

FACT SHEET
Supported Decision Making Instead of Guardianship:
An International Overview
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Protection and Advocacy systems uniformly value, encourage and promote the independence, equality, freedom and dignity of people with disabilities. Guardianship and other related substitute decision-making systems can infringe on some or all of those values. Spurred by people with disabilities, their advocates, legal scholars and social scientists, some states and several countries have begun to adopt systems of “supported decision-making” as an alternative to guardianship.

Supported decision-making has been defined “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.” It is a construct that maximizes independence, uses mainstream mechanisms rather than intrusive interventions, promotes self-advocacy and is entirely consistent with basic tenants of the disability rights movement.

Although the United States lags behind some other countries in adopting supported decision-making models, at least one judge fully embraced the concept when terminating a guardianship. The court recognized a need “to reconcile outmoded, constitutionally suspect [guardianship] statute[s] ... with the requirements of substantive due process and the internationally recognized human rights of persons with intellectual disabilities.” Accordingly, three years after a mother obtained guardianship of her married daughter with intellectual disabilities, the Surrogate Judge found: “[G]uardianship is no longer warranted because there is now a system of supported decision making in place that constitutes a less restrictive alternative to the Draconian loss of liberty entailed by a plenary 17-A guardianship.” The judge further concluded:

The instant case provides a perfect example of the kind of family and community support that enables a person with an intellectual disability to make, act on, and have her decisions legally recognized...Because Damaris has such assistance, she is now able to engage in supported decision making, rather than having substituted decision making, in the form of guardianship, imposed upon her by the court.

This Fact Sheet sets out some of the underpinnings of supported decision-making (particularly in international law) and surveys activities here and in other countries. Legal claims that may be available to challenge guardianship schemes using United States law – *e.g.*, the ADA, the 14th amendment – or state law are not considered or are mentioned only briefly.