

# Knowing Your Options: Understanding Legal Guardianship and Less Restrictive Alternatives

## Presenters:

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Who has ever made an  
important decision?





How did you make that  
decision?



We all make big decisions



We all seek help and advice

There are many tools to  
support decision making





## A Quick List of Tools

- › Informal support of family and friends
- › Advice, support and advocacy from professionals
- › Advance care planning
- › Formalized supported decision making
- › Agency Agreements such as Power of Attorney, Health Care Representative, Representative Payee
- › Limited Guardianship
- › Guardianship



## Today's Focus

- › Informal support of family and friends
- › Advice, support and advocacy from professionals
- › Advance care planning

## › Formalized supported decision making

- › Agency Agreements such as Power of Attorney, Health Care Representative, Representative Payee
- › Limited Guardianship
- › Guardianship





## Today's Agenda

- › Context
- › Definitions
- › Debunk Myths
- › Indiana Pilot Project

## WINGS / IAGSTF

- › Working Interdisciplinary Networks of Guardianship Stakeholders
  - Support court-stakeholder partnerships in states to drive changes in guardianship policy and practice
  - Current ACL grant supports seven state WINGS
  - American Bar Association Commission on Law and Aging

## WINGS / IAGSTF

- › Indiana Adult Guardianship State Task Force
  - Advisory to state WINGS
  - Convened in 2008
  - Volunteer collective impact work group
  - Key public and private sector stakeholders
  - Developed and supports Indiana's community-based volunteer adult guardianship services (Volunteer Advocates for Seniors & Incapacitated Adults Programs)
  - Ongoing policy advocacy



# Guardianship

- › Important tool
- › Legal process governed by individual state statute
- › Removes a person's decision making rights and assigns them to someone else
- › Used when a person
  - can no longer make or communicate safe or sound decisions about his/her person and/or property, or
  - has become susceptible to fraud or undue influence



Establishing a guardianship  
may remove considerable  
rights from an individual



# Guardianship and Personal Rights

- › Determine residence
- › Consent to medical treatment
- › Make end-of-life decisions
- › Possess a driver's license
- › Manage, buy or sell property
- › Own or possess a firearm or weapon
- › Contract or file lawsuits
- › Marry
- › Vote





# Guardianship Best Practice

- › Use the least intrusive measures possible
- › Assure as much autonomy as possible
- › Review annually, considering restoration of some or all rights



The goal of an effective guardianship is to be able to restore some or all of the rights of the individual

## Supported Decision Making

- › A paradigm, not a program
- › People choose and use trusted friends, family members, and/or professionals ("supporters") to help them through the decision-making process
- › Person using SDM retains all decision-making authority
- › Concept to increase empowerment
- › Formalized way to assert self-determination

*Source: National Resource Center for Supported Decision Making*

## Supported Decision Making

- › Understanding and exploring the options
- › Knowing the risks and benefits of those options
- › Getting guidance and recommendations
- › Making and communicating a choice
- › Carrying out that choice, if help is needed to do so

*Source: National Resource Center for Supported Decision Making*



# Top 10 Myths About Supported Decision-Making and Other Options for Adulthood

# Top 10 List

1. Guardianship is the only option when...
2. Not everyone can use Supported Decision-Making (SDM)
3. Decision-making can't be learned
4. Making bad decisions means SDM is not appropriate
5. SDM leaves person open to exploitation



# Top 10 List

6. SDM is just for guardianship
7. SDM is just a fancy POA
8. SDM has to be on a special form
9. Court needs to oversee SDMA
10. SDM isn't recognized without a law

# Supported Decision-Making (SDM)

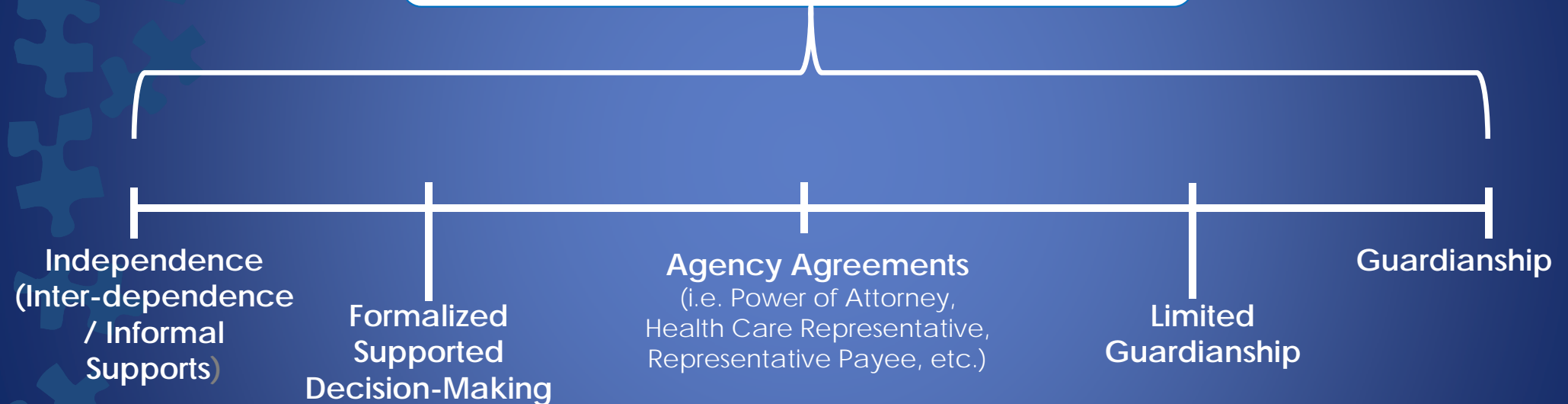
- › Where people choose and use trusted friends, family members, and/or professionals (“supporters”) to help them through the decision-making process
- › Person using SDM retains all decision-making authority
- › Concept to increase empowerment
- › Formalized way to assert self-determination

## Myth #1

- › **Myth:** Guardianship is the only way to access services or participate in a loved one's life once they turn 18.
- › There are a range of options available.

# Spectrum of Assistance

Supported Decision-Making Concept



## Myth #2

- › **Myth:** SDM is only appropriate for certain people or diagnoses.
- › Concept can be used to maximize participation under guardianship.
- › Formalized SDM for those who, with or without support, don't meet definition for incapacity.
- › Any diagnosis or condition can benefit.
- › Capacity as a spectrum – situation, intensity, and timing are considerations.

## Myth #3

- › **Myth:** Decision-making can't be learned.
- › Decision-making is a learnable skill.
- › Learned helplessness as a result of lack of opportunity to make decisions and have decisions respected.



## Myth #4

- › **Myth:** Making bad decisions means that SDM is not appropriate.
- › Determining what is a bad decision is inherently subjective.
- › People deserve the dignity of risk.

## Myth #5

- › **Myth:** SDM leaves a person open to exploitation.
- › Guardianship is not a shield, chastity belt, or bank vault.
- › No guarantee of safety under any arrangement.
- › Self-empowerment – less likely to experience abuse, neglect, exploitation
- › Learned helplessness

## Myth #6

- › **Myth:** SDM is a concept just for guardianship.
- › Can be used across multiple contexts.
- › Not to be confused with:
  - Shared decision-making (medical context)
  - Person-centered planning (service delivery context)

## Myth #7

- › **Myth:** SDM Agreements are just fancy Powers of Attorney, there is no need for an additional tool.
- › POAs can be useful but have context and assumptions.
- › Not an agency agreement.
- › SDM is another tool in the tool box.

## Myth #8

- › **Myth:** SDMAAs need to be on a special form.
- › No form needed (unless governed by jurisdiction).
- › Regulating the natural human experience.
- › Benefits to using a form.
- › Common components of a form.

## Myth #9

- › **Myth:** A court needs to oversee a SDM arrangement.
- › Court MAY be involved, but not required.
- › Oversight can be supported through team-based approach.



## Myth #10

- › **Myth:** SDM isn't recognized without a law.
- › Law helps but isn't required.
- › Ways to enforce SDMA.
- › Law can provide benefits to the process.

# 2017 WINGS Supported Decision-Making Grant Project

- › **Goal:** To develop a county-level judicial reform project that reduces the need for guardianship using supported decision-making.
- › **Objectives:**
  - 1) To create a community education component, explaining the process of supported decision-making;
  - 2) To develop pre-adjudication of guardianship screening tools for cases involving alleged incapacitated adults with intellectual and/or developmental disabilities;
  - 3) To develop a case referral and management delivery model for cases referred to the project by the Court; and
  - 4) To develop a training component for judges and pro bono attorneys/GALs regarding the process of supported decision-making.

# WINGS SDM Project Stakeholders

## › Project Stakeholders include:

- The Honorable Gregory Horn, Wayne County Superior Court
- Achieva Resources, Inc.
- Indiana Disability Rights
- The Arc of Indiana
- The Indiana Division of Disabilities and Rehabilitative Services
- The Indiana Division of Aging
- Indiana Adult Protective Services
- Indiana Legal Services, Inc.
- The WINGS/Adult Guardianship State Task Force

# Project Phases

## › Planning Phase (June 2017 – January 2018)

- Meet regularly with the project stakeholders to work on the development, training, and implementation of the project.
- Develop SDM agreements and screening forms for judges.
- Conduct training on the project for judges, pro bono attorneys/GALS, and community members.

## › Implementation Phase (February 2018– September 2018)

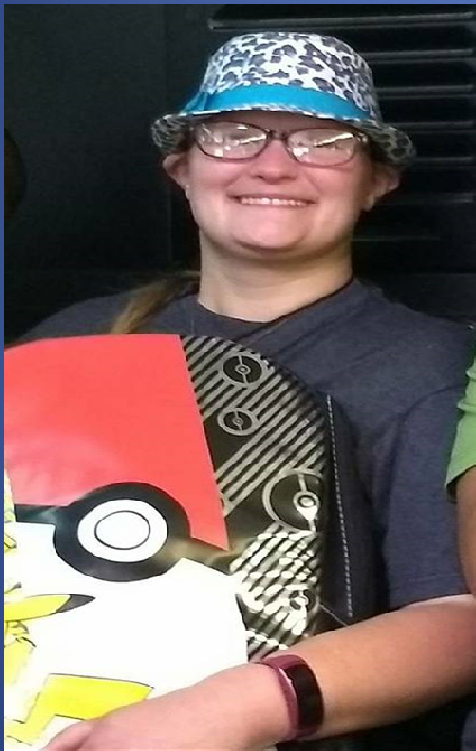
- Work with the judges and stakeholders to begin rollout of the project in February 2018.
- Evaluate the project training and rollout.
- Provide a final report on the project to the American Bar Association.

# Lessons Learned

- › Framing the issue
- › Community engagement
- › Creating a “demand”
- › Next steps
  - Continue recruitment
  - Expand to other counties
  - Focus on legislative initiative



# Guardianship of Jamie Beck



- › In 2010, Jamie was found by Adult Protective Services wandering around the town of Economy, Indiana by herself.
- › Her father had passed away three days earlier at a local hospital and Jamie had no other family members to care for her.
- › Adult Protective Services placed Jamie in a local nursing home and Dan Stewart (with Achieva Resources, Inc.) was appointed guardian of Jamie.

## Jamie's Story

- › While living at the nursing home, Dan Stewart and Achieva Resources worked for almost a year to obtain a Community Integrated and Habilitation Waiver (CIH Waiver) for Jamie.
- › After successfully obtaining a CIH Waiver, Jamie moved into the community with two other individuals with disabilities.
- › Jamie began working in the sheltered workshop at Benchmark Human Services in Richmond, Indiana.
- › Jamie wanted to obtain a job and was referred to Vocational Rehabilitation to help with this process.



## Jamie's Story (Cont.)

- › Jamie applied to over 50 establishments but was unable to find employment.
- › Her guardian made a call to Richmond's Mayor, Sally Hutton and she suggested Jamie attend the next City's Council meeting to express her difficulty in finding a job.
- › Jamie spoke at the next City Council meeting and 2 Council members asked her to send them a resume. (Jamie provided them with her resume at the meeting).
- › The next day, Jamie was called to interview at Pizza King and was employed on the spot!



## Regaining Skills and Capacity:

- › In July of 2017, Jamie enrolled in the Erskine Green Training Institute in Muncie, Indiana, and began a 13-week training at Ball Memorial Hospital.
- › Two weeks before graduating, she was offered a full time position at the hospital.
- › Jamie began to look for a new roommate, place to live, provider, and case manager.
- › On May 14, 2018, she moved into her new apartment in Muncie, Indiana.
- › On May 21, 2018 she began her job at Ball Memorial Hospital at \$11.00 per hour (with full benefits)!

# Jamie and the WINGS Grant Project

- › In the Spring of 2018, Jamie was interviewed by Melissa Keyes and Justin Schrock with Indiana Disability Rights as part of the WINGS grant project.
- › All parties, including her guardian, believed that Jamie was an outstanding candidate for Supported Decision-Making.

# Jamie and Supported Decision-Making

- › On June 13, 2018, Jamie went before the Honorable Gregory A. Horn, with Wayne County Superior Court 2, to request that her guardianship be terminated in favor of Supported Decision-Making.
- › Jamie and her “supporters” testified on her behalf at the hearing.
- › Following this testimony, Judge Gregory A. Horn signed an order terminating her guardianship, making her the first individual in the state of Indiana to have her rights restored under guardianship in favor of Supported Decision-Making.
- › Jamie was very excited and thanked all of her friends and Judge Horn at the hearing!







Questions???



## Contact Information

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# Knowing Your Options: Understanding Legal Guardianship and Less Restrictive Alternatives

## **Need to Know**

All people seek supports in making important life decisions.

There is a continuum of tools and options that support persons in decision making including:

- Informal support of family and friends
- Advice, support and advocacy from professionals
- Advance care planning
- Formalized supported decision making
- Agency Agreements such as Power of Attorney, Health Care Representative, Representative Payee
- Limited Guardianship
- Guardianship

Advocate in your state to ensure a full continuum of tools in the decision making toolbox!

## **Nice to Know**

Supported decision making agreements do not require special forms, legislative recognition or court oversight. These may be helpful, however.

## **Where to Go**

- WINGS/American Bar Association  
([https://www.americanbar.org/groups/law\\_aging/resources/wings-court-stakeholder-partnerships.html](https://www.americanbar.org/groups/law_aging/resources/wings-court-stakeholder-partnerships.html))
- National Resource Center for Supported Decision Making  
(<http://supporteddecisionmaking.org/>)
- National Guardianship Association (<https://www.guardianship.org/>)
- Indiana Adult Guardianship Office (<http://www.in.gov/judiciary/iocs/3425.htm>)
- Indiana Disability Rights (<https://www.in.gov/idr/>)
- Arc of Indiana (<https://www.arcind.org/future-planning/guardianship/>)
- Indiana Area Agencies on Aging and Disability (<http://www.iaaaa.org/>)
- Indiana Statewide Independent Living Council (<https://www.insilc.org/>)
- The Indiana POST Program (<https://www.indianapost.org/>)
- Indiana State Department of Health / Advance Directives Resource Center  
(<https://www.in.gov/isdh/25880.htm>)