

# Supported Decision-Making Concepts in an SNT

**Peter J. Wall**  
Director, Fiduciary Services  
True Link Financial Advisors,  
LLC  
[peter.wall@truelinkfinancial.com](mailto:peter.wall@truelinkfinancial.com)

**Haley Greer, JD**  
Executive Director  
The Arc of Texas  
[hgreer@thearcoftexas.org](mailto:hgreer@thearcoftexas.org)

**Stephen W. Dale, JD, LLM**  
The Dale Law Firm  
Golden State Pooled Trust  
[steve@dalelawfirm.com](mailto:steve@dalelawfirm.com)



## Supported Decision-Making

### American Civil Liberties Union (ACLU):

“Supported decision making (SDM) is a tool that allows people with disabilities to retain their decision-making capacity by choosing supporters to help them make choices. A person using SDM selects trusted advisors, such as friends, family members, or professionals, to serve as supporters. The supporters agree to help the person with a disability understand, consider, and communicate decisions, giving the person with a disability the tools to make her own, informed, decisions.”

### Effective:

- Canada/British Columbia
  - *Representation Agreement Act*
- **United Nations Convention on the Rights of Persons with Disabilities**
- Australia, Ireland, Israel
- Sweden, Bulgaria, Croatia, Peru
- 20+ states

# Supported Decision-Making

## National Guardianship Association (NGA):

- Guardianship should be utilized only when lesser restrictive supports are not available.
- ...guardianship must be limited, allow the maximum retention of individual rights, and be customized to the individual needs of the person under guardianship.
- Under all circumstances, efforts should be made to **encourage every person under guardianship to exercise his/her individual rights** ...to the maximum extent of the person's abilities, in all decisions that affect him or her, to act on his or her own behalf in all matters in which the person is able to do so, **and to develop or regain his or her own capacity to the maximum extent possible.**
- Every guardianship should be focused on the person and grounded in demonstrating respect for the dignity of all involved.
- A guardian must understand and protect the rights of the person and utilize all the tools available to maximize the participation of the person and enable self-determination.

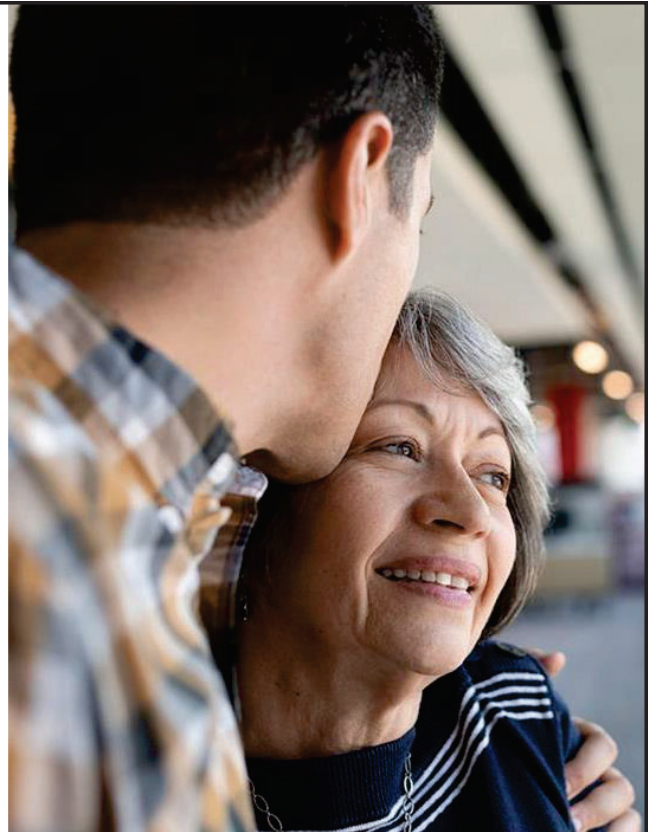


3

# Supported Decision-Making:

## Goals

- Empowerment of person making the decision (Decider)
  - "least restrictive alternative"
  - assessment of all facets of a decision
  - less costly
  - more person-centered planning opportunities
- Limit guardianship/conservatorship appointments
  - "most restrictive"
  - more costly
  - O'Connor v. Donaldson, 422 U.S. 563 (1975): "a State cannot constitutionally confine, without more, a non dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends..."



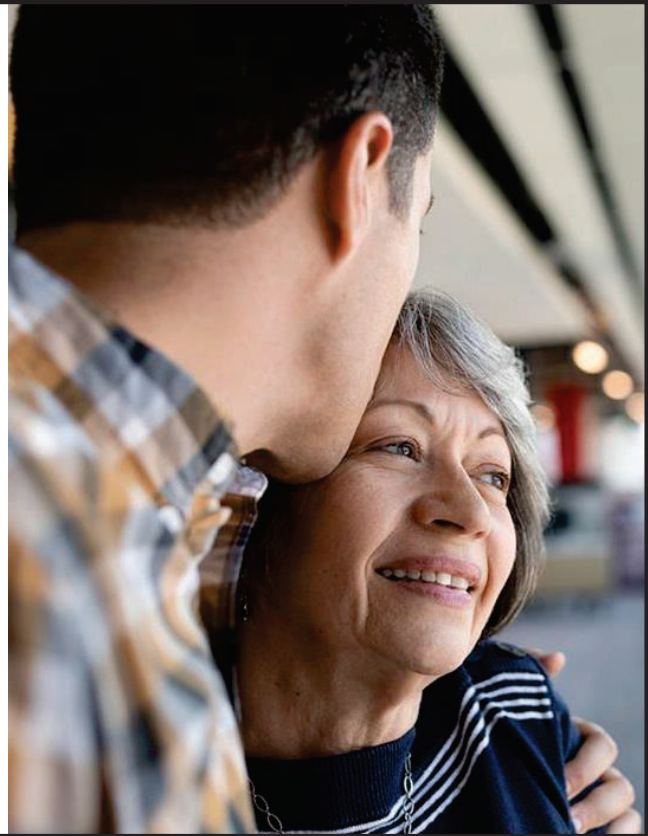
4

4

## Supporters

- Selected by Decider
- Put in a position of trust (friend, family member, professional) - see **Appendix A** for list of who may serve
- Tasked with information gathering and communication with Decider **not** surrogate decision-maker
- Translator role:
  - plain language
  - visual or audio communication tools
  - extra time to discuss Decisions and implications
  - list of pros and cons
  - role-playing activities
  - attending appointments and meetings
  - note taking

5



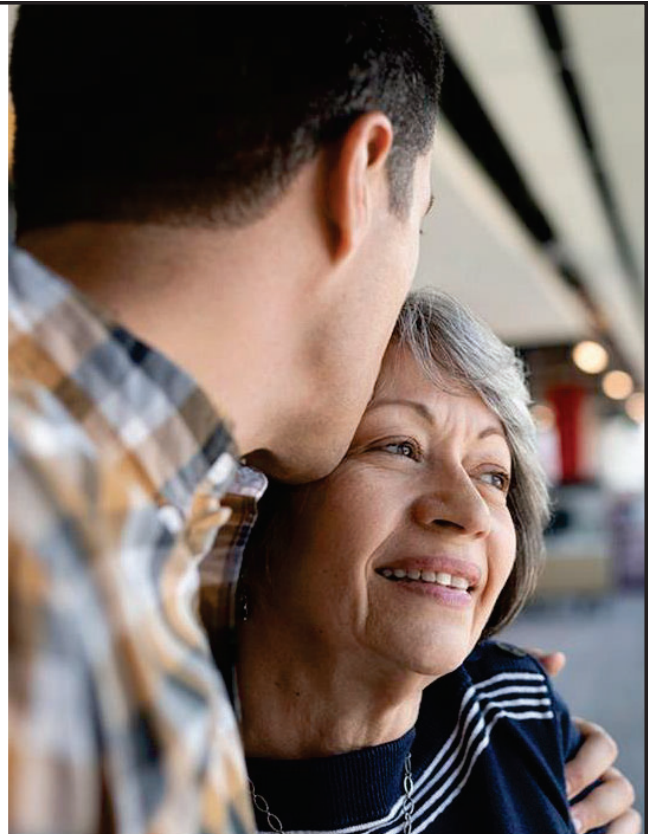
5

## Supporters

### Ineligible to Serve:

- CA & NY: listed in statute
  - Decider subject of protective/restraining order against supporter
- CA: liable for abuse, neglect, mistreatment, coercion, fraud
  - NY: similar, but as found by local dept. of social services
  - TX: similar but as found by Department of Family & Protective Services
- CA: cannot sign documents for Decider unless legally authorized
- See **Appendix D** for limits on Supporter authority

6



6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Supported Decision-Making Concepts in a SNT

Also available as part of the eCourse

[2024 Special Needs Trusts eConference](#)

First appeared as part of the conference materials for the  
20<sup>th</sup> Annual Changes and Trends Affecting Special Needs Trusts session  
"Supported Decision-Making Concepts in a SNT"