

HB

336

<TARGET><BILL>HB 336</BILL><SUBJECT>HB
336</SUBJECT><COMM>SJUD30</COMM></TARGET>

Alaska Legislature
Representative Charisse Millett

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Sponsor Statement for House Bill 336

“Supported Decision-Making Agreements Act”

With over 100 wards per public guardian Alaska has one of the highest rates of full guardianship in the nation. Studies concerning individuals under full guardianship have found that such individuals were significantly less likely to have any kind of paid employment and are less likely to be integrated into their community, than people provided less restrictive options to full guardianship.

Policy makers should engage in efforts to provide adults with intellectual and developmental disabilities (IDD) the needed tools to experience lives with the most autonomy, freedom and independence as possible. The Supported Decision-Making Agreements Act does just that.

Designed as a mechanism to enable adults with IDD to enter into newly created legal structures called supported decision-making agreements (SDMA), House Bill 336 will provide a less-restrictive alternative to full guardianship for adults with IDD. Guided by the experience of other states, HB 336 will enable adults with disabilities to maintain their rights to make decisions currently being taken away from them by guardianship orders.

The philosophy underpinning HB 336 contends that adults with IDD do have and should retain their constitutional and civil rights to live as freely and autonomously as possible. HB 336 will help change the current system in which one person tends to make every decision for adults with IDD, even though those adults have capacity to make many decisions on their own; to a system where adults who can make life decisions with support from others no longer have the right to make those decisions taken away from them by the government.

HB 336 will enable OPA to focus its efforts on adults who truly need full guardianship, while providing Alaskans experiencing varying levels of IDD an avenue to live happier and healthier lives.



DISABILITY LAW CENTER

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www.dlcak.org

April 8, 2018

The Honorable Matt Claman, Chair
House Judiciary Committee
Alaska State Legislature, Room 118
Juneau, Alaska 99801

RE: Letter of Support for HB 336 - An Act relating to supported decision-making agreements to provide for decision-making assistance.

Dear Representative Claman:

The Disability Law Center of Alaska thanks the House Judiciary Committee for considering HB 336, and through this letter lends support for this important legislation.

"An individual's right to make decisions about his or her life is a fundamental value in American law."¹ However, many individuals with intellectual or cognitive disabilities have been stripped of this fundamental right. Exercising its *parens patriae* authority, the State appoints a guardian for these individuals. When considering the impact of the appointment of a guardian on the life of an individual with a disability, U.S.

Representative Claude Pepper observed:

The typical ward has fewer rights than the typical convicted felon—they no longer receive money or pay their bills. They cannot marry or divorce. By appointing a guardian, the court entrusts to someone else the power to choose where they live, what medical treatment they will get and, in rare cases, when they will die. It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen, with the exception, of course, of the death penalty.²

¹ The American Bar Association, Resolution 113 (2017).

RESOLVED, That the American Bar Association urges state, territorial, and tribal legislatures to amend their guardianship statutes to require that supported decision-making be identified and fully considered as a less restrictive alternative before guardianship is imposed; and urges courts to consider supported decision making as a less restrictive alternative to guardianship; and

FURTHER RESOLVED, That the American Bar Association urges state, territorial, and tribal legislatures to amend their guardianship statutes to require that decision-making supports that would meet the individual's needs be identified and fully considered in proceedings for termination of guardianship and restoration of rights; and urges all courts to consider available decision-making supports that would meet the individual's needs as grounds for termination of a guardianship and restoration of rights.

² Abuses in Guardianship of the Elderly and Infirm: A National Disgrace, H.R.641, Subcommittee on Health and Long-Term Care, House Special Committee on Aging, 100th Cong., 1st Sess. (Sept. 25, 1987) (Comm. Pub. 100-641).

THE PROTECTION AND ADVOCACY SYSTEM FOR THE STATE OF ALASKA

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Guardianship is a significant deprivation of individual rights and therefore should only be used as a last resort. Supported decision-making is a meaningful alternative. Rather than extinguishing a fundamental right, supported decision-making recognizes an individual's 'legal capacity' — the right to make decisions and have those decisions respected. "All persons with disability have the right to develop a full human life and such development cannot happen without the opportunity to exercise capacity. To deny this opportunity to any group of persons is to perpetuate exclusion and to legitimize discrimination."³

The United Nations Convention on the Rights of Persons with Disabilities further describes this right in Article 12 – *Equal Recognition Before the Law*:

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

Recognizing the legal capacity of individuals with disabilities through supported decision-making is in consonance with the integration mandate of the Americans with Disabilities Act and the U.S. Supreme Court's decision in *Olmstead v. L.C.* "[B]y limiting an individual's right to make his or her own decisions, guardianship marginalizes the individual and often imposes a form of segregation that is not only bad policy, but also violates the Act's mandate to provide services in the most integrated and least restrictive manner."⁴

Supported decision-making has been formally recognized as a less restrictive alternative by the Uniform Law Commission that revised the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act⁵ in July of 2017.

³ Office of the United Nations High Commissioner for Human Rights, Legal Capacity, 20 (n.d.).

⁴ Leslie Salzman, *Rethinking Guardianship (Again): Substituted Decision Making as a Violation of the Integration Mandate of Title II of the Americans with Disabilities Act*, 81 University of Colorado Law Review 157 (2010).

⁵ "The Uniform Guardianship, Conservatorship, and other Protective Arrangements Act (UGCOPAA) is a comprehensive guardianship statute for the twenty-first century. It was drafted with extensive input from experienced guardianship judges and organizations that advocate for guardianship reform. UGCOPAA promotes person-centered planning to incorporate an individual's preferences and values into a guardianship order, and requires courts to order the least-restrictive means necessary for protection of persons who are unable to fully care for themselves."

<http://www.uniformlaws.org/Act.aspx?title=Guardianship,%20Conservatorship,%20and%20Other%20Protective%20Arrangements%20Act>

[T]he Act recognizes the role of, and encourages the use of, less restrictive alternatives, including supported decision-making and single-issue court orders instead of guardianship and conservatorship. To this end, the Act provides that neither guardianship nor conservatorship is appropriate where an adult's needs can be met with technological assistance or supported decision-making.

In closing, it is important to remember during deliberations on HB 336 that legal capacity – the right to make decisions - is a fundamental human right. “Whether an individual has the cognitive ability to understand and appreciate consequences of her decisions—the traditional threshold of the common law—is simply not determinative of whether she has legal capacity. Even if she does not possess those decision-making abilities, she cannot be stripped of her legal capacity.”⁶

Alaskans have a right to maximize their autonomy and independence through the use of the supports described in HB336. The Disability Law Center of Alaska fully supports HB 336 as it is consistent with the legislative, judicial and scholarly authorities cited herein.

Sincerely,

DISABILITY LAW CENTER OF ALASKA



David C. Fleurant
Executive Director

The Disability Law Center of Alaska is an independent, non-profit law firm and is the designated Protection & Advocacy system for the State of Alaska. Our mission is to vigorously enforce and advance the rights and interests of people with disabilities.

⁶ 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). Available at: <https://ir.lawnet.fordham.edu/ulj/vol43/iss3/2>



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21 MAR 2018 PM 1 L



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I support
HB 336!

JOE
CARR

Senator Chenault
145 main st
Loop Room 223
Kenai, AK 99661

Fishing with Tom Beatty at Kayaker's Cove 2007



Independent Living Center of Alaska
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Peter Micciche
 145 Main St. Loop
 Ste. 226
 Kodiak, AK 99141

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I support H13 J7C

I write/lead to support the
 Spirited Decision Making Act (H15536)
 that empowers Alaskans and government
 to form individualized support decisions
 Making agreements to foster greater independence
 for adults with disabilities

Nick Jordan (Secretary Alaska)
 Fishing with Tom Beatty at Newberry Lake



AADD
ALASKA ASSOCIATION ON
DEVELOPMENTAL DISABILITIES
P.O. Box 241742
Anchorage, Alaska 99524

To facilitate a united provider voice for best practices, advocacy, partnerships and networking.

April 5, 2018

Dear Representative Claman,

AADD, the Alaska Association on Developmental Disabilities, is the professional association that represents the voice of forty seven organizations in Alaska that provide home and community based services to individuals who experience intellectual and developmental disabilities. The Association is a strong supporter of HB 336 on Supportive Decision-Making Agreements.

AADD is pleased to be involved with WINGS (Working Interdisciplinary Network of Guardianship Stakeholders) which is a valuable project working on ways to improve our state's guardianship system. The group recognizes the difficulty Alaska faces with the high percentage of full guardianships awarded in Alaska compared to other states. Supported Decision Making Agreements (SDMA) is one of the alternatives that can support individuals that experience developmental disabilities to direct their lives and services. SMDA's provide a legal written framework for decision making in which a vulnerable adult may select persons of his or her own choosing to assist in life choices where decisions are complex for that individual. We all turn to experts in fields where we lack expertise such as taxes, health, legal affairs. HB 336 provides a legal framework for this commonplace practice for individuals who experience disabilities but who can and want to make decision about their own life.

AADD is grateful for leadership from Representative Millett in championing this bill. We believe that individuals who experience developmental disabilities will benefit from SMDA in supporting their choices and rights to direct their services. We look forward to the passage, enactment and implementation of SMDA in Alaska.

Sincerely,

Lizette Stiehr
Executive Director
AADD

HB 336: THE SUPPORTED DECISION-MAKING AGREEMENT ACT

Who Can Enter Into the Agreement?

A supported decision-making agreement may be entered into by an adult who wants assistance with getting information, weighing options, identifying possible outcomes, or communicating decisions to others. It is a tool that can help seniors who have an early diagnosis of dementia and who want a commitment of support from multiple caregivers, rather than relying only on their spouse or an adult child. Adults who want to continue the support and advice of family and friends but who don't want to lose responsibility for their choices can avoid unnecessary guardianships with supported decision-making agreements. And those adults who have guardians, but who understand the nature and effect of an agreement, can use the agreements to build their capacity by experiencing shared responsibility for making decisions – while still having the oversight of a guardian.

The individual should have the ability to understand that a supporter will be assisting him or her with particular decisions, and to be able to make decisions with the help of supporters.

Who Can Be a Supporter?

A supporter may be any adult, and is usually a family member or friend. The adult who wants a supported decision making agreement has the free will to choose who will serve as their supporters. The individual chooses people they trust, as trust is the foundation of the process. A supporter must agree to serve in that capacity, and must be willing to provide the time and commitment necessary to carry out the agreement. A supporter should be able to clearly understand and communicate with the person to be supported. Each supporter makes a signed declaration to provide the assistance that is described in the agreement.

What is the Scope of the Agreement?

The agreement will be individualized to the needs and strengths of the adult, who is called a "principal". It may be customized to fit the circumstances or situation that the principal is in.

The principal may allow their supporter to help gather information needed for a life decision, support the decision-making process by helping the adult evaluate and understand the options and consequences, and communicate that decision to other parties. The agreement may be established for one specific decision or for many decisions.

The agreement allows the individual to decide which decisions they would like assistance with:

- Obtaining food, clothing and shelter
- Taking care of physical or mental health
- Managing financial affairs
- Obtaining education or training
- Choosing and maintaining supports and services
- Finding a job

The individual may authorize a supporter to do any or all of the following:

- provide supported decision-making, including assistance in understanding the options, responsibilities, and consequences of the adult's life decisions, without making those decisions on behalf of the adult;

- assist the adult in accessing, collecting, and obtaining information that is relevant to a given life decision;
- assist the adult with understanding the information relevant to a decision; and
- assist the adult in communicating the adult's decisions to others.

What Authority Does A Supporter Have?

A supporter has no authority to make the decisions for the principal. A supporter is only allowed to assist the individual with whatever is specified in the agreement. Supporters help the individual gather information and process that information in order to make an informed decision. A supporter can also assist in communicating the decision to the necessary third parties. A supporter merely assists the individual -- the individual is "the decider." A supporter does not have the authority to make financial transactions on behalf of the principal.

What Rights Are Maintained By The Principal?

The agreements do not change any of the principal's existing rights to make decisions. If there is a guardianship order that overlaps with an area of decision-making described in the agreement, the guardian must approve of the agreement. The principal can reject the advice of a supporter.

What are the Execution Requirements?

The adult must sign the agreement voluntarily, with no coercion or undue influence. A supporter must indicate consent to serve in that capacity by signing the agreement and making a declaration, as well. The adult and each supporter must sign in the presence of either two witnesses or a notary public. If the principal has a guardian, notice must be given to the guardian and the guardian must approve in writing.

One of the advantages of the use of supported decision-making agreements is that the parties do not necessarily need an attorney, and no court involvement is required. It is therefore less expensive and may be more accessible to parties with limited financial means. It may also be less stressful to the parties than a guardianship proceeding.

How Does It Differ From a Power of Attorney?

A power of attorney grants an agent the authority to make decisions and handle matters without input from the individual. A supported decision-making agreement does not give supporters the power to make decisions—the principal retains right to make decisions for himself or herself.

How Long Does The Agreement Last?

The agreement may specify an expiration date; otherwise it is effective until the adult or a supporter terminates the agreement. The agreement will also become invalid if the principal is subsequently found to need a guardian or a conservator.

Is Personal Information Protected?

The agreement allows a supporter to access private information only as needed to assist the adult with disabilities in obtaining or accessing information relevant to making the decision authorized by the agreement. If a supporter needs access to medical or other records protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the adult must sign a HIPAA release giving the supporter that access. If the adult would like the supporter to access educational records, he or she must sign a release under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232g).

The supporter is required to ensure that the information is kept confidential and privileged and must protect the information from unauthorized access. The supported decision-making agreement does not prevent the individual from seeking their own personal information without assistance of supporter. The individual's right to their own information is preserved.

What Are the Liability Risks for Someone Relying on the Agreement?

The bill provides that a person shall rely upon the original or copy of the supported decision-making agreement. The bill absolves someone of liability for acting in good faith while relying on a supported decision-making agreement.

What about Abuse?

Because supported decision-making agreements are informal, there is no court supervision over supporters. The agreement is entered into in private and supporters are not subject to formal accountability through the bill. However, protections already exist by operation of other statutes. Principals who have free agency are protected by the laws that protect all of us from fraud, exploitation, abuse and other criminal acts. They are also protected from changes to their own legal capacity to make decisions. The availability of emergency petitions for temporary guardianship, Title 47 commitments, and the role of mandatory reporters of crimes against vulnerable adults are all unaffected by the bill or the agreements. For principals who have a guardian, there is also the additional oversight of court supervision of the guardian's actions. The bill and the agreements do not change any of those existing protections.

Can Supported Decision-Making Be Used With Guardianship and Other Alternatives?

A supported decision-making agreement theoretically could be used in conjunction with guardianship alternatives such as powers of attorney or a representative payee contract. It is possible that it could be used with a limited guardianship if the right to make the specific decision is retained by the ward. This use should be consistent, however, with the goal of promoting self-determination of the principal and avoiding a full guardianship. Other tools like Able Act accounts, Powers of Attorney, and Advanced Health Care Directives can also be used with the agreements.

CONCLUSION

Supported decision-making agreements can be an excellent tool to allow people to make their own decisions with the support they need. The supported decision-making agreement does not protect an individual from bad decisions. We all have the freedom to make bad decisions—this is known as the “dignity of risk.” Every life experience has some degree of risk, and we can learn from our mistakes as well as our successes. We often grow the most from our failures. People want to have responsibility for themselves and take on that risk.

There is a careful balance between supporting independence and protecting someone against risk. But the Supported Decision-Making Agreement Act would be a positive move away from paternalistic substitute decision-making and toward self-determination and equal access to choices about one's life.

Alaska Guardianship by the Numbers

- Petitions increased 59% between 2010-2016
 - Total for 2016 was 723 petitions
 - Approximately doubled the number in the last seven years
- Nat'l Core Indicators data shows 96% of Alaskan respondents had full guardianship
 - NCI average = 55% had full guardianship
- Assets controlled by guardians = \$100 million in the annual reporting (2017)

Alaska Guardianship by the Numbers, cont'd

- Elder population doubling between 2012-2042
- Average life expectancy for person who experiences I/DD
 - 22 years old in 1930s; now 70 years old
- Office of Public Advocacy (1500 wards (2017) statewide)
 - "Fully staffed": 1 guardian to 90 ward
 - 2/2017 report: 1 guardian to 100 wards
 - 1:109+ as of 1/2018
 - Lawsuit alleging failure to visit wards

Nationally recommended
Maximum: 1:40
(Nat'l Guardianship Assn.)

Legal Capacity in Alaska

- **“Incapacitated person”**
 - **Impairment of ability**
 - to receive and evaluate information or
 - to communicate decisions
 - **That causes a lack of ability**
 - to provide the essential requirements
 - for physical health or safety
 - without court-ordered assistance

Legal Capacity in Alaska, cont'd

- **“essential requirements” for health and safety**
 - health care, food, shelter, clothing, personal hygiene and protection
 - without which serious physical injury or illness is more likely than not to occur

Alaska Guardians' Authority

- **A full guardian of an incapacitated person has the same powers and duties respecting the ward that a parent has respecting an unemancipated minor**
- **Except:**
 - **Least-restrictive abode**
 - **Institutionalize w/o commitment proceedings**
 - **Abortion, sterilization, removal of organs**
 - **Withhold life-saving procedures**
 - **Prohibit voting**
 - **Terminate parental rights**
 - **Prohibit marriage or divorce**
 - **others**



Please Join the Council in Supporting HB ?

The Supported Decision Making Act

WHAT IS IT?

This bill provides equal access to decision making for adults with disabilities by authorizing written agreements between an adult and supporters which describe a process for making life decisions; including decisions related to a person's finances, where and with whom the person wants to live, the services, supports, and medical care the person wants to receive, and where the person wants to work. Supported Decision Making Agreements would be a legal alternative to full or partial guardianship. This alternative actively engages people with disabilities in creating the decision-making structures and tools that serve their lives and autonomy. This bill formalizes a support process, describes eligible supporters, creates a blueprint for valid written agreements, and provides safeguards to protect the well-being and independence of adults with disabilities.

Supported Decision Making (SDM) is a constitutional and civil rights idea which recognizes that full guardianship is often not the least-restrictive alternative for adults who experience intellectual or developmental disabilities, communication impairment, or dementia. All people use support for making the important decisions of life; needing more, different, or structured help with getting information, setting goals, weighing options, exploring outcomes does not justify unequal treatment and removal of all rights to make a decision.

WHY IS IT NEEDED?

Alaska has one of the highest rates of full guardianship in the nation. The Office of Public Advocacy (OPA) reports that public guardians are currently each responsible for over 100 wards. The recommended national maximum is a ratio of 1:40. Guardians in Alaska have control over \$100 million of assets of wards, with private guardianships having little or no practical oversight. Guardianship orders in Alaska have doubled in the last seven years, and will likely increase as our senior population grows.

Many good guardians encourage their wards to engage in making decisions about their lives and act on the preferences and choices made by their wards. However, research shows that adults under guardianship orders are less likely to have supported employment, and less likely to be integrated into the community than adults with less-restrictive alternatives to guardianship. Guardianship can lead to a cycle of learned helplessness, where the lack of authority to make decisions leads to increased withdrawal from planning or taking responsibility for adult decisions. Individuals with disabilities who are wards in Alaska report on the loss of independence, self-expression, and dignity that comes from being able to make choices about their lives. It is also important to note that Alaska has recently had an increase of the number of cases of financial exploitation by abusive guardians, problems that stem from the isolation of wards, the number of unexamined guardianship reports, and lack of required monitoring

by the courts.

HOW WILL IT WORK?

Supported decision-making empowers people with disabilities to use available support to make their own choices so they can live more independent and self-directed lives. So, how does this work? People with disabilities who want to use supported decision-making will:

1. Choose people they trust to help them make decisions.
2. Ask these individuals to be their supporters.
3. Think about the type of decisions they need help making.
4. Complete a written plan called a supported decision-making agreement
5. Provide the agreement to people like doctors and service providers

Then, when people with disabilities need to make a decision and want some extra support, they can call upon their supporters to help them through the process. Supported decision-making agreements are an excellent self-advocacy tool that people with disabilities can use to advocate for the right to make their own decisions, and to have the support they need to make those decisions. This process can be used to help plan for future decision making and avoid the need for a restrictive guardianship.

COMMUNITY SUPPORT FOR SDM AGREEMENTS:

With the Council's work and vision, Alaska has joined fourteen other states and the District of Columbia in implementing SDM at varying levels. The momentum toward legal recognition of written Supported Decision Making Agreements has been championed by the American Bar Association. Texas and Delaware have enacted Supported Decision Making statutes, and the New York Supreme Court has required SDM Agreements to be legally recognized by lower courts. The U.S. Administration on Community Living supports nation-wide adoption of Supported Decision Making Agreements through state WINGS grants. The Council supported the successful WINGS grant application for Alaska, and is a lead stakeholder in that collaboration along with the court system, the Long-Term Care Ombudsman, and the Office of Public Advocacy. Within the Council, there is also a work group that is facilitating a pilot project to develop and implement written SDM Agreements for several adults to replace or prevent full guardianships orders. The Council has presented on SDM Agreements to a wide variety of audiences and stakeholders this fall, and is creating more training for professional groups and agencies that are involved in adult guardianship or decision making for others. The Council will continue to work with the legislature, the court system, self-advocates community partners, and state agencies to create processes, forms, professional standards, and institutional support for legally recognized SDM Agreements.

RESOURCES:

- National Resource Center for Supported Decision Making
<http://supporteddecisionmaking.org>
- American Bar Association Resolution on SDM
https://www.americanbar.org/content/dam/aba/administrative/law_aging/2017_SDM_%20Resolution_Final.authcheckdam.pdf
- Videos of individuals and their families implementing SDM Agreements:
<http://youtu.be/wfsMAM781Xk>
<https://www.youtube.com/watch?v=wfsMAM781Xk>
<https://www.youtube.com/watch?v=DwnJ1nRR0Hs>

Talking Points:

Supported Decision Making Act

ASK

Please join the Council in supporting the Supported Decision Making Act.

GOALS

1. Adults with disabilities have support from people for making life decisions. Supporters agree, in writing, to take direction from these adults on getting information, talking about outcomes, telling other people about a person's choices, and doing other things that the adults want for support when they are making life decisions.
2. Adults with Supported Decision Making (SDM) Agreements do not have their rights to make decisions taken away from them by guardianship orders. They have the information and support that they need about their choices to exercise the same rights that others have to choose where to live, where to work, what services they get, how to spend their money, and who they spend time with.

WHAT

1. Supported Decision Making Agreements are planned and written by a set process, with supporters that are chosen by the person who wants support.
2. Valid agreements will have specific ways that supporters will help with decisions and will have safeguards to protect the well-being and independence of adults with disabilities.
3. There will be a basic template form for the SDM Agreements, but each Agreement will be individualized to express the directions of the person who wants support, and the ways they want to be supported to make decisions.

4. This Bill does not:

- A. Interfere or change the established law regarding legal capacity to make decisions or the court processes on petitions for guardianship or conservatorship. It is just another option for people to use.
- B. Alter or change a person's responsibility for their own actions
- C. Cost much; additional funding to implement these changes is estimated to be minimal

WHY IS IT NEEDED?

1. People who can make life decisions with support from others around them should not have the rights to make those decisions taken away from them by the government.
2. Alaska has one of the highest rates of full guardianship in the country. The number of guardianships in the state has doubled in the last 7 years. The courts can't keep up with monitoring all the guardianships to make sure rules and guidance are followed. The Office of Public Advocacy (public guardians) is overwhelmed and has too many wards to supervise. Many of the guardianships would be unnecessary if there was an option for a formalized SDM Agreement.
3. Research shows that people who make more decisions about their lives through alternatives to full guardianship are more involved in the community, more likely to have supported employment, and more likely to report satisfaction with their lives.

SHARE

A personal story or someone else's story about why this bill is necessary.

ASK

Please support the Supported Decision Making Act.

Alaska Legislature
Representative Charisse Millett

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Sectional Analysis of CS for House Bill 336(JUD) am Version R.A

Section One: Amending AS 13, which related to decedents' estates, guardianships, transfers, trusts and health care decisions, by adding a new chapter – chapter 56

- 13.56.010: Authorizes adults to enter into a supported decision-making agreement (SDMA) and spells out reasons why an adult may not enter a SDMA.
- 13.56.020: Describes the requirements adults must meet to be qualified as supporters in SDMAs.
- 13.56.030: Sets the parameters for what a SDMA must contain to be legitimate. Also deals with alternate supporters and sharing of information amongst supporters.
- 13.56.040: This section lays out the precise requirements for a SDMA to be valid, and how the principal and supporter(s) may formalize the signing of the SDMA.
- 13.56.050: Mandates that each supporter acknowledge their relationship with the principal and their responsibilities to support the principal.
- 13.56.060: Delineates who a witness to the signing of the SDMA can and cannot be.
- 13.56.070: Clarifies when a SDMA becomes effective and how long they last.
- 13.56.080: This section details how either a principal or supporter(s) of a SDMA may terminate all or portions of a SDMA. Likewise, explains what happens to a SDMA if only portions of it are terminated.
- 13.56.090: States the general duties of supporters.
- 13.56.100: Outlines the areas of a principal's life, including health, finances, education and communication, that a supporter may provide support in. Also provides a way for supporters to help the principal deal with health information covered under federal healthcare privacy laws.

13.56.110: Prohibits supporters from wrongfully guiding and influencing the principal in a harmful manner. This section also prohibits supporters from using or obtaining the principal's personal information without their consent.

13.56.120: Requires the supporter(s) of a principal to keep all information related to the principal confidential, protected and shielded from unauthorized use.

13.56.130: Directs people who interact with principals/supporter(s) to recognize the communication, requests and decisions made by the principal (with support from the supporter(s)) as if that communication, request or decision was made solely by the principal.

13.56.140: This section absolves a person (for three distinct reasons) from civil or criminal liability or discipline for unprofessional conduct if they either comply or decline to comply with an authorization in a SDMA.

13.56.150: Delineates the circumstances in which a principal is capable and has capacity. A principal doesn't lack capacity based on how they communicate. Likewise, a principal may make decisions without the support of a supporter(s). Lastly, the existence of a SDMA doesn't mean a principal lacks capacity.

13.56.160: Deals entirely with the affairs of a principal that a SDMA may cover. Work, healthcare, support services education, finances, living arrangements and more are all discussed.

13.56.170: This section spells out the multitude of support services, as referenced in 13.56.160, that supporters may provide the principal as agreed upon in the SDMA.

13.56.180: This section creates a statutory form for supported decision-making agreements as prescribed in the other sections of HB 336.

- 1) Introduction: Principal declares their desire to enter a SDMA.
- 2) Supporters: Supporters fill out their information and select what they will be helping the principal with. Provides for an alternate supporter to enter the SDMA.
- 3) Information Access Forms: Enables supporters to obtain the principal's private information.
- 4) Guardians and Conservators: Principal must declare whether they have a guardian or conservator.
- 5) Notice to Third Parties: Outlines the rights and obligations of supporters and ensures that a third party must recognize a principal's request or decision as declared under AS 13.56.130.
- 6) Duration and Termination of Agreement: Principals may end the agreement at any time by giving notice to their supporters.

- 7) Signature of Principal: Recognition of voluntary signature of the principal to enter the SDMA
- 8) Signatures of Supporters: Self explanatory
- 9) Declaration of Supporters: Supporters and possible alternate supporter sign again and acknowledge their role to help the principal with the mutually agreed upon terms.
- 10) Notarization or Witnessing: Provides area for notary or two witnesses to sign and make the SDMA official.
- 11) Approval by Guardian: Space for the guardian to approve the principal entering the SDMA.
- 12) Approval by Conservator: Space for a conservator to approve the principal entering the SDMA.

13.56.190: Definitions

13.56.195: The short title of House Bill 336 is the Supported Decision-Making Agreements Act.

Section 2: Amends Alaska Court Rule 402, Alaska Rules of Evidence, to clarify that the execution of a SDMA cannot be used as evidence of a principal's incapacity.

Section 3: Amends the uncodified law of Alaska by amending Court Rule 402 and clarifies the two-thirds majority vote of each house needed to achieve such action.

**Alaska Legislature
Representative Charisse Millett**

Session:

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House Bill 336 Summary of Changes

House Bill 336 as introduced underwent two substantial changes in the Committee process. In the House Health and Social Services Committee (designated below as Round 1 Changes) we revamped the bill and brought forth a new CS. In the House Judiciary Committee, we rolled out another CS (Round 2 Changes), this time leaving all sections unchanged, but inserted a model supported decision-making agreements form into the bill. Placing a model SDMA form in statute ensures that the Department of Health and Social Services is not responsible for the creation of these forms.

On the House Floor Rep. Millett offered one amendment to correct a drafting error. The amendment was adopted unanimously and is explained in Round 3 Changes.

The changes are described in greater detail below.

Round 1 Changes (House Health and Social Services Committee):

House Bill 336 (Version D) to CS for HB 336(HSS) Version O Explanation of Changes

Section 13.56.010, Page 1, Line 9: Deleted "another adult" and added "one or more adults"

Section 13.56.010(c), Page 2, Line 1-4: Changed language to clarify that an adult cannot enter into a SDMA if that agreement infringes on the authority of any guardian or conservator – but still gives principal the ability to enter a SDMA IF the guardian/conservator approves of it in writing

Section 13.56.030(a)(2), Page 2, Line 18: Changed the word "the" after "assistance that" to "each" to clarify that a SDMA may have multiple supporters

Section 13.56.030(b), Page 2, Line 20-22: Inserted this new subsection to mandate that SDMAs contain 3rd party notification of the rights and obligations of supporters in SDMAs

Section 13.56.030(c), Page 2, Line 23-27: Renumbered the section, following insertion of subsection b

Section 13.56.040, Page 2, Line 30-31: Removed subsection 3 referencing a form provided by the Department of Health and Human Services. DHSS will not be required to create SDMA

forms. Governor's Council on Disabilities and Special Education has agreed to take this on. Also, under subsection 2, line 31 added language "the agreement..."

Section 13.56.040, Page 3, line 2-6: Renumbered subsection "4", to subsection "3."

Section 13.56.040, Page 3, line 8-9: Added new subsection "4," which provides safeguards by ensuring that a principal who also has a guardian or conservator must notify them of the SDMA for the agreement to be valid

Section 13.56.060(b), Page 3, line 22-24: Added "supported decision-making" before "agreement"

Section 13.56.070, Page 3, Line 25-30: Grammar edits in this section. Keeping consistency throughout bill, by adding "supported decision-making" before "agreement"

Section 13.56.080, Subsections A-D, Page 3, Line 31- Page 4, Line 14:

Removed subsection "c" referencing the superior court's ability to terminate or limit a SDMA, as these are private agreements and decision-making right are retained by the principal. Capacity is inherently retained by principals under SDMAs. SDMAs do not grant decision making authority away. Superior Court doesn't have authority over these agreements

a) Clarifies that either a principal or supporter may terminate all, or a portion of a SDMA – at any time

b) Termination process of all or part of a SDMA must be in writing, signed, and such signing must be presence of two witnesses who also sign the termination paperwork, or the signature must be notarized

c) Renumbered as subsection "c" from "b" – includes language noting that a principal or supporter can terminate all or a portion of a SDMA

d) New subsection. If certain parts of a SDMA are terminated, the entire SDMA is not terminated, and the untouched parts remain in effect

Section 13.56.100(2), Page 4, Line 24-25: Strikes out "to manage the principal's affairs", replaced with "for the principal to manage the principal's affairs". Supporter isn't managing principal's affairs – principal is managing their own affairs with assistance by supporter is specific areas

Section 13.56.110, Page 5, Line 11: Inserted new subsection "3." Prohibits a supporter from signing or providing an electronic signature for the principal. Renumber other subsections accordingly

Section 13.56.140(3), Page 6, Line 14-15: Removed the language "conscience or" on concerns that this language might have been unconstitutional/discriminatory

Removed Section 13.56.150 "Principles for providing decision-making assistance," Page 6 of original bill (Version D), Line 11-24 – and renumbered sections accordingly. This language is

stated better in the Shared Vision bill and shouldn't have to be stated -- we are talking about people with full agency, so these are already inherent rights

Section 13.56.150, Page 6, Line 19-27: Removed subsection "a" referencing the superior court for same reasons state previously, and renumbered subsections accordingly

Removed Section 13.56.185 "Regulatory authority; forms," Page 8 of original bill (Version D), Line 9-11: Deleted this section as DHSS won't be necessary to create forms or regulate these private capacity agreements. Governor's Council on Disabilities has offered to produce SDMA forms

Section 13.56.190 (4), Page 8, Line 7-8: Added new definition of "conservator" to include a conservator in another state

Section 13.56.190(6), Page 8, Line 10-11: Added new definition of "decision-making assistance"

Section 13.56.190(7), page 8, Line 12-13: Added new definition of "guardian" to include a guardian in another state

Round 2 Changes (House Judiciary Committee):

HB 336 (Version O) to CS for HB 336(JUD) Version R Explanation of Changes

Under the new CS (Version R) the only substantive change made was to insert a statutory form for supported decision-making agreements into the bill. The form is lengthy, but meets the requirements and stipulations laid out in the rest of the bill.

Sec. 13.56.180, Page 7 on line 31 through page 18 line 7:

Adds new section stating that a supported decision-making agreement must substantially adhere to the criteria spelled out under the 12 new subsections. Creates a standard statutory form for supported decision-making agreements.

Round 3 Changes (House Floor):

Amendment #1 (R.1) to CSHB 336 (JUD)

The amendment deleted duplicative language that was accidentally added in the model SDMA form that is now in the bill. Under Supporter 1 there was extraneous language that didn't mirror the language under the other Supporters.

Supported Decision Making Act

Our Position

AARP Alaska endorses the Supported Decision Making Act. HB 336

GOALS

1. Adults who are vulnerable or live with disabilities have support from people for making life decisions. Supporters agree, in writing, to take direction from these adults on getting information, talking about outcomes, telling other people about a person's choices and doing other things that the adults want for support when they are making life decisions.
2. Adults with Supported Decision Making (SDM) Agreements do not have their rights to make decisions taken away from them like they would with guardianship orders. They have the information and support that they need about their choices to exercise the same rights that others have to choose where to live, what services they get, how to spend their money, and who they spend time with.
3. Supported Decision Making continues familiar and lifelong ways of making choices. It is very common throughout life to confer with family, friends, a physician, a financial planner, or a member of the clergy when big decisions are made. SDMA's formalize that familiar process as needs and capacity change.

WHAT

1. Supported Decision Making Agreements are planned and written by a set process, with supporters that are chosen by the person (the principal) who wants support.
2. Valid agreements will have specific ways that supporters will help with decisions and will have safeguards to protect the well-being and independence of vulnerable adults and those who live with disabilities.

3. There will be a basic template form for the SDM Agreements, but each Agreement will be individualized to express the directions of the person who wants support, and the ways they want to be supported to make decisions.

4. This Bill does not:

- A. Interfere or change the established law regarding legal capacity to make decisions or the court processes on petitions for guardianship or conservatorship. It is just another option for people to use.
- B. Take the place of other legally established documents such as powers of attorney or advance directives.
- C. Alter or change a person's responsibility for their own actions
- D. Cost much; additional funding to implement these changes is estimated to be minimal

WHY IS IT NEEDED?

1. People who can make life decisions with support from others around them should not have the right to make those decisions taken away from them by unnecessary government (court) involvement.
2. Alaska has one of the highest rates of full guardianship in the country. The number of guardianships in the state has doubled in the last 7 years. The courts can't keep up with monitoring all the guardianships to make sure rules and guidance are followed. The Office of Public Advocacy (public guardians) is overwhelmed and has too many wards to supervise. Many of the guardianships would be unnecessary if there were an option for a formalized SDM Agreement.
3. Research shows that people who make more decisions about their lives through alternatives to full guardianship are more involved in their community, more likely to maintain their own health, more likely to feel respected and dignified, and more likely to report satisfaction with their own lives.
4. Even people experiencing declining abilities due to a condition like Alzheimer's disease, still can and should maintain remaining skills by

exercising them with support and encouragement. Identity does not have to be lost with memory.

ASK

Please support the Supported Decision Making Act – HB 336

1841 Chelton Lane
Fairbanks, Alaska 99709
February 12, 2018

To Whom It May Concern,

I support House Bill 336, a bill that adds Supported Decision Making (SDM) agreements as an option to guardianship in Alaska. SDM agreements are planned and written by a set process, with supporters that are chosen by the person who wants support. These valid agreements will have specific ways that supporters will help with decisions and will have safeguards to protect the well-being and independence of adults with disabilities.

SDM agreements are planned and written by a set process, using supporters that are chosen by the person who wants support. These valid agreements will have specific ways that supporters will help with decisions and will have safeguards to protect the well-being and independence of adults with disabilities. There will be a basic template form for the SDM agreements, but each agreement will be individualized to convey the directions of the person who wants support, and the ways they want to be supported

I have full guardian and conservatorship for my 24 year old son who experiences both a developmental and a mental health disability. Although I have the authority to make decisions for him, he and I have always discussed decisions and come to an agreement before a decision is made. This process has always worked well works well for us as well as several other guardians I know. SDM would be a great option for my son. It would empower him and give him more control of his life. Our public guardians, working under the Office of Public Advocacy, are overwhelmed because each public guardian has over 100 wards for whom they make decisions. Inserting SDM agreements as a third option in Alaska Guardianships would take some of that burden from Public Guardians.

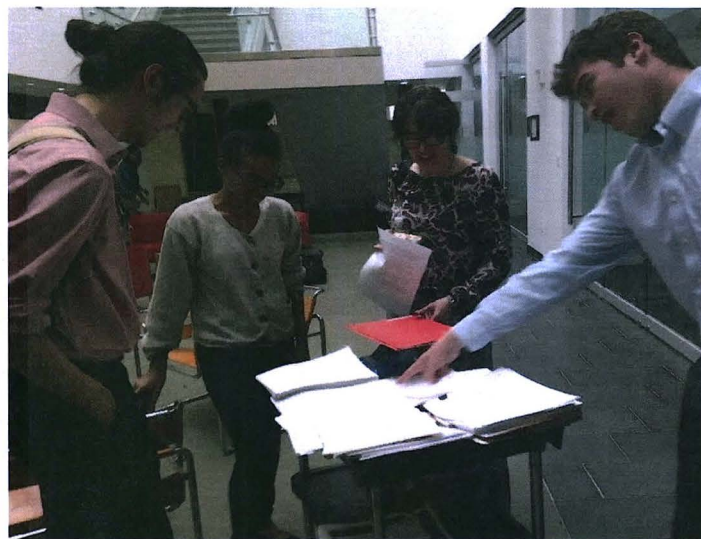
The passage of HB336 will allow a person the opportunity to have a voice in how they live their lives. Research shows that people who make more decisions about their lives are more involved in the community, more likely to have supported employment, and more likely to report satisfaction with their lives Control of your life brings about empowerment, self-determination, and a positive mindset. I encourage legislators to work to move HB336 through the legislative process as soon as possible.

Sincerely,



Art Delaune
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SUPPORTED
DECISION
MAKING
AGREEMENTS



WHAT WE KNOW IN SHORT FORM
AND WHAT COMES NEXT

A Project of INCLUDE
University of Texas School of Law

TEXAS
LAW

Richard and Ginni Mithoff
Pro Bono Program



William Wayne Justice
Center for Public Interest Law

THE UNIVERSITY OF TEXAS SCHOOL OF LAW

SDMA BASICS

What is Supported Decision Making?

Last session, the Texas Legislature passed a law requiring all attorneys, judges, and would-be guardians involved in creating guardianships to look first at Supported Decision Making (SDM) as a way for adults with disabilities to continue to develop independent living and decision-making skills. SDM enables adults to continue to make decisions and grow in the ability to exercise safe choices with the guidance of their chosen supporters. It builds on the person-centered planning process often used in special education programs and can be used as a way to continue a transitioning youth's educational development beyond age 22.

What is INCLUDE at UT Law?

INCLUDE is an initiative sponsored by the William Wayne Justice Center for Public Interest Law that works to advance the rights of persons with disability and to involve law students in serving families touched by disability.

Beginning in the fall of 2015, INCLUDE partnered with the Austin Independent School District (AISD), later expanding to work with more than fifteen other school districts, to conduct evening clinics at which volunteer law students supervised by pro bono attorneys provided individualized legal counseling sessions on guardianship alternatives. Families were invited to return to "Signing Clinics" for more in-depth counseling with law students and lawyers assigned their cases. INCLUDE has counseled approximately 300 families interested in guardianship alternatives.

Parents on the Path

Most parents and other supporters counseled were interested in promoting the independence of their children. A number were very motivated to avoid judicial involvement and the costs of guardianship.

- "We don't want to go to court or have expenses."
- "Our son is real high functioning. He is able to make choices. So we don't want to take away his rights."
- "We want to support our daughter's independence but don't want to do too much too soon."
- "We think that we would have benefited from learning about SDM sooner."

Youth in Transition

Individuals counseled had the following things to say about SDM:

- "I think [SDM] is fun. I think it's cool!"
- "I make my own choice. But I'll listen to my mom if she wants to help."
- "I want to make decisions on my own, but I want help with the important decisions of my life."
- "I wish I had learned about the SDMA at 15 or 16. I only heard about guardianship."

A FATHER AND SON STORY

“When he was early 17, we were looking at what we had to do when he turned 18, and we were discussing it knowing that the one that we knew of we really didn’t like because of all the work involved in it—guardianship. **But we didn’t know of any other options...** That was the only thing we knew that we could do, so that was the direction we would’ve been going.”

“I think he was nervous about turning 18 and knowing that there are a lot of legal responsibilities, and he was just nervous not really knowing all that could happen... He has veto power over these decisions and he knew that there was a structure in place that we are agreeing to help him with his medical, with his banking, with all these decisions in life, to the extent he needs, and we were there for him. **So [the SDMA] gave him a sense of security and calm.**”

“It gives him that security blanket and that comfort level that he knows that we’re there to help him. **As he takes more of his own responsibilities, we’re still there to help advise, and when he doesn’t feel certain about things, that we can help him out.** So he knows. That’s the biggest thing, too, as he’s maturing; he knows that this is in place and we’re there for him. We’re in his corner and he’s not on his own.”

**A CENTRAL TEXAS FATHER/SUPPORTER,
ONE YEAR AFTER SIGNING AN SDMA WITH HIS SON**

A NEW BEGINNING



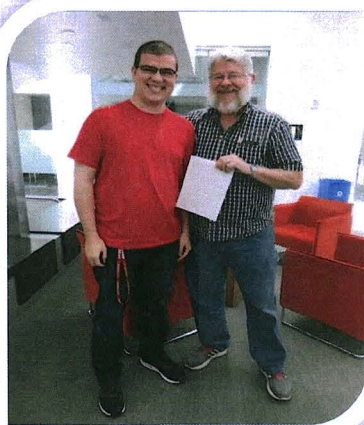
Kendra¹ learned about SDM her senior year of high school. It was “great to know there were options other than guardianship,” says Kendra’s mother, who is now Kendra’s supporter. “We both wish we had learned about it a long time ago.”

Jackie learned about SDM years after graduating high school. “I can’t believe this! I really wish they taught me about this in school!”



What’s Next?

There is strong support from the SDM community for the idea that all families should be notified of the option much earlier in transition and through the special education process — where independent living skills are already the focus. Where appropriate, this will help families avoid the stress and cost of unnecessary court proceedings.



¹ All client names have been changed to protect confidentiality, though many families were eager to share their family photographs.