

# Supported Decision-Making Basics

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# Housekeeping

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- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems with getting on to the webinar? Send an e-mail to [trainings@justiceinaging.org](mailto:trainings@justiceinaging.org).
- Slides and a recording are available at Justice in Aging – Advocates Resources – Trainings: [justiceinaging.org/resources-for-advocates/webinars](https://justiceinaging.org/resources-for-advocates/webinars). See also the chat box for this web address.

# American Bar Association Commission on Law and Aging

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The American Bar Association Commission on Law and Aging is a collaborative and interdisciplinary leader of the Association's work to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of aging persons.

The Commission accomplishes its work through research, policy development, advocacy, education, training, and through assistance to lawyers, bar associations, and other groups working on issues of aging.

# Fundamental human and Constitutional rights

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"I am my choices. I cannot not choose. If I do not choose, that is still a choice. If faced with inevitable circumstances, we still choose how we are in those circumstances."

-Jean Paul Sartre

# Supported Decision-Making

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- Empowering persons with disabilities
- To make choices
- With help from supporters / advisors
- To understand
- To explore the options
- To know the risks and benefits of the options
- To offer a recommendation
- To make a choice
- And have the help of the supporter, advisor, agent to carry out that choice.



# We All Do It

Across the spectrum of experience and abilities

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# SDM is a Balancing Point

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On Your Own



Guardianship

# Person Centered – Person Driven

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- Person Centered Planning
- Person Centered Services and Supports
- Person Centered Health Care



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- SDM is Person Driven
  - Always – always – always ask the person what they want
    - Everyone has the Right to make choices
    - Everyone has the “capacity” to make choices
    - As long as a person can communicate in any meaningful way, they have the ability to make choices
    - People will make good choices for themselves with support



# Essence of SDM

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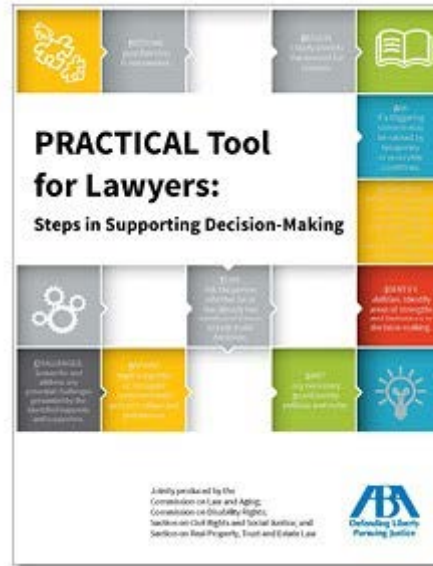
- A person with a disability (including changes in memory and cognition)
- Selects and empowers supporter(s)
- Who help the person
- Understand questions, opportunities and options
- Offer guidance and recommendations
- Help the person make a choice
- As needed, help the person carry out that choice



# Practical Guide to SDM

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9 Issues to Explore  
Or Consider



# Presume that guardianship is not needed.

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- Guardianship or Conservatorship had become the default solution
- A person with a disability, includes a person experiencing a permanent decline in memory or cognition



R Reason. Clearly identify the reasons for concern.

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**Money Management:**

**Health Care:**

**Relationships:**

**Community Living:**

**Personal Decision-Making:**

**Employment:**

**Personal Safety:**



Ask if a triggering concern may be caused by temporary or reversible conditions.

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**Medical conditions:** Infections, dehydration, delirium, poor dental care, malnutrition, pain

**Sensory deficits:** hearing or vision loss

**Medication** side effects

**Psychological conditions:** stress, grief, depression, disorientation

**Stereotypes or cultural barriers**



# Community.

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Determine if concerns can be addressed by connecting the individual to family or community resources and making accommodations.

Ask “what would it take?” to enable the person to make the needed decision(s) or address the presenting concern.



**T**eam. Ask the person whether he or she already has developed a team to help make decisions.

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- Does the person have family members, friends, or professionals available to help?
- Has the person appointed a surrogate to help make decisions?
- Help develop a team



Identify abilities. Identify areas of strengths and limitations in decision-making.

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- What does the person do alone
- What do they need help with
- Support only as needed
- Ability is situational





Challenges. Screen for and address any potential challenges presented by the identified supports and supporters.

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**Possible challenges to identified supports**

**Possible concerns about supporters**



Appoint legal supporter or surrogate consistent with person's values and preferences.

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- Select the best people
- Train them in SDM/person driven decision making
- Empower them to carry out choices of the person

# Limit any necessary guardianship petition and order.

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- Limit Order
- Instruct Guardians and Conservators in SDM decision making model



# Technology is redefining our lives

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# SDM Agreements

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- Contractual agreement between the Person and Supporters
- Describes what help is needed
- Outlines terms and conditions for both parties
- Asks that third parties – including courts- recognize the SDM process
- Texas and Delaware have statutory provisions for SDM agreement

# SDM in Advance Care Planning

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- Overreach by fiduciaries is a major concern / complaint
- Advance directives can start off by incorporating SDM principles
  - I ask that my agent appointed in the document, always explain to me the issue, breaking it down to a level that I can understand, that my agent explain the options, the risks and benefits, make a recommendation, but ask me to make a choice. Even if it appears that I am unable to understand or make a choice, please complete this process.



# The Biggest Change

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- Training family, friends, caregivers, advisors, agents and guardians
- In the principles of person driven decision making

# Is SDM Always the Answer?

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- SDM should be the first option
- In cases of abuse or exploitation, SDM will only remedy the abuse or exploitation, if you can break the cycle of abuse and exploitation
- Some persons become truly unable to communicate
- For persons experiencing changes in memory and cognition, the disease may reach the point that they are unable to communicate. If the advisors have practiced SDM up to that point, they will be well prepared to make decisions that reflect the decision the person would make.



# Important to Remember

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- Adults are allowed to make bad choices
- The more people are empowered to make choices, the better they are at it
- Empowering people to make choices improves their quality of life



# Concerns you will hear

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- Abuse, and exploitation
- The choices are not “in her best interest”
- He asks the same question, over and over
- She forgets the choice that she made
- It is so hard to communicate
- Sooner or later SDM won't work



# Conclusion

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- SDM is Person-Driven Decision-Making – we all do it!
- SDM should always be explored and exhausted before considering more restrictive options
- The Practical tool can be used as a guide to SDM
- The supporters, advisors, or agents need to be trained in person center planning and person drive decision making
- This is all about protecting the human and Constitutional rights of every person



# Additional Resources

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- David Godfrey, [David.Godfrey@Americanbar.org](mailto:David.Godfrey@Americanbar.org)
- American Bar Association Commission on Law and Aging, [americanbar.org/aging](http://americanbar.org/aging)
- National Resource Center on Supported Decision Making, [supporteddecisionmaking.org](http://supporteddecisionmaking.org)
- Burton Black Institute at Syracuse University, [bbi.syr.edu](http://bbi.syr.edu)
- Administration for Community Living, [ACL.gov](http://ACL.gov)
- 2017 National Aging and Law Conference–Pre-Conference program on SDM, [americanbar.org/groups/law\\_aging/events\\_cle/nationalagingandlawconference.html](http://americanbar.org/groups/law_aging/events_cle/nationalagingandlawconference.html)

# Case Consultation

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Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [NCLER@justiceinaging.org](mailto:NCLER@justiceinaging.org).

