



Center for Public
Representation

WRITTEN TESTIMONY OF THE CENTER FOR PUBLIC REPRESENTATION

IN SUPPORT OF S. 109

Submitted by Morgan K. Whitlatch, Director of Supported Decision-Making Initiatives

Hearing before the Joint Committee on Children, Families and Persons with Disabilities

September 18, 2023

Dear Chair Kennedy, Chair Livingstone, and Honorable Members of the Joint Committee on Children, Families and Persons with Disabilities:

My name is Morgan Whitlatch, and I am the Director of Supported-Making Initiatives at the Center for Public Representation (CPR). I am here today to express CPR's strong support of Senate Bill 109, legislation that would establish the legal framework for Supported Decision-Making (SDM) in the Commonwealth of Massachusetts.

CPR is a legal advocacy center that is committed to protecting and advancing the rights of people with disabilities by using legal strategies, systemic reform initiatives, and policy advocacy. We have offices in Easthampton, New York, and Washington, D.C. We have been an active member of the Massachusetts Advocates for Supported Decision-Making (MASDM), a large and diverse coalition of leading disability and elder justice and advocacy organizations working closely together with the bill's sponsors for the passage of SDM legislation. CPR is also a national leader in advancing SDM. We lead the State Team Community of Practice for the Center on Youth Voice, Youth Choice, a national resource center that works to increase access to alternatives to guardianship for youth with intellectual and developmental disabilities. We also regularly provide training, consultation, and technical assistance on SDM to people with disabilities, family members, and other advocates around the country.

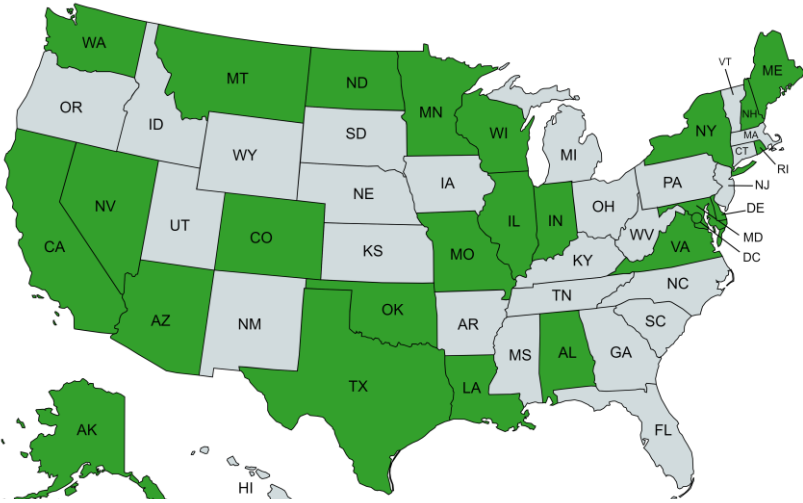
Under the SDM model, people can turn to a network of supporters – family members, friends, colleagues, and others they trust – to help them make their own decisions regarding healthcare, finances, jobs, and other personal matters. It is a model that allows adults with disabilities to exercise their autonomy and promotes self-determination. Based on what we have learned from our work nationally and in Massachusetts, too many people are unnecessarily placed under

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restrictive guardianships, even when they would be able to make their own decisions with individualized assistance from people they trust. Widespread recognition of their right to use SDM as an alternative would allow them to retain their legal rights and dignity.

CPR has been piloting SDM in Massachusetts since 2014 with partners that include Nonotuck Resource Associates, Advocates, Inc., Massachusetts Families Organizing for Change, Multicultural Community Services, and the Northeast Arc. From our pilots, which have been independently evaluated, we know that the SDM model works, strengthens support networks, and can transform lives. To see evidence of this, you have only to hear some of the powerful stories shared with you today by Massachusetts pilot project participants, including Amanda, Johnathan, Jimmy, and Cory’s mother Malia. CPR has expanded our SDM pilot work to Georgia, and we know that other states are also piloting SDM with great success.¹ For more stories about SDM, please visit our website: www.supporteddecisions.org.

Through our national work, we have seen formal recognition of SDM gain momentum across the United States. Legislatures in at least 24 other states and the District of Columbia have already passed statutes that formally recognize SDM agreements and/or specifically require courts to consider SDM as a less-restrictive option before appointing a guardian. These include Texas (2015), Delaware (2016), Wisconsin (2018), Maine (2018), the District of Columbia (2018), Missouri (2018), Alaska (2018), North Dakota (2019), Indiana (2019), Nevada (2019), Rhode Island (2019), Washington (2020), Minnesota (2020), Louisiana (2020), Montana (2021), Virginia (2021), Colorado (2021), Illinois (2021), Oklahoma (2021), New Hampshire (2021), Maryland (2022), New York (2022), California (2022), Alabama (2023), and Arizona (2023).² We strongly urge Massachusetts to join them.



We have heard from partners in a number of these states that implementing these SDM statutes has resulted in people with disabilities improving their decision-making skills and experiencing greater self-esteem and better family relationships. In addition, there has been an apparent

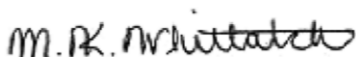
decrease in the need for guardianship. For example, since Wisconsin's SDM law was introduced, the annual number of guardianship requests in that state has decreased by 20 percent.³ This suggests that passing Senate Bill 109 would not only benefit people with disabilities and their supporters by making it easier for them to access and enforce their use of the SDM model. Passage would also benefit the probate courts by reducing the financial and administrative burden of having to address guardianship petitions for people who do not need them. That said, SDM does not replace guardianship for those who do need it. Rather, SDM is an additional and less restrictive option -- another legal tool in the decision-making toolbox that people with disabilities and their families can consider using.

SDM has also been recommended and endorsed by a number of respected national organizations and federal agencies, including the American Bar Association, the National Guardianship Association, The Arc of the United States, the U.S. Department of Education, the U.S. Department of Health and Human Services, the American Association on Intellectual and Developmental Disabilities, United States Senate Special Committee on Aging, and the National Council on Disability.⁴ SDM is also recognized as a less restrictive alternative in the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA),⁵ a 2017 update to the model guardianship law that requires courts to rule out such alternatives before appointing a guardian.

Advancing SDM was also recognized as a priority during the Fourth National Guardianship Summit, which was convened in May 2021 by the National Guardianship Network, with the support of the State Justice Institute, the Borchard Foundation Center on Law and Aging, and the Syracuse University College of Law. The Summit Delegates adopted recommendations⁶ that urged states to make some of the very reforms that Senate Bill 109 would make to Massachusetts law, including "provid[ing] education, training, and outreach programs on supported decision-making"⁷ and requiring guardianship petitioners to plead affirmatively that SDM is "one of the alternatives that has been tried or why it is not feasible."⁸

In short, CPR's experience with SDM has shown that it is a viable and beneficial alternative to guardianship that is nationally recognized as a best practice in the lives of people with disabilities. Enactment of Senate Bill 109 would enable many more individuals and families in Massachusetts to access and enforce this innovative model. We urge you to favorably report this bill out of Committee.

Sincerely,



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¹ See Cathy Costanzo, Hon. Kris Glen, & Anna Krieger, *Supported Decision-Making: Lessons Learned from Pilot Projects*, 72 SYRACUSE L. REV. 99 (2022), <https://lawreview.syr.edu/wp-content/uploads/2022/09/99-163-Costanzo-2.pdf> (law review article prepared to inform the deliberations of the Fourth National Guardianship Summit held in May 2021).

² See TEX. EST. CODE ANN. §§ 1357.001 - 1357.102 (2015 & 2017); DEL. CODE ANN. tit. 16, §§ 9401A-9410A (2016); WIS. STAT. ANN. §§ 52.01-52.32 (2018); ME. STAT. tit. 18-C, §§ 5-102, -301, -304, -317, -401, -405, -502, -503, -506 (2018); D.C. CODE ANN. §§ 7-2131 – 7-2134 (2018); MO. REV. STAT. § 475.075(13) (2018); ALASKA STAT. ANN. §§ 13.56.010-13.56.195 (2018); N.D. CENT. CODE ANN. §§ 30.1-36-01 - 30.1-36-08 (2019); IND. CODE ANN. §§ 29-3-14-1 - 29-3-14-13 (2019); NEV. REV. STAT. ANN. §§ 162C.010 - 162C.330 (2019); 42 R.I. GEN. LAWS ANN. §§ 42-66.13-1 - 42-66.13- 10 (2019); WASH. REV. CODE ANN. §§ 11.130.700 – 11.130.755 (2020, eff. 2022); MINN. STAT. §§ 524.5-102, -310, -409 (2020); LA. STAT. ANN. § 13:4261.101- 13:4261.302 (2020); MONT. CODE ANN. §§ 72-5-305(3), -319, -316 (2021); VA. CODE ANN. §§ 64.2-2000, -2003(B), -2007(C) (2021); COLO. REV. STAT. ANN. §§ 15-14-801 - 15-14-806 (2021); H. Bill 3849, 102nd Gen. Assem., Act 102-0614 (Ill. 2021); N.H. REV. STAT. § 464-D:1 (2021); S. 198, 58th Leg., 1st Reg. Sess. (Okla. 2021); MD. CODE ANN., EST. & TRUSTS § § 18-101 – 18-109 (2022); N.Y. MENTAL HYG. LAW §§ 82.02 – 82-15 (2022, not yet effective); A.B. 1663, 2022 Reg. Sess. (Cal. 2022), S. 55, 2023 Sess., Reg. Sess. (Ala. 2023); S. 1291, 56th Leg., 1st Reg. Sess. (Ariz. 2023).

³ See WSAW-TV, *Guardianship requests decline as knowledge of alternative legal option grows* (Aug. 9, 2021), available at <https://www.wsaw.com/2021/08/10/guardianship-requests-decline-knowledge-alternative-legal-option-grows/> (stating that, in Wisconsin, “since the [SDM] law was introduced, guardianship requests have declined each year from 5,147 in 2017 to 4,146 by 2020”).

⁴ See Tina Campanella & Morgan Whitlatch, *Supported Decision-Making: U.S. Status and Trends*, 32 IMPACT 1 (2019), available at <https://publications.ici.umn.edu/impact/32-1/supported-decision-making-us-status-and-trends>.

⁵ See NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, *Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act* (2017), available at <https://tinyurl.com/b6uzh43k>. UGCOPAA is an update of Article V of the Uniform Probate Code, which is the basis of Massachusetts guardianship law in the Massachusetts Uniform Probate Code, G.L. c. 190B.

⁶ SUMMIT DELEGATES, *Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability - Recommendations Adopted by Summit Delegates*, 72 SYRACUSE L. REV. 29 (2022), <https://lawreview.syr.edu/wp-content/uploads/2022/09/29-40-Preface-2.pdf> (see Recommendations 2.1, 2.2, 2.3, 2.4, 3.3, 3.4, and 5.2).

⁷ Compare Fourth National Guardianship Summit Recommendation 2.1 with Section 1 of S. 109.

⁸ Compare Fourth National Guardianship Summit Recommendation 2.3 with Section 5 of S. 109.