

# Supported Decision Making

# George V. Zaske

- Father
- Attorney
- Board Member for Service Provider
- Advocate

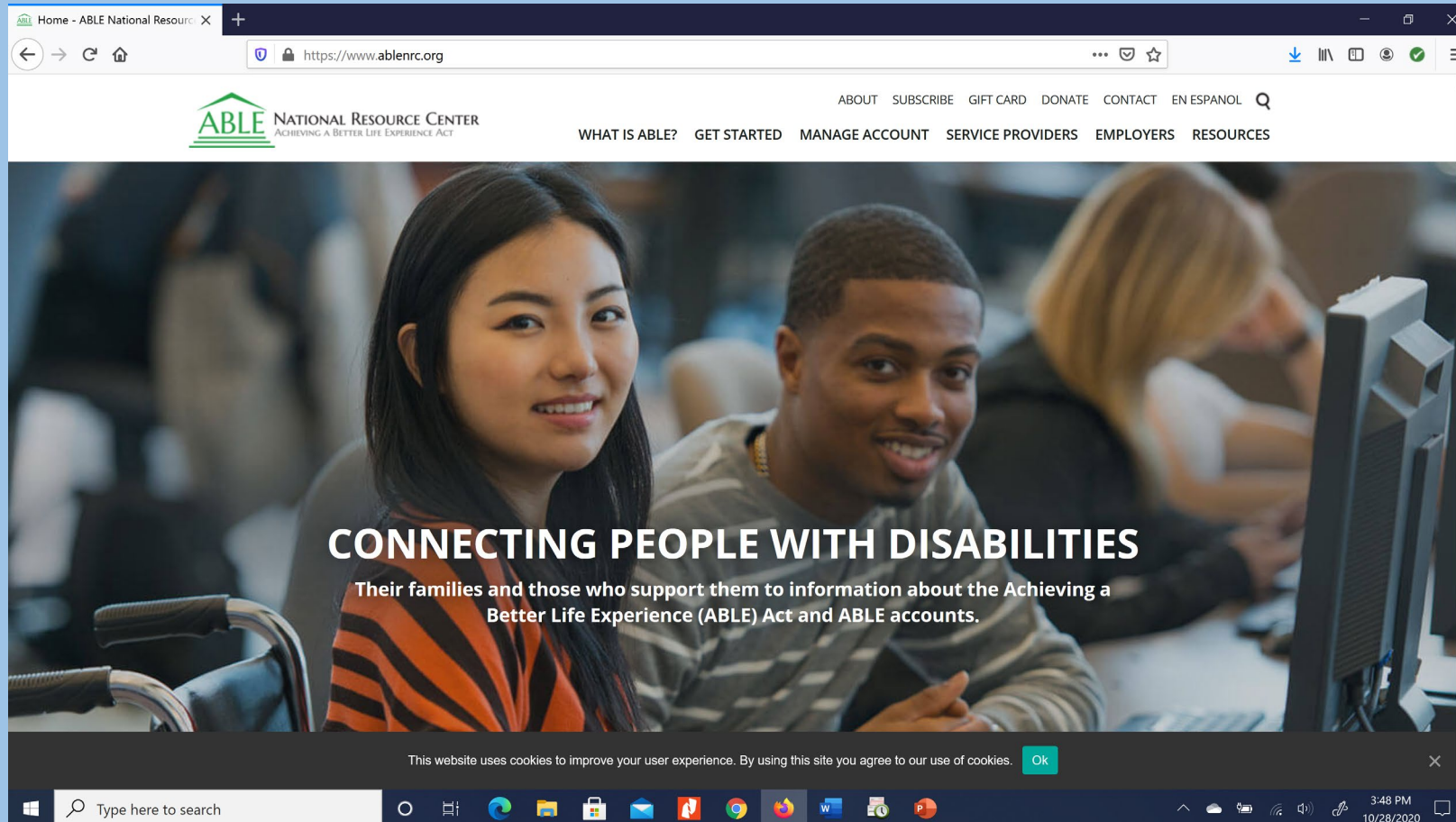
# Disclaimer

- I am here to educate and provoke thoughtful family discussion.
- I am not giving legal advice that should be relied upon – I don't know your facts.

# Audience Survey



# Awesome Resource – www.ablenrc.org



The screenshot shows a web browser displaying the homepage of the ABLE National Resource Center. The browser's address bar shows the URL <https://www.ablenrc.org>. The website's header features the ABLE logo on the left, which includes the text "ABLE NATIONAL RESOURCE CENTER" and "ACHIEVING A BETTER LIFE EXPERIENCE ACT". To the right of the logo is a navigation menu with links for "ABOUT", "SUBSCRIBE", "GIFT CARD", "DONATE", "CONTACT", and "EN ESPAÑOL", followed by a search icon. Below the header is a secondary navigation bar with links for "WHAT IS ABLE?", "GET STARTED", "MANAGE ACCOUNT", "SERVICE PROVIDERS", "EMPLOYERS", and "RESOURCES".

The main content area features a large photograph of a young woman with long dark hair, wearing a red and black striped shirt, sitting in a wheelchair. She is smiling and looking towards the camera. Next to her is a young man with short dark hair, wearing a grey and white striped sweater, who is also smiling and looking towards the camera. They appear to be in a classroom or office setting. Overlaid on the bottom half of the photograph is the text:

## CONNECTING PEOPLE WITH DISABILITIES

Their families and those who support them to information about the Achieving a Better Life Experience (ABLE) Act and ABLE accounts.

At the bottom of the page, there is a cookie consent banner that reads: "This website uses cookies to improve your user experience. By using this site you agree to our use of cookies." with an "Ok" button. The Windows taskbar is visible at the very bottom, showing the search bar, task view button, and several application icons. The system tray on the right shows the time as 3:48 PM and the date as 10/28/2020.

# What is Support Decision Making?

- While there is no singular definition or model of SDM (Dinerstein 2012), it generally occurs when people with disabilities use friends, family members, and professionals to help them understand the every day situations and choices they face, so they may make their own decisions without the “need” for a substitute decision-maker such as a guardian. (Blank & Martinis, 2015, Quality Trust 2013).

What is the current state?



# The world is changing.

- The Olmstead Decision – 1999 Upholding the ADA Integration Mandate
- CMS “Final Rule”
- Person Centered Planning
- Co-decision Making
- Circles of Support
- ABLE Accounts
- Representation Agreements
- Project SEARCH
- ThinkCollege
- Attorney Training
- Supported Decision Making – ABA Roundtable 2012
- ABA Resolution 111 – Adopted 8/14/2017

# Neuroscience and Fully Developed Brain

- Research has shown that the human brain is not fully developed until around age 25
- Where are the changes?
  - Increased Connectivity
  - Executive Functions



# Prefrontal Cortex

- Development continues until (at least) until our mid 20s
- Areas
  - Attention
  - Complex Planning
  - Decision Making
  - Impulse Control
  - Logical Thinking
  - Organized Thinking
  - Personality Development
  - Risk Management

# What Promotes Health Brain Development?

- Cognitive Challenges
- Education
- Environmental Enrichment
- Socialization



# Guardianship Petition

- A petition that begins a court action with a goal to appoint a guardian for a ward.

STATE OF WISCONSIN, CIRCUIT COURT, \_\_\_\_\_ COUNTY *For Official Use*

IN THE MATTER OF

Amended

\_\_\_\_\_  
Name

**Petition for**  
 Temporary  
 Permanent  
**Guardianship  
Due to Incompetency**

\_\_\_\_\_  
Date of Birth

Case No. \_\_\_\_\_

**FOR ALL GUARDIANSHIPS** (Complete #1 through #10)

**UNDER OATH, I STATE:**

- I am interested as
  - a relative. I am related to the individual as \_\_\_\_\_
  - a public official. My authority to act as petitioner is \_\_\_\_\_
  - Other: \_\_\_\_\_
- This petition is filed in the county in which the individual
  - resides.
  - is physically present.
  - Other: \_\_\_\_\_
- The individual lives in \_\_\_\_\_ County, State of \_\_\_\_\_  
and the individual's mailing address is [Street, City, State, Zip] \_\_\_\_\_
- The name and mailing address of the person or institution, if any, that has care and custody of the individual or the facility, if any, that is providing care to the individual is:  
Name \_\_\_\_\_ Phone Number \_\_\_\_\_  
Mailing Address [Street, City, State, Zip] \_\_\_\_\_
  - This petition for guardianship is filed with a petition for protective placement prior to transfer of the individual directly from a hospital to a nursing facility or community-based residential facility under §50.06, Wisconsin Statutes.
- The names and mailing addresses of all interested parties (including the petitioner) and all others entitled to notice are as follows:  See attached

Name	Relationship	Mailing Address [Street, City, State, Zip]

6. The individual, if married,  does  does not have children who are not of the current marriage.

7. The individual  
 does  does not have a current, valid financial durable power of attorney  activated.  
 Name, mailing address [Street, City, State, Zip] and phone: \_\_\_\_\_

does  does not have a current, valid power of attorney for health care  activated.  
 Name, mailing address [Street, City, State, Zip] and phone: \_\_\_\_\_

does  does not have other advance planning to avoid guardianship.  
 If the above-named powers of attorney or advanced planning exist, guardianship is still necessary because \_\_\_\_\_  See attached

8. I am  not aware  aware of a guardianship or conservatorship or related proceeding or ordered proceeding involving the individual in another state or county. The details of the guardianship, conservatorship, or related proceedings of which I am aware are as follows:  See attached  
 guardian or conservator appointed in Wisconsin [Name and county where appointed] \_\_\_\_\_  
 guardian or conservator appointed out-of-state [Name and state where appointed] \_\_\_\_\_

9. The following person is nominated as guardian:  See attached

Type of Guardian	Name & Mailing Address (Street, City, State, Zip)	Phone
Guardian of the Person		
Guardian of the Estate		
Temporary Guardian of the Person		
Temporary Guardian of the Estate		
Standby Guardian of the Person		
Standby Guardian of the Estate		

10. A. The approximate value of individual's property is:  See attached

General Description	Amounts	General Description	Amounts
Cash/Bank Accounts:	\$	Other Liquid Assets:	\$
Real Estate:	\$	Other Assets:	\$

B. Assets of individual previously derived from or benefits of individual now due and payable from U.S. Department of Veterans Affairs are  none  \_\_\_\_\_  See attached

C. The individual receives public benefits, including medical assistance, SSI, SSDI or long term community options program benefits.  No  Yes, type and amount \_\_\_\_\_

D. Any other claim, income, compensation, pension, insurance or allowance to which the individual may be entitled is  none.  as follows:  See attached

General Description	Amounts (monthly)	General Description	Amounts (monthly)
Social Security	\$	Investment Income	\$
Pension	\$	Other:	\$
Disability	\$	Other:	\$

**FOR PERMANENT GUARDIANSHIP** (Complete #11 through #17)

11.  A. A report of examination by a physician or psychologist  
 is filed with this petition.  
 will be filed with the court and provided by the petitioner to the guardian ad litem and the attorney for the proposed ward or ward at least 96 hours before the time of the hearing.  
 B. Certificate of Administrator (or representative) of U.S. Department of Veterans Affairs is filed with this petition.



12. A sworn and notarized Statement of Acts by Proposed Guardian and Consent to Serve

- filed with this petition.
- will be filed at least 96 hours before the hearing.

13. The individual is alleged to be incompetent as a result of the following impairment

- a developmental disability.
- serious and persistent mental illness.
- degenerative brain disorder.
- other like incapacities.

A guardian is requested to be appointed for the individual based upon the following standards:

- A. The individual will be at least 17 years and 9 months of age as of the date of the hearing.
- B. The individual's need for assistance in decision-making or communication is unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept.
- C. (For appointment of guardian of the person) The individual, because of impairment, is unable effectively to receive and evaluate information or to make or communicate decisions to such extent that the individual is unable to meet the essential requirements for the individual's physical health and safety.
- D. (For appointment of guardian of the estate) The individual, because of an impairment, is unable effectively to receive and evaluate information or to make or communicate decisions related to management of the individual's property or financial affairs, to the extent that at least one of the following applies:
  - (1) The individual has property that will be dissipated in whole or in part; or
  - (2) The individual is unable to provide for the individual's support; or
  - (3) The individual is unable to prevent financial exploitation.

14. The specific nature of the individual's alleged incapacity is as follows:  See attached

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15. GUARDIAN OF THE PERSON

I request the court appoint a permanent guardian of the person.

I request the individual be prohibited from possessing a firearm and order seizure of any firearm owned by the individual pursuant to §54.10(3)(f), Wis. Stats., OR

I request the appointment of a guardian of the person which I understand may result in a prohibition of the individual's ability to possess firearms pursuant to §54.10(3)(f), Wis. Stats.

A. Rights to be removed in full. If removed, these rights may not be exercised by any person.

I request the court declare the individual has incapacity to exercise one or more of the following rights and remove such right to

- (1) execute a will.
- (2) serve on a jury.
- (3) register to vote or to vote in an election.

B. Rights to be removed or exercised by individual with consent of Guardian of Person. If removed, these rights may not be exercised by any person. If a right is to be affected, the box to the far left must be marked. Marking only box (1) or (2) has no effect and the individual retains the right.

I request the court declare the individual has incapacity to exercise one or more of the following rights and remove such right or order that the individual is able to exercise the right only with consent of the guardian of the person right to

- a. consent to marriage:
  - Choose (1) or (2):**
  - (1) declare the individual has incapacity to exercise this right.

- (2) order that the individual is able to exercise this right only with consent of the guardian of the person.
  - b. apply for an operator's license, a hunting, fishing or other license issued under ch. 29, or a credential as defined in §440.01(2), Wis. Stats.: \_\_\_\_\_  
**Choose (1) or (2):**  
 (1) declare the individual has incapacity to exercise this right.  
 (2) order that the individual is able to exercise this right only with consent of the guardian of the person.
  - c. consent to sterilization:  
**Choose (1) or (2):**  
 (1) declare the individual has incapacity to exercise this right.  
 (2) order that the individual is able to exercise this right only with consent of the guardian of the person.
  - d. consent to organ, tissue, or bone marrow donation:  
**Choose (1) or (2):**  
 (1) declare the individual has incapacity to exercise this right.  
 (2) order that the individual is able to exercise this right only with consent of the guardian of the person.
- C. Powers to be transferred to Guardian of the Person in part or in full.**  
 If a power is to be affected, the box to the far left must be marked. Marking only box (1) or (2) has no effect and the individual retains the power.
- 1) I request the court declare that the individual lacks evaluative capacity in part or in full to exercise one or more specific powers and transfer the specific powers to the guardian.
  - 2) The powers to be affected are:
    - ab. Except as otherwise limited by §54.25(2)(d)2.ab., Wis. Stats., the power to give an informed consent to the voluntary receipt by the guardian's ward of a medical examination, medication, including any appropriate psychotropic medication, and medical treatment that is in the ward's best interest, if the guardian has first made a good-faith attempt to discuss with the ward the voluntary receipt of the examination, medication, or treatment and if the ward does not protest.  
**Choose (1) or (2):**  
 (1) The individual retains limited capacity and the power to: \_\_\_\_\_  
 The Guardian of the person should exercise this power not retained by the individual.  
 (2) Individual lacks evaluative capacity in full. The guardian of the person to exercise full power.
    - ac. Except as otherwise limited by §54.25(2)(d)2.ac., Wis. Stats., the power to give informed consent, if in the ward's best interests, to the involuntary administration of a medical examination, medication other than psychotropic medication, and medical treatment that is in the ward's best interest.  
**Choose (1) or (2):**  
 (1) The individual retains limited capacity and the power to: \_\_\_\_\_  
 The Guardian of the person should exercise this power not retained by the individual.  
 (2) Individual lacks evaluative capacity in full. The guardian of the person to exercise full power.
    - b. The power to authorize individual's participation in an accredited or certified research project if the research project might help the individual, or others if minimal risk of harm.  
**Choose (1) or (2):**  
 (1) The individual retains limited capacity and the power to: \_\_\_\_\_  
 The Guardian of the person should exercise this power not retained by the individual.  
 (2) Individual lacks evaluative capacity in full. The guardian of the person to exercise full power.
    - c. The power to authorize individual's participation in research that might not help the individual but might help others if greater than minimal risk of harm to the individual but evidence indicates individual would have elected to participate.  
**Choose (1) or (2):**  
 (1) The individual retains limited capacity and the power to: \_\_\_\_\_  
 The Guardian of the person should exercise this power not retained by the individual.  
 (2) Individual lacks evaluative capacity in full. The guardian of the person to exercise full power.
    - d. The power to consent to experimental treatment in the individual's best interests.  
**Choose (1) or (2):**

- (1) The individual retains limited capacity and the power to: \_\_\_\_\_  
The Guardian of the person should exercise this power not retained by the individual.
- (2) Individual lacks evaluative capacity in full. The guardian of the person to exercise full power.
- e. The power to give informed consent to receipt by individual of social and supported living services.  
**Choose (1) or (2):**  
 (1) The individual retains limited capacity and the power to: \_\_\_\_\_  
The Guardian of the person should exercise this power not retained by the individual.
- (2) Individual lacks evaluative capacity in full. The guardian of the person to exercise full power.
- f. The power to give informed consent to release of confidential records other than court, treatment, and patient health care records and redisclosure as appropriate.  
**Choose (1) or (2):**  
 (1) The individual retains limited capacity and the power to: \_\_\_\_\_  
The Guardian of the person should exercise this power not retained by the individual.
- (2) Individual lacks evaluative capacity in full. The guardian of the person to exercise full power.
- g. The power to make decisions related to mobility and travel.  
**Choose (1) or (2):**  
 (1) The individual retains limited capacity and the power to: \_\_\_\_\_  
The Guardian of the person should exercise this power not retained by the individual.
- (2) Individual lacks evaluative capacity in full. The guardian of the person to exercise full power.
- h. [Intentionally omitted to correspond with statute.]
- i. The power to choose providers of medical, social, and supported living services.  
**Choose (1) or (2):**  
 (1) The individual retains limited capacity and the power to: \_\_\_\_\_  
The Guardian of the person should exercise this power not retained by the individual.
- (2) Individual lacks evaluative capacity in full. The guardian of the person to exercise full power.
- j. The power to make decisions regarding educational and vocational placement and support services or employment.  
**Choose (1) or (2):**  
 (1) The individual retains limited capacity and the power to: \_\_\_\_\_  
The Guardian of the person should exercise this power not retained by the individual.
- (2) Individual lacks evaluative capacity in full. The guardian of the person to exercise full power.
- k. The power to make decisions regarding initiating a petition for termination of marriage.  
**Choose (1) or (2):**  
 (1) The individual retains limited capacity and the power to: \_\_\_\_\_  
The Guardian of the person should exercise this power not retained by the individual.
- (2) Individual lacks evaluative capacity in full. The guardian of the person to exercise full power.
- l. The power to receive all notices on behalf of individual.  
**Choose (1) or (2):**  
 (1) The individual retains limited capacity and the power to: \_\_\_\_\_  
The Guardian of the person should exercise this power not retained by the individual.
- (2) Individual lacks evaluative capacity in full. The guardian of the person to exercise full power.
- m. The power to act in all proceedings as an advocate of the individual, except the power to enter into a contract that binds the individual or the individual's property or to represent the individual in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the estate.  
**Choose (1) or (2):**  
 (1) The individual retains limited capacity and the power to: \_\_\_\_\_  
The Guardian of the person should exercise this power not retained by the individual.
- (2) Individual lacks evaluative capacity in full. The guardian of the person to exercise full power.
- n. The power to apply for protective placement or for commitment.  
**Choose (1) or (2):**  
 (1) The individual retains limited capacity and the power to: \_\_\_\_\_  
The Guardian of the person should exercise this power not retained by the individual.
- (2) Individual lacks evaluative capacity in full. The guardian of the person to exercise full power.
- o. The power to have custody of the individual, if an adult, and the power to have care, custody, and control of the individual, if a minor.

24. A petition for appointment of a permanent guardian of the person or estate is NOT filed with this request because: \_\_\_\_\_  See attached

25. Additional requests: \_\_\_\_\_  See attached

**I REQUEST THE COURT:**

1. Order a hearing on this petition.
2. Make appropriate findings and appointments as requested above.
3. Award appropriate fees and costs.

State of \_\_\_\_\_  
County of \_\_\_\_\_  
Subscribed and sworn to before me on \_\_\_\_\_  
\_\_\_\_\_  
Notary Public/Court Official  
\_\_\_\_\_  
Name Printed or Typed  
My commission/term expires: \_\_\_\_\_

\_\_\_\_\_ ▶ \_\_\_\_\_  
Petitioner  
\_\_\_\_\_  
Name Printed or Typed  
\_\_\_\_\_  
Address  
\_\_\_\_\_

Name of Attorney/Petitioner	
Address	
Telephone Number	Bar Number

# Guardianship The Best Option?

- 1994 study found that the majority of guardianship hearings last less than 15 minutes.

- **15 MINUTES**

# Guardianship The Best Option?

- Most studies show that only 25% to 50% of families of adults with developmental disabilities make concrete plans for the future of an adult with developmental disabilities.
- Most adults with developmental disabilities live with their parents “well into middle age” .... the transition shows up at the death of a parent.
- Guardianship is described as part of the standard practice of planning for the future of persons with intellectual disabilities.
- Guardianship implicates a person’s constitutional rights

# Court Ordered Loss of Personal Freedoms



# Wis. Stat. §54.2 (2)(d)3

- 3. In exercising powers and duties delegated to the guardian of the person under this paragraph, the guardian of the person shall, consistent with meeting the individual's essential requirements for health and safety and protecting the individual from abuse, exploitation, and neglect, do all of the following:
  - a. Place the least possible restriction on the individual's personal liberty and exercise of constitutional and statutory rights, and promote the greatest possible integration of the individual into his or her community.
  - b. Make diligent efforts to identify and honor the individual's preferences with respect to choice of place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation. In making a decision to act contrary to the individual's expressed wishes, the guardian shall take into account the individual's understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity for the individual to develop decision-making skills, and the need of the individual for wider experience.
  - c. Consider whether the ward's estate is sufficient to pay for the needed services.



Are There Alternatives?

# Petition For Appointment of Conservator

# Durable Power of Attorney For Finances and Property

# Power of Attorney For Health Care

# Custom Releases

# Limited Guardianship

Supported Decision Making is not a FORM



# Supported Decision Making

- 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.”
- Dinerstein, Robert D. “Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road From Guardianship to Supported Decision-Making.” Human Rights Brief 19, no.2(2012): 8-12
- Slide from Attorney Kate Schilling – Wisconsin Elder Law CLE 9/2014



# Support Decision Making is Still Developing

- While there is no singular definition or model of SDM (Dinerstein 2012), it generally occurs when people with disabilities use friends, family members, and professionals to help them understand the every day situations and choices they face, so they may make their own decisions without the “need” for a substitute decision-maker such as a guardian. (Blank & Martinis, 2015, Quality Trust 2013).

# Values of Supported Decision Making

- Autonomy
  - Self-Direction
  - Equality
  - Least Restrictive
  - Trust
  - Respect
- 
- Slide from Attorney Kate Schilling – Wisconsin Elder Law CLE 9/2014

# Other Concepts to Consider

- Presume Competence
- Dignity of Risk
- Substitute Decision Maker vs. Supported Decision Maker

# States with Supported Decision Making Laws

- Alabama Supported Decision-Making Statute (2023)
- Alaska Supported Decision-Making Statute (2018)
- Arizona Supported Decision-Making Statute (2023)
- California Supported Decision-Making Statute (2022)
- Colorado Supported Decision-Making Statute (2021)
- Delaware Supported Decision-Making Statute (2015)
- District of Columbia Supported Decision-Making Statute (2018)
- Illinois Supported Decision-Making Statute (2021)
- Indiana Supported Decision-Making Statute (2019)
- Louisiana Supported Decision-Making Statute (2020)
- Maryland Supported Decision-Making Statute (2022)
- Nevada Supported Decision-Making Statute (2019)
- New Hampshire Supported Decision-Making Statute (2021)
- New York Supported Decision-Making Statute (2022)
- 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)

# Wisconsin

- WINGS
- Community of Practice
- Attorney Training
- Supported Decision Making Statute Chapter 52
- Self Determination Training Session

# Real Life Case from Virginia - circa 2013

- A contested guardianship between a daughter and her mother.

# Resources

- Wisconsin Board for People with Developmental Disabilities
- <https://wi-bpdd.org/>
  
- Greater Wisconsin Agency on Aging Resources, Inc.
- [www.gwaar.org](http://www.gwaar.org)
  
- National Resource Center for Supported Decision Making
- <http://www.supporteddecisionmaking.org/>
  
- Wisconsin Department of Health Services
- <https://www.dhs.wisconsin.gov/publications/p2/p20460.pdf>
  
- Minnesota Department of Health Services
- Introduction and Guide to Supported Decision Making YouTube Video Series





Questions?