OFFICE OF LEGISLATIVE RESEARCH
Objective Research for Connecticut's Legislature

ResearchReport

Supported Decision-Making Laws in Connecticut and Neighboring States

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Issue

What is Connecticut's law on supported decision-making and how does it compare to similar laws in neighboring and other northeast states?

Summary

Connecticut does not have a specific statute on supported decision-making (SDM) agreements. A 2019 bill (SB 63) would have authorized adults with disabilities to voluntarily enter into such an agreement, but the bill did not pass. However, three northeast states (New Hampshire, New York, and Rhode Island) statutorily provide for SDM agreements, including provisions that (1) explicitly define the term and establish the supporter's role and eligibility criteria, (2) address agreement termination and conflict of interest, and (3) require the reporting of abuse. (Massachusetts recently reintroduced bills to establish a legal framework for SDM agreements, but they have not been enacted (S. 109, H. 1485, H. 4949).)

Supported Decision-Making (SDM)

SDM generally allows certain adults to choose one or more trusted supporters to help them make decisions about their lives.

The arrangement is memorialized in a simple written agreement setting out roles for the supporter and the individual in need of assistance, among other things.

SDM agreements are a less restrictive alternative to guardianship or conservatorship.

Even though Connecticut does not have a specific SDM agreement statute, existing law requires the probate court, when reviewing an application for representation for an adult with disabilities, to first find that there is no less restrictive means of intervention available. The other northeast states

(Maine, Massachusetts, New Hampshire, New York, Vermont, and Rhode Island) similarly require or explicitly allow the consideration of less restrictive alternatives to guardianship or conservatorship for adults.

The Connecticut legislature also recently passed legislation (PA 23-137, § 41) that required the State Department of Education (SDE) to develop an online resource that provides information about decision-making options, including SDM, for eligible students when they turn age 18. This resource must be provided to students (1) eligible under the federal Individuals with Disabilities Education Act who are ages 14 and older, and their parents; and (2) at the student's individual educational plan (IEP) meeting. This resource is available on SDE's website here. Like Connecticut, at least one other northeast state, New Hampshire, has enacted a law that provides for such notification in IEP meetings.

Below are summaries of the (1) Connecticut legislative measures mentioned above; (2) New Hampshire, New York, and Rhode Island laws that statutorily established SDM agreements as an alternative to guardianship for adults; and (3) laws in northeast states that generally require or expressly allow consideration of a less restrictive alternative in guardianship proceedings.

Connecticut

Below are summaries of the (1) bill that would have statutorily authorized SDM agreements in Connecticut, (2) existing law that requires the probate court to consider the least restrictive alternatives before appointing a conservator, and (3) recently enacted legislation that required SDE to develop an online tool for students who need special education and related services about decision-making options once the student reaches age 18.

An Act Concerning the Use of a Supported Decision-Making Agreement by a Person With a Disability (SB 63 (2019))

In the 2019 legislative session, the Judiciary Committee voted out a bill (SB 63) that would have authorized adults with disabilities to voluntarily enter into agreements with other adults ("supporters") for SDM. However, the bill was not enacted.

Definition of Supported Decision-Making. The bill defined "supported decision-making" as a process of supporting and accommodating adults with disabilities to enable them to make life decisions without impeding their self-determination. Under the bill, "life decisions" included where the adult wants to live and with whom; services, supports, and medical care the adult wants to receive; and where the adult wants to work.

SDM Agreements. Under the bill, SDM agreements would have allowed supporters to provide SDM, be present during the SDM process at the adult's request, or assist the adult in his or her presence with (1) getting information related to life decisions from any person as long as the supporter keeps such information confidential and (2) communicating the adult's decisions with others. The bill limits a supporter's authority to that explicitly granted in the agreement.

Limited Liability. Under the bill, anyone who accepts an acknowledged agreement in good faith would be allowed to rely on it even if certain conditions render it null (e.g., the agreement is void) as long as the person has no knowledge of those conditions. The bill would have prohibited state and local agencies and others from being subject to criminal or civil liability or findings of professional misconduct based on acts or omissions done in good faith and in reasonable reliance on a SDM agreement.

Consideration of Least Restrictive Alternative to Conservatorship

Under existing Connecticut law, when the probate court receives an application for voluntary or involuntary representation for an adult (i.e., a respondent), the court must, among other things, find that appointing a conservator is the least restrictive means of intervention.

Definition of Least Restrictive Means of Intervention. By law, "least restrictive means of intervention" means intervention for a conserved person that is sufficient to provide, within the resources available to the conserved person, for a conserved person's personal needs or property management while affording the conserved person the greatest amount of independence and self-determination (CGS § 45a-644(k)).

Court's Consideration of Least Restrictive Means. By law, if after considering specific factors (e.g., the respondent's abilities and capacity) the court may appoint a conservator, if it finds by clear and convincing evidence that:

1. the respondent is incapable of managing his or her affairs, the affairs cannot be managed adequately without the appointment of a conservator, and doing so is the least restrictive means of intervention available to assist the respondent in his or her affairs ("conservator of the estate"); or

2. the respondent is incapable of caring for himself or herself, the respondent cannot be cared for adequately without the appointment of a conservator, and the appointment of a conservator is the least restrictive means of intervention available to assist the respondent in caring for himself or herself ("conservator of the person") (CGS § 45a-650(f)).

Decision-Making Options for a Child who Turns Age 18 (PA 23-137, § 4)

In the 2023 legislative session, the Connecticut legislature enacted a law that required SDE to develop a plain language, online resource for students and parents, guardians, or surrogate parents with a child aged 14 or older who requires special education and related services.

Required Information. This resource must have information and training resources about decision-making options once the student reaches age 18. SDE was required to develop the resource in consultation with in-state disability rights advocacy groups. (The department has since done so, see below.) Specifically, this resource must include at least the following information: (1) the child's and parent's rights under federal special education law when the child reaches age 18 and (2) alternatives to guardianship and conservatorship, including SDM, powers of attorney, advance directives, and other decision-making alternatives.

Definition of Supported Decision-Making. Under this new law, "supported decision-making" is a tool used by a person with a disability to retain decision-making authority through the help of one or more individuals, chosen by the person, in understanding the nature and consequences of potential personal and financial decisions and in communicating these decisions. The act required SDE to post the online resource on its website in an easily accessible location. The department also must give information about it to (1) the State Education Resource Center, so that it may be included in the online listing of the transition resources, services, and programs provided by state agencies and (2) each local and regional board of education to give to parents and guardians at the first planning and placement team meeting after students reach age 14. SDE must update this resource as needed (PA 23-137, § 41; codified at CGS § 10-74s).

SDE's Online Tool. SDE's online tool is now available on the department's website and lists the following SDM resources:

1. Connecticut State Independent Living Council - Supported Decision Making
2. Disability Rights Connecticut - Supported Decision Making
3. Center for Parent Information & Resources - Supported Decision Making
4. National Resource Center for Supported Decision-Making

SDM Agreement Statutes

We found at least 16 states (not including Connecticut) and the District of Columbia with laws that authorize SDM agreements and establish processes for their use. These states are Alaska, California, Colorado, Delaware, Illinois, Indiana, Louisiana, Maryland, Nevada, New Hampshire, New York, North Dakota, Rhode Island, Texas, Washington, and Wisconsin.

Table 1 below summaries the primary provisions of the laws for the northeast states with SDM agreement statutes (i.e., New Hampshire, New York, and Rhode Island).

Table 1: Northeast States with SDM Agreement Statutes

Provisions	New Hampshire	New York	Rhode Island
Definitions "Supported decision-making" means a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including, without limitation, decisions related to where and with whom the adult wants to live, the services, supports, and medical care the adult wants to receive, education, and where the adult wants to work, without impeding the adult's self-determination.	*N.H. Rev. Stat. Ann. § 464-D:4(VI)*	*N.Y. Mental Hyg. Law § 82.02(i)*	*R.I. Gen. Laws § 42-66.13-3(8)*
Agreement Scope New Hampshire specifies the types of decisions that can be subject to a SDM agreement (e.g., physical and mental health care). New York and Rhode Island generally establish the areas in which the decision maker needs support to make his or her own decision (e.g., gathering information).	*N.H. Rev. Stat. Ann. § 464-D:5*	*N.Y. Mental Hyg. Law § 82.04*	*R.I. Gen. Laws § 42-66.13-5*

Table 1 (continued)

Provisions	New Hampshire	New York	Rhode Island
Form and Content of a Valid Agreement • A valid SDM agreement must designate at least one supporter and describe the types of decisions that are authorized or prohibited. • It may designate more than one supporter and the circumstances under which an alternate supporter can act. • It must be written, dated, and signed in the presence of witnesses (e.g., two adults, or a notary public). • Generally, the supporter must attach a separate signed declaration indicating their (1) relationship to the principal, (2) willingness to act, and (3) acknowledgement of the role. • The statutes generally provide a template of an agreement.	*N.H. Rev. Stat. Ann. § 464-D:7*	*N.Y. Mental Hyg. Law § 82.10*	*R.I. Gen. Laws § 42-66.13-10*

Table 1 (continued)

Provisions	New Hampshire	New York	Rhode Island
Termination • Generally, a SDM agreement may be set for a definite time or may be terminated by the principal, the supporter, or by operation of law at any time. • The principal (i.e., the person who will receive the decision-making assistance) may revoke the agreement at any time; the following occurrences may also cause the agreement to terminate: 1. the principal (i.e., the person who will receive the decision-making assistance) gives the supporter written notice or, in the presence of witnesses, verbal expression of intention to do so; 2. the supporter withdraws from the agreement by providing the principal written notice; 3. the principal dies (automatic termination); 4. there is a finding of abuse, neglect, or exploitation; or 5. the supporter is convicted for certain offenses (e.g., assault and related offenses) (In most instances the termination is not automatic if there is another supporter named in the agreement.)	*N.H. Rev. Stat. Ann. § 464-D:8*	*N.Y. Mental Hyg. Law § 82.08*	*R.I. Gen. Laws §§ 42-66.13-5(g)*

Table 1 (continued)

Provisions	New Hampshire	New York	Rhode Island
Reporting Abuse and Neglect • SDM statutes generally require a person who receives a copy of a SDM agreement or is aware of the existence of a SDM agreement to promptly report to the commissioner of health and human services, or the commissioner's authorized representative, if he or she believes that the principal has been abused, neglected, or financially exploited by the supporter.	*N.H. Rev. Stat. Ann. § 464-D:14*	*N.Y. Mental Hyg. Law § 82.14*	*R.I. Gen. Laws § 42-66.13-9*

Least Restrictive Alternative Statutes

In addition to Connecticut, most states (including the other northeast states) have provisions in their guardianship statutes requiring or authorizing the court to consider a "less restrictive alternative" to guardianship when considering appointing a guardian for an adult.

Of the northeast states without a full SDM statute, Maine specifies in its guardianship statutes that SDM is considered a less restrictive alternative and provides a statutory definition of the term "supported decision-making."

Table 2 below summarizes how the northeast states address the consideration of less restrictive alternatives in their guardianship proceedings.

Table 2: Other Northeast States With Consideration of Least Restrictive Alternative Statutes

State *(Citation)*	Description
Maine *Me.Rev. Stat. Ann. tit.18, § 5-502*	• Before appointing a guardian, among other things, the court must find by clear and convincing evidence that the respondent's identified needs cannot be met by less restrictive alternatives that provide adequate protection for the respondent. • In deciding whether supported decision-making or other less restrictive alternatives are appropriate, the court may consider the following factors: 1. any proposed vetting of the person or persons chosen to provide support in decision-making; 2. reports to the court by an interested party or parties regarding the effectiveness of an existing SDM arrangement; or 3. any other information the court determines necessary or appropriate to determine whether SDM or other less restrictive arrangements will provide adequate protection for the respondent.
Me.Rev. Stat. Ann. tit.18, § 5-102(14)	• "Less restrictive alternative" (e.g., SDM) means an approach to meet an individual's needs that restricts fewer rights than the appointment of a guardian or conservator.
Me.Rev. Stat. Ann. tit.18, § 5-102(32)	• "Supported decision-making" means assistance from one or more persons of an individual's choosing in: (1) understanding the nature and consequences of potential personal and financial decisions that enables the individual to make the decisions; and (2) when consistent with the individual's wishes, communicating a decision once it is made.
Massachusetts *Mass. Gen. Laws Ann. ch. 190B § 5- 306(b)*	• After a hearing, the court may appoint a guardian as requested if, among other things, it finds that the person's needs cannot be met by less restrictive means, including use of appropriate technological assistance. • The court must exercise this authority to encourage the development of maximum self-reliance and independence of the incapacitated person and make the appointment and other orders only to the extent the incapacitated person's limitations make it necessary. • The law does not specifically define the term "less restrictive means."

Table 2 (continued)

State (Citation)	Description
New Hampshire *N.H. Rev. Stat. Ann. § 464-A:9* *N.H. Rev. Stat. Ann. § 464-A:2(XIV)*	• The court may appoint a guardian, as requested, after finding in the record based on evidence beyond a reasonable doubt that: 1. there are no available alternative resources which are suitable with respect to the incapacitated person's welfare, safety, and rehabilitation or the prudent management of his or her property and financial affairs; and 2. guardianship is appropriate as the least restrictive form of intervention consistent with the preservation of the civil rights and liberties of the person. • "Least restrictive form of intervention" must mean that the (1) guardianship imposed on the represented person represents only those limitations necessary to provide him or her with needed care and rehabilitative services, and (2) represented person must enjoy the greatest amount of personal freedom and civil liberties consistent with his or her mental and physical limitations.
New York *N.Y. Mental Hyg. Law § 81.02(a)* *N.Y. Mental Hyg. Law § 81.03(d)*	• The court may appoint a guardian for an adult if the court determines that the person either agrees to the appointment or is incapacitated. • In deciding whether the appointment of a guardian for an adult is necessary, the court must consider the (1) required court evaluator's report, and (2) sufficiency and reliability of available resources to provide for personal needs or property management without the appointment of a guardian. • Any guardian appointed under this law must be granted only those powers necessary to provide for the personal needs and/or property management of the incapacitated person as appropriate to the individual and which must constitute the least restrictive form of intervention. • "Least restrictive form of intervention" means that the powers granted by the court to the guardian with respect to the incapacitated person represent only those powers which are necessary to provide for that person's personal needs and/or property management and which are consistent with affording that person the greatest amount of independence and self-determination in light of that person's understanding and appreciation of the nature and consequences of his or her functional limitations.

Table 2 (continued)

State (Citation)	Description
Rhode Island R.I. Gen. Laws § 33-15-2	• A person who petitions the court for the appointment of a guardian for an adult must state in the petition the steps the petitioner has taken to use less restrictive alternatives to guardianship.
R.I. Gen. Laws § 33-15-4(a)(1)	• Unless the court finds that an individual is totally incapacitated, the court must not appoint a guardian or limited guardian if the court finds that the needs of the proposed ward are being met or can be met by a less restrictive alternative or alternatives. • The court must authorize the guardian to make decisions for the individual in only those areas where the court finds, based on one or more decision making assessment tools, that the individual lacks the capacity to make decisions. • The court order shall clearly indicate the scope of the powers and duties of the limited guardian.
Vermont *Vt. Stat. Ann. tit. 14, § 3063*	• An interested person may file a petition with the Probate Division of the Superior Court for the appointment of a guardian. • Among other things, the petition must state alternatives to guardianship that have been considered and an explanation as to why each alternative is unavailable or unsuitable.

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