Balancing Autonomy and Safety: Supported Decision-Making

March 2, 2020

What is supported decision-making?

• An alternative to guardianship
• Less restrictive than guardianship
• Let’s adults with disabilities make their own decisions by using family members, friends, and support staff to help understand choices, ask questions, make decisions, and communicate their decisions.

SDM as an alternative to guardianship

• Guardianship is substitute decision-making, SDM is supported decision-making.
• SDM can be formal (via written agreement) or informal.
• Decisions are made by the person, with support and input from a group of trusted advisors – the advisors do not make the decisions.
SDM looks different for everyone

• Depends on:
  • What the person needs support for and
  • The decision the person needs to make.

SDM trends

• Laws codifying supported decision-making as an alternative to guardianship that should be attempted before guardianship can be granted.
• As of late 2019, 9 states had laws outlining formal, legal SDM agreements.

Similar cases... different processes and outcomes

• Marie in Texas had cerebral palsy and an intellectual disability. She does not have a legal guardian. She has signed supported decision-making agreements with three people – her mom, her sister, and a longtime support professional.
• Marie started dating Dan, a man she met at the grocery store she works at part-time. He also has an intellectual disability.
How did the supporters approach the consent issue with Marie?

• Ongoing, continual conversations with Marie about dating, sex, and her relationship with Dan.
• Marie asked questions and was open with her supporters – they were able to help her navigate her relationship with Dan, including a sexual relationship.

Similar cases… different processes and outcomes (2)

• Jane in Pennsylvania has a daughter, Claire, who is 27-years-old and has an intellectual disability. She is Claire’s legal guardian (plenary or full guardian).
• Jane discovered that Claire was having sex with a man in her day program. Claire called him her boyfriend and said they were in love.

How did Jane approach the consent issue with Claire?

• She didn’t talk to Claire at all.
• Instead, she made a report with law enforcement. She claimed that Claire was unable to consent to sex because she was Claire’s guardian.