

DEFAULT SUPPORTED DECISION MAKING INTRODUCTION and FAQ

Why we need this law, and as this version-

The following is what Guardianship and Conservatorship often looks like. The States created it as an intended protection, but it turned out to be a path to legalized exploitation by the protectors. The text you are about to read defines the actual problem in how it works out from the perspective of the person subjected to it. This is a very common and frequent situation across America. It applies to the elderly and to persons with disabilities, regardless of the severity of those disabilities. All of it comes from typical true accounts. The cases usually follow the same pattern or differ only slightly.

I'm an adult with a mind, a soul, and desires for how I envision my life-

I have never committed a crime, and am considered normal for my age.

I have been discriminated against because of my age and some disabilities.

Strangers took over my whole life, saying it was to protect me. They gave my rights to other strangers.

I was not in any danger, and I had help with the things I need, but which I have trouble doing alone.

I was satisfied, and had adequate care with that help.

Despite the law and the US Constitution, they deprived me of ALL of my rights.

They took me to court, but neglected to tell me.

I had no lawyer. I was not there. No evidence or little evidence was used against me other than the opinion of a stranger who had no qualification to assess me or my situation.

I have not been allowed to obtain my own lawyer, but must accept one appointed by a judge who is determined to undermine my case and my justice.

I was taken from my home and placed in a facility.

I was not allowed to visit my own house, and my family were ordered not to enter my property, even if I wanted them to do that. My Constitutional right to property was gone.

I was restricted from, and even disallowed to see my family and friends. My Constitutional rights to free association was gone.

I wasn't even allowed out to vote.

My family fought back in court, but they did not realize the judge was abusing judicial discretion to violate my rights, the law, and due process, intentionally allowing the guardian and conservator to exploit me for extreme profit.

By stirring up conflict, the guardian and conservator assured legal action, which they could bill me for. They did this, and hired services I didn't need, racking up unnecessary bills that made an excuse to sell my family home. Then they pocketed a huge percentage of my home's value for themselves.

They destroyed my life and destroyed our family.

They sold and gave away all of my life's possessions, everything I cared about and reminded me of what my life had been, even our family photos, my clothes, my furniture, all into the trash or given away, just to clear the way to sell our home.

I am a prisoner, isolated from everything I care about. My Constitutional right to liberty was gone.

I have been made legally helpless, with no way to defend myself.

I exist now only to enrich others- like a slave.

Who protects me from my "protectors?" My Constitutional right to life is gone.

Guardianship & Conservatorship vs. Default Supported Decision Making.

Guardianship and Conservatorship, is a system created by the States to manage the affairs of any person whom the State declares to have some degree of mental or physical decline. In most, but not all cases, full powers of care, custody, and control of the individual are given to a guardian, and if there is a significant estate, also a conservator. This power of a guardian over the Individual is typically cited as a virtually limitless power to ignore State and Federal laws (a typical Law Enforcement response to complaints is "We have no jurisdiction because it is in civil court").

In theory, the system has some statutory limits, which vary from State to State, but in real practice these limits are often ignored by both the court and fiduciaries. That creates a violation of several Constitutional rights, as well as rights by State law and violations of other State laws. The result is a system which removes rights of Americans and gives them away, often to strangers, who are in a position to exploit the Individual without fear of being stopped. The system inherently promotes corrupt behavior by courts and fiduciaries.

The few Supported Decision Making (SDM) laws which have been signed or presented as Bills across the US are intended to reform the abuses under guardianship and conservatorship by creating a “less intrusive” system, where in theory the individual has more ability to maintain self-determination. Unfortunately, most of these SDM laws and Bills are flawed in that they fail to recognize the true sources of abuse. By keeping the matter under the discretion of the court rather than the Health Care system, they give discretion to the court to deprive rights, directly leading to abuse. They also fail because they are based on the false premise that a State can legally usurp fundamental Constitutional rights (violating the Supremacy Clause of the USC). And they fail because they presume the court will intend to use its discretion to make good and beneficial judgments. Unfortunately, the courts have clearly demonstrated that they often act on the contrary and defend their appointees to the detriment of the Individual. The catastrophic consequences of that failure are the ruination of lives, and are even the cause of premature deaths.

DEFAULT-SUPPORTED DECISION MAKING (aka: D-SDM) is the answer. It differs greatly from typical SDM laws and Bills presented previously. By making SDM the default, we bring the matter back to the sphere of Health Care, and the court system is almost uninvolved. The Individual or patient gets the better care and more transparent protection which they need than a court system can guarantee. The care and protections with D-SDM are far better than when someone is under guardianship or conservatorship, and the system comports with the US Constitution, while the previous systems, including most SDM laws and Bills, do *not*. D-SDM saves time and money by staying out of court, and greatly reduces the risks of abuse and exploitation from a guardianship/conservatorship system.

FAQ:

EXPLAINING WHAT D-SDM IS vs. OTHER SDM LAW AND WHY WE NEED IT

(Putting the Default into Supported Decision Making)

1) FAQ: (p.3) *THE SITUATION TODAY*

2) FAQ: (p.10) *THE DEFAULT SUPPORTED DECISION MAKING LAW PROPOSAL*

1) FAQ: THE SITUATION TODAY:

The guardianship and conservatorship statutes in the individual States are not serving the purpose of ensuing proper protection and meeting the needs of the people whom they serve. The State laws are not just flawed, they are fundamentally flawed because their foundation is a false premise that you can better protect a person by taking away their rights and giving them to a third party. It might seem like a solution on paper, but the first FAQ section explains why the reality is far from that. The reality is we have created a systemic, legalized platform which encourages abuse and exploitation.

Q: When someone gets old, or they have some kind of injury that makes them somehow more vulnerable or less capable, don't we need to make sure they are properly cared for and don't get into problems or trouble?

A: Not quite. Discrimination against someone because they are old or had an injury is wrongful and presumptuous. We are all open to making mistakes, big mistakes, or becoming crime victims throughout our lives. Having natural cognition challenges from aging, or physical challenges, or even developmental challenges does not mean a person cannot know what they want, or have any ability to cope. These reduced abilities vary tremendously in degree, yet our laws do not effectively address that difference because they are vague and let a judge rather than a medical or psychiatric expert decide where to draw the line. *Removing someone's rights is not a protection. It just makes them more helpless.*

Q: But my grandfather actually IS helpless to take care of himself. Doesn't he need a guardian because of that?

A: No. In fact one commonly misunderstood fact is that guardianship does not address that. A guardian is not there to wash you, or give you your pills in the morning, get your meals, or stop you from walking out into a street without looking. We already have support for that. You do not need a guardian to hire In-Home Health Aides, or to move to an Adult Foster Care home or senior living. Anybody can help you set up any social services you may need.

Q: But what if my grandma can't even remember what uncle Bill looks like, and certainly can't remember if she decided to have someone come fix the roof? Doesn't she need a guardian for that?

A: No, anybody can talk to grandma about getting the roof fixed, and if she forgets, anybody can

remind her later and keep an eye out to make sure it happens.

Q: But what if my elderly parent has a very short memory, and makes an important decision one day and forgets it the next, and then makes the opposite decision? Doesn't a guardian make the "right" decision for what is best for my parent?

A: Not necessarily, and too often not. A guardian can, and often does make a bad choice because they either don't know the desires and values of the ward or doesn't care. Their decisions are often made based on what is easiest or best for the guardian. Supported Decision Making allows a person to have a TRUSTED person of their choice advise and consult with them over a decision, and it allows them to act on what they VALUE. And if the person changes their mind, that is their right.

For example: Let's say the choice is to stay in the home or move to a retirement home.

A guardian find it easier to manage someone under more control at a retirement home or even a long-term care facility. They would care less about the emotional and psychological damage caused by uprooting the person and disposing of all of their possessions.

However, A Supported Decision Making Assistant would gather the information necessary to present the pros and cons, would have a meaningful discussion with the Individual without trying to direct the choice, and the choice to move would be what the person wanted. Since they still have the right, they can sign to do it.

And the next day, when that person seems confused because they forgot about making that decision, the SDM Assistant can remind them about how the decision was made and show them their signature.

Q: What if my uncle just has so much ego that he won't let someone assist him in decisions? What if he doesn't recognize that things have changed, and he has trouble with this? Doesn't he need a guardian to protect him from himself?

A: This is not uncommon. As changes happen gradually, many people simply do not notice the changes until it is late, or they have a psychological denial of it. It is better to respect them by sitting down and discussing examples in a positive and caring manner than it is to drag them by force into court and strip them of their rights and their dignity. When people see that they are having problems, they naturally want to try to make sure their needs are met and their desires fulfilled. They will usually choose help rather than continuing in an untenable and degrading life. But if they choose the later, when it becomes life threatening, there is the option of institutionalization or guardianship. This is the back-up plan for the most severe cases.

Q: I was put into guardianship because I am an amputee in a wheel chair, or I'm blind, or I have some other physical disability, but my mind is perfectly sharp. My hands can't write, but I can think clearly. How can I get things done and be protected?

A: It was wrongful to put you in guardianship for any of those reasons and take your rights away for someone else's control. Many people have the same conditions as you and get through life just fine. A Durable Power of Attorney would be able to help, but you can't have that because you have a guardian. You can escape the guardian under this law by initiating a D-SDM agreement.

Q: People claim my gambling and spending habits are so bad that I require the protection of guardianship in order to keep me from losing all of my money, my home and my livelihood. Is that true?

A: No. There are several ways to deal with these problems right now. Losing all of your rights is never the answer. There are organizations to help with addictions of any kind. These are Mental Health issues, and should be dealt with as that rather than legal rights deprivation. One of your rights as a human being is to make mistakes and even be foolish in the eyes of others. The only time authority should be allowed to step in is when you represent an imminent harm to yourself or others, just as when a judge may order an alcoholic to enter a 12 Step program.

Q: Who are the people most likely to fall victim to guardianship or conservatorship abuse and exploitation?

A: Anybody of any age or disposition. There are many cases of persons without any cognitive, mental, or physical deficiency have been taken to court and appointed guardians, even though they do not qualify for needing guardianship under State Law. Without this D-SDM law, anybody can assert that anybody else has a problem and request an emergency hearing to skip formalities such as due process, and even the presence of the target person in court. They simply file a false petition claiming either mental or physical vulnerability needs to be addressed immediately for the person's "best interests," and therefore they need another person to control them. It doesn't need to be true, because the judges seldom require evidence or follow due process or the law's requirements.

People who are most likely to be subjects include: the elderly, alcoholics or persons with other substance abuse problems, people recovering well from illness in hospitals, and persons with disabilities. Someone can even get you into guardianship because they want your money or property if they make up a good story. Sometimes even family members may have a family member put into guardianship because they don't like their choice of significant other, or their lifestyle.

Q: Who does this to people?

A: The answer is different in different places and situations. It can be a crooked or poorly trained Adult Protective Services agent who knows nothing about you and is just listening to someone who claims to be speaking on your behalf, a hospital social worker or nursing home administrator who wants to make sure they get paid, a family member who covets your wealth, a neighbor who dislikes you, etc. In effect, anybody who is willing to make up a story, bears a grudge, or has a motive to exploit you for profit.

Q: Who is given the power over me?

A: It is sometimes a “professional” guardian or conservator. The term “professional” does not mean they are trained or have any particular ability or motive to help you. It just means they get paid to have that role. They are usually either an attorney who works in that probate court, or someone from a professional guardianship company. A non-professional may be a family member or non-relation.

Q: I heard an executive of the Guardianship Association on a podcast saying that professional guardians hardly make enough money to stay in business, and that they are all good-hearted people who are always trying to provide the best care. Why would we not want that?

A: Because it is a complete lie. Professional guardians and conservators, especially the ones who are probate attorneys make lots of money, and it comes directly from the ward's accounts. There is little oversight, and probate law is one of the most lucrative forms of law. In fact, probate law and the guardianship industry have made such vast amounts of money that the corruption surrounding itself has powerful lobbies to undermine reform. Not just guardianship associations, but even the probate judges associations and large elements of the State Bar. They know every way to make money off the victim and make sure the law Bills that would prevent that never pass.

Q: Well wouldn't a professional be working to ensure my best interests?

A: Too often the answer is “No.” The theory is yes, but in practice that may be a low priority or no priority. The professional's priority is to make money for themselves while protecting them self from liability. In exchange for that “service” you lose all of your rights to self-determination, possessions, property, family and friend associations, and to defend yourself by law. You cannot vote if they say so, and they can even force you to get divorced. The fact is that a guardian or conservator has been put into a position where they can exploit you while they enjoy the full protection of the court to do so. Your

family will take the professionals to court, and you'll have to pay the guardian and conservator to defend themselves. That works well for them financially, but you lose the case and everything you owned.

In fact, when a court sees that a family member who clearly wants to exploit and otherwise abuse you wants to become your guardian or conservator, even if you object to them by your statutory right, that person often gets appointed anyway. That's because the judge knows that it will certainly lead to court action. That means probate attorneys will need to be hired, and they make even more money from that than their regular billing for services as guardians and conservators. In a crooked probate court, the idea is to increase litigation to increase profits for the attorneys and other professionals.

Q: What does the judge get out of it?

A: Judges are paid a LOT to “ensure integrity.” They keep that job by supporting their attorney appointees in exploitation. For the greedy, there is no such thing as enough power and money. By helping the attorneys of their court, they enjoy election support, receive election contributions, and don't have to spend money running against opposition for re-election. In some proven cases judges have also been found by Law Enforcement to get kick-backs and even to be owners of nursing homes where their victims are sent.

Q: How do attorney and private company guardians and conservators get away with this? Isn't a judge going to hold them accountable when evidence is presented in court?

A: No. Attorneys are only accountable to three entities. 1) If the judge who appointed them is crooked, that judge will certainly abuse judicial discretion to find in favor of the people they appointed, regardless of testimony or evidence to the contrary. 2) The State Bar has a Grievance Commission, but they nearly always absolve the attorney, and in rare cases where proof is inescapable, the consequence is usually a minor token fine, nowhere near the amount of loss to the victim. And the Commission is not law enforcement, so they cannot provide criminal action anyway. 3) That leaves Law Enforcement. The state Attorney General office is made up of attorneys, and they don't go after other attorneys or judges very often. Local law enforcement will even ignore criminal acts by guardians and conservators because it is under the civil Probate jurisdiction. And Federal law enforcement, which is supposed to go after crimes committed in racketeering, human trafficking, elder abuse (Americans with Disabilities Act), and even deprivation of rights under the Color of Law (using your legal authority to commit illegal acts), just doesn't want to engage. They won't say why, and even legislators are demanding that they explain why they fail to act.

Q: How does the judge get away with it?

A: Similarly to the situation with attorneys, the judges also enjoy protection from the BAR Association, the Courts system, and unwillingness of proper law enforcement to intercede. Also, judges are provided a high degree of legalized “immunity” in order to use discretion to ensure a “just” outcome. But a crooked or lazy judge can abuse these powers in violation of rights and law. In effect, the worst that can happen is a Court of Appeals will simply reverse their decision. Good luck even getting your case to the CoA. You probably don't have use of your money and are not allowed to get an attorney who isn't working under that judge.

There is a Grievance Commission about judges in each state. It is just as useless as the ones for attorneys. And when you make a complaint, you just told the bad guys everything they need to know to cover their tracks.

This means that a judge effectively has absolute power to abuse the law so you can be exploited.

Q: Don't people notice this?

A: Of course they do. The victims all across America notice it, but are prevented from defending themselves. The secondary victims, family and friends, notice and try to act, but that plays into the scam and they lose everything. Many become activists, trying to spread the word and get action, but few people who have not yet faced this seem interested- until the scam affects their own family. The media notices, but seldom cover it. It has reached a point now that so many are affected that the voice crying out for change is becoming loud.

Q: Who prevents legislation from fixing this?

A: The opposition is made up of the very people who are supposed to ensure the integrity of the process. They talk as if they are trying to work for the good of the people, but a fair look at what they say and do shows the opposite is true. Laws are made with loopholes that allow the exploitation to continue. Lobbies like the State Probate Judges Association, the State Bar Association, the Professional Guardianship Association all work to maintain the status quo. There is great pressure on legislators to make sure the paths towards profit continue, or they risk losing campaign funds and other support.

Q: But are there no honest attorneys or judges?

A: Of course there are. But the number of attorneys and judges who are dishonest is great enough that it has created a major systemic problem across the USA. The laws and legal protections have created a

situation where there is just so much money to be made, and as an exploitative industry it is so easy ,and so well protected, that the temptation to exploit the helpless is extreme. Judges and attorneys are actually incentivized to act corruptly because of the way the laws are designed.

Q: Isn't it unlikely that every attorney working through a crooked probate court is a crook? Why can't I find one that will work in my interests?

A: Obviously there are attorneys who object to this corrupt behavior. Imagine you are an honest attorney and you get a job in what turns out to be a crooked probate court. If you complain, or file grievances with the Court Administration or Grievance Commissions, you face the end of your career where you live, and maybe in the State. You will be retaliated against. You will have Grievances filed against you. You will not win cases. If you want your job, you can represent your client for the minor things, but when it comes to anything significant, you have to go along with the scam. No choice.

Q: Isn't that a complete perversion of what our country stands for and how our judicial system is supposed to work? What do we do about it?

A: Yes, it is exactly that. What we do about it is to get enough voters to tell our legislators that we want real solutions that uphold our rights and make these abuses impossible without the crook being held accountable. The best answer is the Default Supported Decision Making Law described here. It gets your head out of the lion's jaws by keeping you out of court in the first place, and it defends YOUR RIGHT have control of your own life.

2) FAQ: THE DEFAULT SUPPORTED DECISION MAKING LAW PROPOSAL

Q: Different versions of Supported Decision Making laws have been a popular proposals for a solution for several years, so why is this Default SDM proposal the answer when the others were not?

A: SDM is popular because in theory it supports a person's rights to self-determination regarding their life. Unfortunately, politicians tend to water it down by allowing courts to determine what rights a person keeps or loses. They also generally allow guardians to have control, despite the intention. By keeping the matter in the hands of the court, they open the matter to exploitation because there is no control over the court. This law would make D-SDM the universal default, so it never has to go to court in the first place.

Here is a list of some Supported Decision Making signed Laws and proposed Bills:

- [Alaska Supported Decision-Making Statute \(2018\)](#)
- [Colorado Supported Decision-Making Statute \(2021\)](#)
- [Delaware Supported Decision-Making Statute \(2015\)](#)
- [District of Columbia Supported Decision-Making Statute \(2018\)](#)
- [Indiana Supported Decision-Making Statute \(2019\)](#)
- [Louisiana Supported Decision-Making Statute \(2020\)](#)
- [Nevada Supported Decision-Making Statute \(2019\)](#)
- [North Dakota Supported Decision-Making Statute \(2019\)](#)
- [Rhode Island Supported Decision-Making Statute \(2019\)](#)
- [Texas Supported Decision-Making Statute \(2015\)](#)
- [Washington Supported Decision-Making Statute \(2020\)](#)
- [Wisconsin Supported Decision-Making Statute \(2018\)](#)

Alaska: 21 pages
 Colorado: 9 pages
 Delaware: 8 pages
 Dist. Columb: 8pages
 Indiana: 10 pages
 Louisiana: 7 pages
 Nevada: 8 pages
 North Dakota: 5 pages
 Rhode Island: 9 pages
 Texas: 8 pages + Agreement: 2 pages
 Washington: 217 pages
 Wisconsin: 4 tight pages

They have the same root problems. They are written so that a guardian or judge can still take away your rights and give them to a stranger, and keep them there. Rights under the US Constitution are still not ensured, or are abandoned altogether. In fact, several specifically let a guardian decide if you get to use SDM and what decisions they will let you make. So these laws totally fail to accomplish anything.

Q: I see that several of the States which have adopted SDM laws, or are introducing SDM Bills allow the guardian to remain when someone enters an SDM Agreement, and the guardian retains the power to act in ways which may be contrary to the Individual's wishes and even needs. If that happens, what is the value of having an SDMA if the guardian or conservator can just act adversely anyway?

A: This is a valid point, and it is the basis of why this particular law proposal terminates the guardianship and conservatorship for most cases, and is the default unless doctors evaluate the Individual and doctors, not a judge, conclude that the Individual has lost so much mental capacity and reason that they present a continuous likelihood of causing serious life threatening harm to them self or others. For all cases short of that threshold, the SDM allows a person to be self-determinative.

Q: Wouldn't a trusted family member or friend always be a guardian who would work for the benefit of the individual? Shouldn't family automatically come first in all cases?

A: No. The subject person's wishes should always be honored above any other claims because it is *their* life. There are plenty of families with greedy, selfish and crooked members who would act for their own interests against the individual. Some family members will use “undue influence” or subterfuge to get into the good graces of the individual, and thus obtain legal power over them to exploit. But- that being said, even having a benevolent guardian means all of your rights are now in their hands. You may find you disagree with what THAT person thinks is best for you, but you have no rights, so what you want gets overruled in favor of their vision of what they want your life to be.

Q: In that case, wouldn't a Professional Guardian or Conservator be objective and benevolent because they have a neutral position?

A: Often that answer is a resounding “no. The “professional” is not neutral. They are in the business for their own interests. A professional usually has a lot of wards, so they hardly spend the time to know what you want and what is important. They have a standardized idea of what works best for THEM, not you. Their idea of what is “best for you” often has no empathy or consideration for anything beyond keeping you alive, and they function to make money off of you, so that is their priority. They have every reason to sell your home and place you in a Long Term Care facility so there will be less legal liability for them. And they have an incentive under the law to create more billing hours for themselves so they can get the maximum profit from you. The non-attorney professional is bad enough this way, but when it is an attorney, you now have a person who has expert understanding of how to manipulate the law and the court, and they will be defended by the judge and knows probate law and court procedure well enough to prevail in any legal action you take. An attorney/professional is unfairly advantaged to win and avoid accountability, regardless of their abuse and exploitation.

Q: Isn't a “professional” guardian or conservator better capable of managing a person's life?

A: The record shows this is untrue. In fact, in most States there are no professional requirements, not even training or registration to be a guardian or conservator. They are simply people who make money by providing a service. And since it is rare that they live with the ward, the professional may be a total stranger who knows almost nothing about the Individual's personal life. The great many examples in the news and from public complaints show that professional guardians and conservators are often the cause of problems, making terrible, even destructive decisions, or committing abuse and exploitation.

Q: Why shouldn't a judge decide if you are competent or incapacitated?

A: Because this is a Health Care matter, not the settling of an estate or criminal matter. The judge is not a psychiatrist and therefore has no expertise in the question of your cognitive level. The mental condition of a person can only be determined by qualified doctors, and should certainly be redundantly proven before institutionalization.

Q: Where do we draw the line between competence and incapacity vs. incompetence and incapacity?

A: It is subjective, meaning different things to different people, and each Individual's case is different. Mental decline is not an ON-OFF affection. The areas of decline are different from person to person. It is usually gradual, and people can be anywhere on a sliding scale. The line of demarkation between being affected in some way vs. being a danger needs to be kept simple, and there needs to be a high bar for determining when a person simply cannot function to the point that they need to be institutionalized. The Default SDM recognizes this and provides a tool for the person to get the level of help and kind of help they need- even if they were deemed incompetent or incapacitated in the past.

Q: If I enter into a Supported Decision Making Agreement, am I opening myself up to being declared incompetent, incapacitated, or otherwise disabled to the point where someone could discriminate against me?

A: No. In fact, the law states otherwise. It is not an official admission. It is you wanting some level of help, but you will always have the last word on any decision. Unless you have been found to need institutionalization because you are an imminent and continuing harm to yourself -which is another matter- nobody can prevent you from any actions simply because you have a SDM Agreement. And that SDM Agreement can remain private, with the exception of your SDM Assistant producing it to show they have legal permission to act with your consent.

Q: Does an SDM Agreement have to be made when I am starting to notice mental decline or later? Or does it have to wait until I have already been determined to have cognition challenges?

A: No. Anybody can enter into a SDM Agreement at any time, regardless of their mental condition.

Q: Why would I give another person authority to act on my behalf, when I could overrule their action?

A: Because for example, you may wish to use it if your hand shakes too much from neural degeneration to be able to sign documents. Maybe you want to be ready in case you are hospitalized with a brain injury, or after you were hospitalized and want to avoid guardianship. Maybe you are

developmentally disabled and your parents want to force you into guardianship, but you are capable of managing life with some help and even holding a job. Maybe you are blind and find that certain things are easier this way. Maybe you have a mobility disability that makes it time consuming or expensive to manage your needs. Maybe you want to set something up for a future scenario and you like this system better than Power of Attorney.

Q: Don't we already have the equivalent to Supported Decision Making with Durable Power of Attorney and Patient Advocate designations?

A: No. These are limited for when they can be created, and they are vague and broad in scope. They can only be created BEFORE a person is ruled by a court to be "incompetent" or "incapacitated." Also, the judge can revoke them at whim and appoint a stranger as guardian or conservator. And if a person has set them up prior to being found incapacitated or incompetent (having seen an Elder Law Attorney to do that), after crossing that threshold of legal finding of cognitive deficiency, if they want to change their DPoA, they can no longer designate the replacement.

Q: What if the person has dementia, or other mental illness or cognitive decline to the point where they would suffer severe physical damage or loss of life without help? Wouldn't it be foolish not to give custody and control to another person so they can be watched and guided? Don't we want them not to do stupid things?

A: No. Beyond making sure they have care and are safe, what we want for them and our opinion of what is best, is merely our subjective personal opinion. That doesn't make it legitimate, or even wise. Just different. A guardian's judgment can also be entirely flawed and destructive, as many examples prove. At no time whatsoever should a person be deprived of their fundamental rights protected under the US Constitution, or their moral rights as implied under the US Constitution. Even if they are insane or in a coma, they still deserve their fundamental rights which protect them from predation. However, when the need for care arises which exceeds a person's cognitive ability, there is no reason not to provide a SHARED responsibility. In that case, the SDM gives powers to another person to act only with the consent of the individual. They cannot have absolute control based on the responsibilities of care. It is NOT appropriate to give custody, and control of one person to any other, even trusted family or a theoretically benevolent professionals, *while removing the person's rights*. Your personal idea of what is best for another person is not more valid than their personal desires for their own life. Our freedoms include the right to make what other people would consider to be poor choices. The law already has a mechanism to address addictions. The transparency that is absent with guardianship is

present in SDM, so concerned third parties can alert authorities, including medical personnel when someone has a self-destructive problem. Action should not include removal of all of their rights.

Q: Does a D-SDM system entirely abolish guardianship and conservatorship?

A: No. It removes the vast majority of cases from guardianship and conservatorship- if the individual wishes, but guardianship and conservatorship must be an option for those who DO meet the high bar for institutionalization. But even then, the law must reflect that a person always has certain rights, so there should never be such a thing as plenary guardianship where all rights are removed from the person.

Q: How does a D-SDM Assistant differ from a Guardian or Conservator?

A: In this D-SDM system, the difference is in authority. The person gets to keep their authority while only choosing to SHARE an amount of that authority with someone they choose. And they can immediately replace that person at will if they are “unsatisfactory” (or crooked). The D-SDM Assistant can NEVER overrule the will of the person without consequences. The D-SDM Assistant is open to oversight by the person and by law enforcement for criminal acts because they are not protected under probate civil law.

Q: What protections and help does SDM provide?

A: The person can have the SDM Assistant be given some power to act on their behalf in all of the ways a guardian *should* act, such as making arrangements, paying for things, having access to the person at any facility, general care, consulting over major decisions, dealing with banks, the IRS, etc., even to take legal action with the consent of the person, if the person desires that.

Q: Other SDM laws and Bills only offer the chance to have someone consult with you about what you want to do. But this proposal adds the dimension of delegating powers that would normally be held by a Durable Power of Attorney, a Payee, a Health Care Advocate, a Guardian, or a Conservator. So what is the reason for that?

A: There are several reasons: A Power of Attorney or Health Care Advocate can only be created by the Individual before they are declared incapacitated or incompetent. After that, the person has a guardian and/or conservator. But in this proposal we recognize the sliding scale of ability which courts and the other systems seldom differentiate. The Individual should have self-determinative abilities until they simply cannot, and they should not be subjected to being made helpless by improper action. Yes, under this law these forms of control are replaced by the SDM Agreement. The SDM Agreement is more

detailed and offers the choices rather than expecting a person who may already be mentally compromised to think of them off the top of their head.

Q: Can I be exploited under SDM?

A: Yes, but anybody can be duped and exploited, defrauded, robbed, abused, etc. in the prime of life. It happens. And guardians do all of that too. So guardianship does not make you immune. The best way to prevent it is the openness and transparency that comes with a good Supported Decision Making Agreement. It provides safeguards not available to someone in guardianship, and it allows other people to recognize alleged abuses by the SDM Assistant and to notify the proper authorities. That is totally blocked under guardianship.

Q: I notice that the other SDM laws and Bills disallow a person who has committed certain acts against the Individual from being their SDM Assistant. Why doesn't that make sense?

A: Because of degree, circumstance, and above all- the choice of the individual. For example, suppose 30 years ago your adult child, then only 20 years old, stole some money from you and struck you. But 30 years have gone by, and they are your child, and you forgave them long ago. They became a very trusted and honest, safe person. If they are the person you really want helping you, it makes sense that they be allowed. If you didn't trust them, you might not select them.

Q: If I agree to be an SDM Assistant, and I end up accidentally giving advice that is somehow problematic, am I liable?

A: No, not if you did it in good faith with good intentions. However, if you did it knowing it would cause loss or harm, and knew you had other options, and you did it to benefit anyone, including yourself, over the individual, then you would have committed a fraud and would be criminally liable.

Q: If I am an SDM Assistant, and I advise a person one way but they use their authority to do something else that ends up being harmful to them self or others, am I liable?

A: Absolutely not. You can never be held responsible for the action of another if you advised them to the contrary. Someone would have to prove that you advised them to do what they did. Your best practice would be to log decision requests and state your advice for anything significant.

Q: What if I do not have someone I know well enough to trust as my SDM Assistant? Maybe I am old and have no friends and family left.

A: You can pick anyone who satisfies you. There can be professional SDM Assistants if you cannot find someone, but you will have to pay for their assistance. It would be helpful for our society and to the program to have religious institutions and public community centers, etc. organize SDM Assistance for people in this situation.

Q: Hasn't SDM been criticized as just a replacement for Guardianship?

A: It has, but the implication that one flawed system is being replaced by another flawed system which acts to control someone is wrong if THIS version is adopted. Guardianship removes rights and becomes someone else's means of control over a person. SDM is just a tool that a person can use to help them get the help they need to get by in life when they have a cognition degradation of any degree. It is very flexible, and provides these things where DPoA and Payee, and Patient Advocate designations all fail.