. She wants to choose a psychiatrist and a psychologist to treat her. She wants to decide how often to go to therapy. Carla also states in her SDMA that she wants her sister to decide if she ever needs major surgery. Carla wants her sister to listen to her concerns and talk to her about the surgery, then make the final decision. Carla signs an SDMA stating all of this. Carla also signs a health care surrogate designation naming her sister as her health care surrogate. Because Carla does not have a guardian or guardian advocate, even though her sister is her health care surrogate, Carla still has the ultimate say over whether or not she gets any treatment.

**Can I use Supported Decision-Making (SDM) if I have or want a health care surrogate or a power of attorney?**

Yes. Powers of attorney and health care surrogate designations can be used on their own or as part of Supported Decision-Making (SDM). Read "What is the difference between Supported Decision-Making (SDM) and a power of attorney?" and "What is the difference between Supported Decision-Making (SDM) and a health care surrogate designation?" above for more details.

**How will Supported Decision-Making (SDM) affect my benefits, like SSI, SSDI, and Medicaid?**

Using Supported Decision-Making (SDM) should not affect your benefits. You may want your supporters to help you apply for or manage your benefits. You may also want your supporters to help you manage your finances so that you remain eligible for your benefits.

One way you might want a supporter to help you is by acting as your Representative Payee. Representative Payees receive your money from Social Security and use it to pay for all of your basic needs. Then they give you or save whatever money is left. Basic needs include food, shelter, and any healthcare expenses not covered by your insurance. To learn more about Representative Payees visit [https://www.ssa.gov/payee/index.htm](https://www.ssa.gov/payee/index.htm).