



What Judges Need to Know About Supported Decision-Making, and Why

By Kristin Booth Glen

In August 2017, the ABA House of Delegates passed a resolution that “urges courts to consider supported decision-making as a less restrictive alternative to guardianship” and “to consider available decision-making supports that would meet the individual’s needs as grounds for termination of a guardianship and restoration of rights.”¹ This article examines the newly emerging practice of supported decision-making as an alternative to guardianship (the “what”), compares it within existing guardianship law (the “why”), and describes how some judges have taken the lead in promoting supported decision-making in their jurisdictions (the “how”).

First, why is this an important issue? Although there are no reliable figures for the number of persons currently under guardianship in the United States, the best current estimate is that there are 1.3 million active adult guardianship cases.² Many are older persons with progressive cognitive decline, dementia, Alzheimer’s, and so forth, while others (who are subject to separate statutes in 11 states) are persons with intellectual and developmental disabilities (I/DD), a population that is growing at a faster rate (and subject to separate statutes in 11 states).³ A smaller, but increasing number, are young adults with traumatic brain injuries resulting from incidents that occurred during their military service. These are people who, in the vast majority of cases, have plenary guardians⁴ (or conservators, as they are called in some states) and have, in essence, lost all of their legal and civil rights (or at least had these rights suspended indefinitely). While guardianship is seen as a remedy to “protect” persons who lack “capacity,” it has come under increasing scrutiny and concern, including a recent report by the National Council on Disability,⁵ articles in national publications,⁶ and even an Oscar-nominated short documentary.⁷

The resolution draws on the ABA’s 50-year commitment to limiting imposition of guardianship to only those cases where a less restrictive alternative is not available.⁸ This decades-long commitment has as its foundation a constitutional imperative grounded in due process and, arguably, in

the Americans with Disabilities Act.⁹ “Least restrictive alternative” language is specifically included in the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act,¹⁰ which focuses on “the need to limit the use of guardianship and create alternatives that maximize the self-determination of those who may need decision-making assistance. . . .”¹¹ and the guardianship statutes of 31 states, with analogous language in seven other state statutes, and case law imposition in two more.¹²

Judges in most guardianship proceedings are required to consider less restrictive alternatives before imposing guardianship. Until recently, those alternatives have generally involved health care proxies, living wills, trusts and/or powers of attorney executed by an older person before developing her/his disability, or special needs trusts, or other financial instruments created by others for the person’s benefit. Recently, however, the emerging practice of supported decision-making has become a viable alternative.

So just what is supported decision-making, where does it come from, and how does it work? At its most basic, supported decision-making reflects our common experience that we all use a variety of supports in making decisions, especially important decisions. Think about your decision to go to law school, or to marry (or not), to buy a house or car, to accept a job, or to seek a position as a judge. No doubt you consulted with friends and/or family members or knowledgeable professionals, perhaps did some research in the library or online, and so forth. Like most people, you did not make those decisions entirely on your own or in a vacuum.

Supported decision-making simply reflects that persons with a variety of intellectual, developmental, or cognitive disabilities also may need supports, although those supports may be different or of greater intensity. The kinds of supports might include gathering relevant information, explaining that information in simplified language, weighing the pros and cons of a decision, considering the consequences of making—or not

making—a particular decision, communicating the decision to third parties,¹³ and assisting the person with a disability to implement the decision.

Understanding how we all use supports also provides a different lens on how to think about “capacity” as it arises in guardianship statutes and proceedings. The “understand and appreciate” test commonly employed can and should comfortably include “with supports,” reflecting the reality of decision making, rather than positing an unrealistic, isolated, and unconnected “rational person.”¹⁴

Supported decision-making is also premised in Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD),¹⁵ which has been ratified by more than 175 countries.¹⁶ The United States has signed, but not yet ratified, the CRPD, so it is not binding in our courts. The experience of other countries, both in legislative change and in the creation of pilot projects utilizing supported decision-making, is useful to consider.¹⁷ The experience of those pilots also has been reflected in practice in the United States.¹⁸ with evaluations of various pilots demonstrating that the use of supported decision-making leads to greater self-determination, personal satisfaction, and community inclusion.¹⁹

A useful definition of supported decision-making comes from Professor Robert Dinerstein of American University’s Washington College School of Law, who has



Kristin Booth Glen is professor and dean emerita at the City University of New York School of Law and director of Supported Decision-Making

New York. She has been a trial and intermediate appellate court judge in New York, most recently as surrogate in New York County, from which she was mandatorily retired in 2012.

described supported decision-making as “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.”²⁰ That is, supported decision-making may take many forms, from entirely informal, to circles of support, to more formalized arrangements involving written agreements, and finally to agreements made legally binding on third parties by legislation, as in Texas, Delaware, the District of Columbia, and Wisconsin.²¹

In the latter two situations, people with I/DD choose trusted persons in their lives (family members, friends, service providers, etc.) to provide support in specified areas, and in specified ways. For example, a person might choose a parent to support her/him in healthcare decisions by collecting information and helping to weigh the pros and cons. Someone who does not communicate in traditional ways might choose to have support from a sibling in communicating her/his decision to third parties.

The person with I/DD may go through a formalized “facilitation” process with her/his chosen supporters before entering into a written agreement.²² That person may enter into a statutory agreement with assistance from students in a law school clinic²³ or utilize a template with the help of video instructions available through organizations like the ACLU Disability Rights Project and the University of California at Davis,²⁴ or the protection and advocacy agency for South Carolina.²⁵ The common factor is that the supported decision-making agreement describes the areas in which support is needed and designates supporters; they, in turn, agree to support the person with a disability rather than substituting their own decisions.²⁶

Results from the evaluations of pilot supported decision-making projects here and abroad have, so far, clearly and resoundingly demonstrated the clear value of the supported decision-making concept to the participants.²⁷ Perhaps equally important for judges, the increased self-determination that supported decision-making provides for people with I/DD also means that they are less likely to

be the subject of abuse or exploitation.²⁸ While existing pilots mostly focus on people with I/DD, supported decision-making should also offer protection to older persons with cognitive decline and persons with traumatic brain injuries because the existence of a network of supporters ensures that there will be “many eyes” watching out for possible abuse or undue influence, and available to report it or otherwise take protective action.²⁹

Supported decision-making has been embraced by a variety of entities including the federal Administration for Community Living,³⁰ which funds a number of supported decision-making-related projects such as the National Resource Center for Supported Decision-Making.³¹ Support for supported decision-making has come from The Arc³² and from the National Guardianship Association.³³ As already noted, as of November 2018, four states and the District of Columbia have passed legislation recognizing SDMAs, with several more in process.³⁴

So how does, or will, supported decision-making arise in the judicial system? The two most obvious ways are in proceedings in which guardianship is sought in the first instance, or where there is a petition to terminate guardianship and restore rights to the person previously subject to guardianship. In each instance, proof that there is a credible system of decision-making support in place for the subject of the proceeding, whether formalized in a supported decision-making agreement³⁵ or demonstrated over time in a more informal way,³⁶ should constitute a “less restrictive alternative” as the ABA resolution anticipates.

More can be done, however, to ensure that concerned individuals are considering the supported decision-making alternative at the outset. For example, whether by statute or court rule, petitioners for guardianship might be required to explain why they have not explored supported decision-making, or, if they have, why it has not proven sufficient.³⁷ Many petitioners—and their attorneys—are unaware of the existence of supported decision-making³⁸ or how it might resolve the issues that caused them to seek guardianship. Requiring consideration of supported decision-making will bring the possibility of its use to their attention,

potentially resulting in withdrawal or non-filing of a guardianship petition. Where information about supported decision-making is available in the office of the guardianship clerk, potential petitioners can be advised of a process that could avoid unnecessary court proceedings, while providing a rights-enhancing service to someone who might otherwise have been subjected to guardianship.³⁹

Individual judges, and state judiciaries more broadly, have been instrumental in expanding the knowledge and use of supported decision-making and the practice in both the legal and larger communities. Perhaps most prominent among these is Justice Nathan Hecht, Chief Justice of the Texas Supreme Court, who led the effort to pass the first supported decision-making statute in the country in 2015.

According to Justice Hecht,⁴⁰ problems with guardianship arose in part because of Texas’s diverse, nonunified court system—with guardianship proceedings in small rural counties presided over by judicial officers who were not law trained. The larger counties, with active probate courts, were also sporadically the subject of sensational press reports about guardianship abuses. Under Justice Hecht’s leadership, the Texas Judicial Council, made up of judges, legislators, lawyers, and public members, formed a committee to investigate and monitor guardianship in a number of representative counties. The Texas Office of Court Administration, directed by David Slayton, developed the program, gathered information, and analyzed the data. Although supported decision-making was not the original focus of that committee, over time, the Council became convinced that supported decision-making “was the way to go as an alternative to guardianship.”

Gaining bipartisan support in both houses of the Texas legislature, the first statute passed unanimously in 2015.⁴¹ At the same time, it also generated a major educational effort. In Texas, attorneys involved in the guardianship system are required to complete relevant continuing legal education, and the statute provides that supported decision-making *must* be considered before guardianship can be imposed. Justice Hecht reports that there has been a great deal of

buy-in, especially by judges in urban counties that handle the majority of Texas guardianship cases. In 2017, the supported decision-making statute was slightly changed to make supporters fiduciaries and to provide procedures to deal with conflicts that might arise among supporters.⁴²

The Texas Judicial Council has continued to study supported decision-making, and thus far has been “pleased” by the way the statute is working. Significantly, since enactment of the initial statute in 2015, there has been a 6 percent decrease in adult guardianships. Justice Hecht describes this as a good trend, helping to ensure that supported decision-making is viable and, in many respects, better than guardianship for a large number of people.

One of the issues that arose at the beginning of the Texas experience was the lack of concrete information about the number of guardianships in place and the

situation of persons subject to those guardianships. This all-too-common problem also marked the beginning of an effort in Nevada led by Nevada State District Court Judge Frances Doherty.⁴³

In 2012, Judge Doherty was assigned to organize the guardianship cases in Washoe County, where there was an inventory of approximately 1,300 cases. Working with her court staff, and literally reading every file, she noted the dearth of demographic information, making it difficult or impossible to determine exactly whom on its guardianship docket the court was serving. Going forward, by requiring additional information on guardianship petitions, she learned that almost a third of all persons subject to guardianship were young adults between the ages of 18 and 29. Somewhat surprisingly, that percentage was approximately equal to that of older persons placed under guardianship after age 60. The data

also revealed that the majority of guardians were parents or other family members, and that a large percentage of young adults under guardianship were living at home rather than in institutional settings. This information caused Judge Doherty to question how the court could best serve these young people and their families who were seeking guardianship. As well, it raised an issue as to whether guardianship was actually the best solution for them.

Following the lead of Texas, the Nevada State Judicial Council convened a Commission to look at guardianship in Nevada. One presentation during its proceedings was about supported decision-making in Texas. To gain more information, the Commission approved Judge Doherty’s efforts to obtain a grant from the National Resource Center for Supported Decision-Making.⁴⁴ Although that grant was, as she describes it, “tiny,” she began a 2,000-mile

journey to dozens of communities in Nevada, holding information meetings on supported decision-making to test whether there was stakeholder interest in this alternative to guardianship. After a year's work, including a survey and a final statewide meeting, it became apparent that there was almost unanimous support for utilizing supported decision-making in Nevada.

The results of Judge Doherty's work led her to redirect her court's approach to

children's individualized education programs⁴⁵ without seeking guardianship. The School District is excited to have supported decision-making as a tool to more effectively ensure that young adults leaving the education system have the tools and skills needed for success, and also plans, in the 2018–19 school year, to change individualized educational programs to include the concept of supported decision-making as far back as first grade.



The emerging practice of supported decision-making has become a viable alternative to imposed guardianship.

guardianship petitions, now with serious attention to the potential use of supported decision-making. She notes that lawyers now commonly reference supported decision-making and are prepared for questions as to when and why it is not an adequate alternative in their case. Social service agencies now come to court with detailed information about wraparound services that will provide support sufficient to constitute a less restrictive alternative, and thus to avoid guardianship. As a result, the court has restored rights to a number of previously “protected persons” who were subject to guardianship.

The effect of Judge Doherty's work goes beyond the court setting into the critical area of education/special education. She reports that, beginning in the 2018–19 school year, the Washoe County School District plans to use a supported decision-making form that allows parents to continue to participate in their adult

There is another important area of third-party acceptance. Despite the absence of legislation requiring third parties to honor supported decision-making agreements, a local trust company is now reaching out to social workers to determine whether there is a supported decision-making system in place for persons with intellectual disabilities, rather than, as was the previous practice, insisting on the appointment of a guardian.

Because of Judge Doherty's commitment to the rights of young adults with intellectual and developmental disabilities, and her belief that courts can do better to serve them and their families, supported decision-making is well on its way to becoming an effective and recognized practice in Nevada.⁴⁶

Judges have also taken active roles as members of Advisory Committees and Councils in pilot projects testing the use of supported decision-making to divert

persons with I/DD from guardianship, and to restore rights to persons currently subject to guardianship. The first such project in the United States was a partnership between the Center for Public Representation, a public interest law firm involved in disability rights work for 40 years, and Nonotuck Resource Associates, a provider organization in Western Massachusetts. From the outset, the project included local judges⁴⁷ in its planning and actualization, a relationship that bore fruit when the first project participant subject to guardianship had his rights restored in 2016.⁴⁸ The largest pilot project to date, Supported Decision-Making New York has, as its director, a retired surrogate judge and has several sitting surrogates and the dean of the New York State Judicial Institute as active members of its Advisory Council.⁴⁹

While most of the supported decision-making projects around the country focus on persons with I/DD, the Minnesota WINGS⁵⁰ project, supported by a \$1.5 million grant from the Administration on Community Living, is aimed at older adults with progressive cognitive decline, dementia, Alzheimer's, and so forth.⁵¹ A collaborative effort, it includes the Minnesota Judicial Council, chaired by Chief Justice Lorie Gildea. At its recent summit, she noted:

Our judges around the state are invested in the success of this initiative and have made it a priority for our court system. We understand how important it is to give people as much control over their lives as possible. We understand this, not only out of the moral principle of preserving a person's individual rights and freedoms, but because we also understand that self-determination leads to a happier, healthier, and more productive lives.⁵²

Chief Justice Gildea's words aptly express the many benefits of supported decision-making, in addition to its salience for the constitutional imperative of “least restrictive alternative,” advanced by the recent ABA-supported decision-making resolution. They can inform and inspire all

judges whose caseloads include consideration of guardianship and the significant, and now, with supported decision-making, potentially unnecessary deprivation of rights it entails. Judges, court staff, and lawyers alike need to learn more about supported decision-making to promote its availability and to ensure that information about supported decision-making is easily accessible. In this way, all involved can continue to protect vulnerable adults and do so in the least restrictive manner, consistent with the ABA resolution, the U.S. Constitution, and the dignity to which all adults are entitled. ■

Endnotes

1. Am. Bar Ass'n, Res. 113 (passed House of Delegates August 2017).

2. *Examining the Social Security Administration's Representative Payee Program: Who Provides Help? Hearing Before the Subcomm. on Oversight and Social Security of the H. Comm. on Ways & Means*, 115th Cong. 42–53 (2017) (statement of Brenda K. Uekert, Principal Court Research Consultant, Nat'l Ctr. for State Courts), available at <https://waysandmeans.house.gov/wp-content/uploads/2017/11/20170322OSSS-Transcript.pdf>.

3. *Id.* at 66–67. According to the National Council on Disability, they are Arizona, California, Connecticut, Florida, Idaho, Iowa, Kentucky, Michigan, Minnesota, New York, and South Dakota. NAT'L COUNCIL ON DISABILITY, BEYOND GUARDIANSHIP: TOWARD ALTERNATIVES THAT PROMOTE GREATER SELF-DETERMINATION 171 (2018) [hereinafter NCD REPORT], https://ncd.gov/sites/default/files/NCD_Guardianship_Report_Accessible.pdf.

4. *Id.* at 78.

5. *Id.*

6. See, e.g., Rachel Aviv, *How the Elderly Lose Their Rights*, THE NEW YORKER (Oct. 11, 2017), <https://www.newyorker.com/magazine/2017/10/09/how-the-elderly-lose-their-rights>.

7. See, e.g., EDITH + EDDIE (Kartequim Films 2018), available at <https://www.editheddie.com>.

8. Most guardianship statutes require findings both of incapacity and need for the guardianship in order to prevent harm. “Least restrictive alternative” is understood to apply to the “need” requirement.

9. For the germinal discussion of ADA applicability to guardianship, see Leslie Saltzman, *Rethinking Guardianship (Again): Substituted*

Decision-Making as a Violation of the Integration Mandate of Title II of the Americans with Disabilities Act, 81 UNIV. COLO. L. REV. 157 (2010). See, e.g., O'Connor v. Donaldson, 422 U.S. 563 (1973); Olmsted v. L.C. by Zimring, 527 U.S. 581 (1999).

10. UNIF. GUARDIANSHIP, CONSERVATORSHIP & OTHER PROTECTIVE ARRANGEMENTS ACT §§ 102(13), 301(a) (adopted 2017, replacing the Uniform Guardianship and Protective Proceedings Act (UGPPA)).

11. NCD REPORT, *supra* note 3, at 6.

12. For a state-by-state (and the District of Columbia) chart on statutory language concerning “least restrictive alternatives” to guardianship, see COMM'N ON LAW & AGING, AM. BAR. ASS'N, LEAST RESTRICTIVE ALTERNATIVE REFERENCES IN STATE GUARDIANSHIP STATUTES (June 23, 2018), https://www.americanbar.org/content/dam/aba/administrative/law_aging/06-23-2018-lra-chart-final.authcheckdam.pdf.

13. This is especially important for persons who do not communicate verbally, or whose speech may be unintelligible to most others.

14. See NCD REPORT, *supra* note 3, at 74–79.

15. U.N. Convention on the Rights of Persons with Disabilities, art. 12, March 30, 2007, 2515 U.N.T.S. 3 [hereinafter CRPD]. Although the CRPD does not use the specific term “SDM,” article 12(3) speaks to the necessity of providing “access by persons with disabilities to the support they may require in exercising their legal capacity” and the treaty body responsible for interpreting the CRPD refers repeatedly to supported decision-making in its First General Comment. Comm. on the Rights of Persons with Disabilities, *General Comment No. 1*, U.N. Doc. CRPD/C/GC/1 (May 19, 2014).

16. As of the drafting of this article, 177 countries have ratified the CRPD. *United Nations Treaty Collection*, U.N. OFFICE OF LEGAL AFFAIRS TREATY SEC. ch. IV, sec. 15 (May 28, 2018, 5:00 AM), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-15&chapter=4&lang=en&clang=en.

17. For a review of legislative change in response to Article 12, see Arlene S. Kanter & Yotam Tolub, *The Fight for Personhood, Legal Capacity and Equal Recognition Under the Law for People with Disabilities in Israel and Beyond*, 39 CARDOZO L. REV. 557 (2017). For a discussion of some of the pilot projects, see Kristin Booth Glen, *Introducing a “New” Human Right: Learning from Others, Bringing Legal Capacity Home*, 49 COLUM. HUM. RTS. L. REV. 1 (2018).

18. See, e.g., SUPPORTED DECISION-MAKING N.Y. (July 31, 2018), <http://www.sdmny.org> (the largest pilot to date); see also Kristin Booth Glen, *Piloting Personhood: Reflections on the First Year of a Supported Decision-Making Project*, 39 CARDOZO L. REV. 295 (2017). For another smaller, but extensively evaluated pilot in Western Massachusetts, see *Initial Supported Decision-Making Pilot: CPR and Nonotuck*, CTR. FOR PUB. REPRESENTATION (July 31, 2018, 12:30 PM), <http://supporteddecisions.org/initial-sdm-pilot>.

19. NCD REPORT, *supra* note 3, at 131–32.

20. Robert Dinerstein, *Implementing Legal Capacity Under Article 12 of the U.N. Convention on the Rights of Persons with Disabilities: The Difficult Road from Guardianship to Supported Decision-Making*, 19 HUM. RTS. BRIEF 8, 10 (2012).

21. TEX. EST. CODE ANN. §§ 1357.001–.003 (West 2015); DEL. CODE ANN. tit. 16, §§ 9401A–9410A (2017); D.C. CODE §§ 21-2001 to 2077 (2018); WIS. STAT. §§ 52.01–.32 (2018).

22. This is the model used by the pilot projects in New York and Massachusetts. See discussion *supra* at note 18.

23. An example is the INCLUDE Project at the University of Texas–Austin's School of Law. See *Texas Law INCLUDE Project*, UNIV. OF TEX. AT AUSTIN SCH. OF LAW (July 31, 2018, 12:30 PM), <https://law.utexas.edu/probono/opportunities/texas-law-include-project>.

24. See *Supported Decision-Making Resource Library*, AM. CIVIL LIBERTIES UNION (July 31, 2018, 12:34 PM), <https://www.aclu.org/other/supported-decision-making-resource-library>; *Supported Decision Making (SDM)*, UC DAVIS MIND INST. (July 31, 2018, 12:36 PM), <http://www.ucdmc.ucdavis.edu/mindinstitute/centers/cedd/sdm.html>.

25. See SC SUPPORTED DECISION MAKING PROJECT (July 31, 2018), <http://scsupporteddecisionmaking.org/about-the-project>.

26. Most supported decision-making agreements also provide that the supporters will not engage in conflicts of interest or undue influence. See *Supported Decision-Making Model Agreements*, NAT'L RES. CTR. FOR SUPPORTED DECISION-MAKING (July 31, 2018, 12:47 PM), <http://supporteddecisionmaking.org/node/390>. Texas, in a recent amendment to its supported decision-making statute, has imposed fiduciary obligations on supporters. TEX. EST. CODE ANN. § 1357.052 (LexisNexis 2018), amended by 2017 Tex. Gen. Laws ch. 514 (S.B. 39).

27. Elizabeth Pell & Virginia Mulkern,

Supported Decision Making Pilot: Pilot Program Evaluation Year 2 Report (Hum. Svcs. Res. Inst. 2016), http://supporteddecisions.org/wp-content/uploads/2016/11/Evaluation-Year-2-Report_HSRI-2016_FINAL-2-1.pdf; Margaret Wallace, *Evaluation of the Supported Decision Making Project: Office of the Public Advocate* (Muirgen Nominees Pty. Ltd. 2012), http://www.opa.sa.gov.au/files/batch1376447055_final_supported_decision_making_evaluation.pdf.

28. See, e.g., NCD REPORT, *supra* note 3, at 47 (“As [an] interviewee noted, ‘It’s not about protecting someone. It’s about teaching them how to best protect themselves.’”); see also *id.* at 70–72.

29. See *id.* at 71 (“[I]t is apparent from the totality of available evidence regarding guardianship practices, that courts are not currently able to safeguard individuals against abuse, neglect and exploitation committed by guardians.”).

30. ACL is a part of the U.S. Health and Human Services Administration (HHS) that includes the Administration on Intellectual and Developmental Disabilities (AIDD) and the Office on Aging.

31. See NAT’L RES. CTR. FOR SUPPORTED DECISION-MAKING (July 31, 2018), <http://www.supporteddecisionmaking.org>.

32. The Arc, Position Statement, Autonomy, Decision-Making Supports, and Guardianship (Apr. 10, 2016), <https://www.thearc.org/who-we-are/position-statements/rights/Autonomy-Decision-Making-Supports-and-Guardianship>.

33. Nat’l Guardianship Ass’n, Position Statement, Guardianship, Surrogate Decision Making, and Supported Decision Making (Sept. 20, 2017), <https://guardianship.org/wp-content/uploads/2017/07/SDM-Position-Statement-9-20-17.pdf>.

34. For the most recent updates, see *Supported Decision-Making State Map*, SDMNY (July 31, 2018, 1:25PM), <http://sdmny.org/sdm-state-map>.

35. See Ryan King—Updated, NAT’L RES. CTR. FOR SUPPORTED DECISION-MAKING, <http://supporteddecisionmaking.org/impact-stories/ryan-king-updated> (last visited July 31, 2018).

36. See, e.g., Estate of Hilton, 2017 NYLJ LEXIS 284 (Sur. Ct., Kings Co. 2017); Matter of Michelle M., 2016 N.Y. Misc. LEXIS 2719 (Sur. Ct., Kings Co. 2016); Matter of Antonio C., 2016 N.Y. Misc. LEXIS 2742 (Sur. Ct., Kings Co. 2016); Matter of D.D., 19 N.Y.S. 3d 867, 869 (Sur. Ct., Kings Co. 2015); Matter of Dameris L., 38 Misc. 3d 570, 580 (Sur. Ct., N.Y. Co. 2012).

37. UNIF. GUARDIANSHIP, CONSERVATORSHIP & OTHER PROTECTIVE ARRANGEMENTS ACT §§ 603(8) & (9).

38. The ABA has attempted to address this issue for attorneys involved in guardianship cases through creation and dissemination of the “PRACTICAL” tool. PRACTICAL Tool, AM. BAR ASS’N (July 31, 2018), https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool.html.

39. This is now the case in some Surrogates’ Courts in New York as a result of the educational efforts of Supported Decision-Making New York (SDMNY), a five-year project funded by the New York State Developmental Disabilities Planning Council. For information about this project, see SUPPORTED DECISION-MAKING N.Y. (July 31, 2018), <http://www.sdmny.org>.

40. The information that follows is taken from a presentation by Justice Hecht. Remarks at the American Bar Association Webinar: What Judges Need to Know About Supported Decision-Making (Feb. 15, 2018) [hereinafter ABA Webinar] (video recording available upon login at <https://register.gotowebinar.com/register/886667455512124419>).

41. H. 84-39, 72nd Day, H.J. 3740 (Tex. 2015), Tex. Gen. Laws 1291, available at <https://journals.house.texas.gov/HJRNL/84R/PDF/84RDAY72FINAL.PDF>.

42. S. 85-39, 65th Day, S.J. 3303 (Tex. 2017), Tex. Gen. Laws ch. 514, available at <https://journals.senate.texas.gov/sjrn1/85r/pdf/85RSJ05-25-F.PDF#page=161>.

43. The following is a summary of Judge Doherty’s remarks at the ABA Webinar, *supra* note 40. See also Frances Doherty, Judge, Second Judicial Court of Nevada, Presentation at the Fourth Annual Minnesota Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) Summit (Jan. 26, 2018) [hereinafter MN WINGS Summit], <https://drive.google.com/drive/folders/1S8gZJynWk0cpvKxpzMA2C-JOfyXOWQfZ>.

44. Information about NRCSDM, which is supported by a grant from the Administration for Community Living, is available on its website, <http://www.supporteddecisionmaking.org>, which serves as a repository for information about supported decision-making on a national scale.

45. “IEP” or “Individualized Education Program,” refers to a document prepared for a child with a disability that is developed, reviewed, and revised in accordance with the Individuals with Disabilities

Education Act (IDEA) and contains, among other information, the child’s levels of academic achievement and functional performance and how the child’s disability affects his or her involvement and progress in the general education curriculum. See 34 C.F.R. §§ 300.22–324 (2017).

46. While there is no supported decision-making legislation presently pending in Nevada, the results of the informal survey conducted at the end of the NRCSDM grant suggests that, if and when there is, it may look quite different from that of Texas. The response to that survey encouraged recognition of a variety of ways in which supported decision-making might be utilized rather than the single statutory form in Texas. See ABA Webinar, *supra* note 40.

47. In Massachusetts, guardianships are handled by the Family Court.

48. Information about the CPR/Nonotuck project, including two extensive independent evaluations, is available on its website, <http://www.supporteddecisions.org>, as are statements from the young man whose rights were restored and his former guardian; see Cory, *Pilot Project Participant*, CTR. FOR PUB. REPRESENTATION (July 31, 2018, 3:59 PM), <http://supporteddecisions.org/cory>.

49. For a complete list of SDMNY’s Advisory Council members, see *Advisors*, SDMNY (July 31, 2018, 4:00PM), <http://sdmny.org/about-sdmny/advisors>.

50. “WINGS” is an acronym for the Working Interdisciplinary Network of Guardianship Stakeholders that grew out of the Third National Guardianship Summit in 2012 and now numbers 18 working groups in 16 states, as of 2016. NCD REPORT, *supra* note 3, at 59.

51. For a thoughtful discussion of the potential of supported decision-making for older persons with cognitive decline, see Rebekah Diller, *Legal Capacity for All: Including Older Persons in the Shift from Adult Guardianship to Supported Decision-Making*, 43 FORDHAM URB. L.J. 495 (2016).

52. Lorie Skjerven Gildea, Chief Justice, Minnesota Supreme Court, Address at MN WINGS Summit, *supra* note 43 (copy on file with author). WINGS grew out of the 2012 Third National Guardianship Summit and is now active in 16 states (as of 2016), always in conjunction with the states’ judiciaries. NCD REPORT, *supra* note 3, at 59, 60.