

Frequently Asked Questions about Supported Decision-Making (SDM)

1. What is Supported Decision-Making?

In California, Supported Decision-Making is recognized in state law as a way for adults with disabilities to get help making decisions while keeping their legal rights or decision-making authority.

Supported decision-making (SDM) is a process where an individual with a disability or an older adult uses a network of trusted people (supporters) to help them make their own life decisions, rather than having a guardian or conservator make those decisions for them. The individual retains all of their legal rights and autonomy.

SDM is a flexible, person-centered approach that can be tailored to the individual's specific needs and preferences.

2. Who can use Supported Decision Making?

In California, SDM can be used by any adult with a disability who is 18 years of age or older who want help understanding, making, communicating, and implementing their important life decisions while still retaining their autonomy and legal rights to make their own decisions. This means that the person is not under any type of conservatorship.

3. What is AB 1663 and what are its main changes?

AB 1663 (the Probate Conservatorship Reform and Supported Decision-Making Act), chaptered in 2022 and effective January 1, 2023, reforms California probate conservatorship law to strengthen conservatee rights, promote less-restrictive alternatives, and codify SDM in statute. Key changes include:

- Legal recognition of Supported Decision Making as an option for people with disabilities who do not need a restrictive conservatorship and the requirement for courts to consider SDM and other supports when assessing capacity and the need for conservatorship.
- Requirement for courts and investigators to evaluate capacity with supports and consider less-restrictive options before granting conservatorship.
- Creation of a Conservatorship Alternatives Program within Superior Court self-help centers to provide resources and assistance.
- Requirement that petitioners describe alternatives tried and why they were unsuitable and adding procedural protections for conservatees seeking termination or modification of conservatorship.

For a concise fact sheet and overview of AB 1663, see the State Council on Developmental Disabilities fact sheet: <https://scdd.ca.gov/sdm-tap-resources/fact-sheet-on-assembly-bill-1663-the-probate-conservatorship-reform-and-supported-decision-making-act/>

5. What is a Supported Decision-Making Agreement?

A Supported Decision-Making Agreement (SDM Agreement) is a private agreement between a person with IDD and a trusted supporter. This agreement details the types of assistance needed to support the individual in making significant life decisions. It can be formal (written) or informal (verbal).

6. What must an SDM Agreement include?

A written SDM agreement must contain:

- A list of areas where the individual requests support.
- A list of areas where the supporter agrees to provide assistance.
- The supporter's commitment to follow existing laws.
- Information regarding the individual's rights under the Elder Abuse and Dependent Adult Civil Protection Act.
- Signatures from the individual and two disinterested witnesses or a notary.

7. Who can be a supporter?

A supporter can be any trusted adult, unless an exception applies, who is chosen by the person with a disability to help them understand information, consider their options, and communicated their decisions. A person cannot be a supporter if any of the following apply:

- **Abuse or Neglect Allegations** - the adult with a disability has *previously made or makes an allegation* against the supporter under the **Elder Abuse and Dependent Adult Civil Protection Act**
- **Protective or Restraining Orders** - the adult with a disability has obtained an **order of protection** (restraining order) against the person
- The person is subject to a **civil or criminal order** that prohibits contact with the adult with a disability.
- **Prior Removal as Conservator** - the person was **removed as the conservator** of the adult with a disability because they failed to act in the person's best interest.
- **Liability for Abuse/Mistreatment** - the person has been found criminally, civilly, or administratively liable for abuse, neglect, mistreatment, coercion, or fraud against the adult with a disability.

8. What is the role of the Supporter?

A Supporter acts as a facilitator that helps the person with a disability understand and access information, explore options and consequences, clarify values and preferences, and communicate their decisions in the appropriate manner (verbally, written, assistive technology, etc.). A supporter must always act with the consent of the person with a disability and may never make decisions for the person.

9. How long does an SDM Agreement last?

An SDM Agreement remains in effect until terminated by either party. Written agreements should be reviewed every two years and updated as needed. It is important

to note that updated agreements have the same requirements as the original agreement, including the signature requirements.

10. What is the Elder and Dependent Adult Civil Protection Act and where can I read it?

The Elder Abuse and Dependent Adult Civil Protection Act (often called the Elder Abuse Act) is California law that defines and provides civil remedies for abuse, neglect, and exploitation of elders and dependent adults, and sets out mandatory reporting and other protections. You can read the Act in the California Welfare and Institutions Code, Chapter 11 (sections beginning at 15600). A convenient online version is available here: California Welfare & Institutions Code, Elder Abuse and Dependent Adult Civil Protection Act <https://law.justia.com/codes/california/> (search “WIC Chapter 11 Elder Abuse”).

11. What to do when someone does not accept a SDM agreement?

First it is important to understand why the agreement is being refused. Many refusals happen because people are unfamiliar with SDM or don't understand the law. If another party refuses to accept the SDM agreement the person with a disability can ask for the reason to be put writing. If the SDM agreement is being refused because the other party is unaware of the law the person with a disability can share *Section 16, Division 11.5, Sections 21000-21007 of the Welfare and Institutions Code* which is the authorizing statute. Specifically, *Section 21004(a)(b) and (c)* that read as follows:

21004. (a) Notwithstanding any other provision of this division, an adult with a disability is entitled to have present one or more other adults, including supporters, in any meeting or discussion, or to participate in any written communication, including, but not limited to, individual planning meetings required by state or federal law, service and care planning meetings, discharge planning meetings, meetings with health care providers and individuals who provide residential services or long-term services and supports, and communications with a bank, financial institution, or financial planner.

(b) An adult with a disability may indicate that they wish to have one or more adults attend a meeting or discussion or participate in any written communication through oral statement, gesture, or any augmentative or alternative communication method used by the adult with a disability.

(c) A third party may only refuse the presence of one or more adults, including supporters, if the third party reasonably believes that there is fraud, coercion, abuse, or other action by the individuals requested to be included that the third party is required to report pursuant to the Elder Abuse and Dependent Adult Civil Protection A

There is no legal requirement to show the SDM agreement but it can be helpful to show the refusing party that an agreement exists and the person with the disability has retained their right to make decisions for themselves.

If the refusal comes from a health care provider, school, government agency, or other public entity the person with a disability can request SDM as a reasonable accommodation under the Americans with Disabilities Act (ADA) or section 504 of the Rehabilitation Act.

Combining the SDM agreement with supplemental legal tools such as power of attorney, limited power of attorney, and consent forms can also be helpful in addressing concerns expressed by a third-party. If the third-party continues to refuse to accept the SDM agreement the person with a disability can file a grievance or complaint with the refusing entity.

If, after exhausting other options, the person with a disability is still being denied their right to make decisions using SDM they can seek assistance from Advocacy Organizations, Disability Rights Organizations, or the State Council on Developmental Disabilities to help advocate for their right to use SDM.

12. Are supporters fiduciaries and what are fiduciary duties?

California law does not impose fiduciary duties on supporters, however, supporters are required to do the following:

- Support the person's will, preferences, and values.
- Act honestly, diligently, and in good faith.
- Stay within the scope of authority identified by the person.
- Maintain confidentiality unless the person authorizes disclosure.

Fiduciary duties (when a person is a fiduciary, e.g., a conservator or trustee) are legal obligations requiring the fiduciary to act with the highest good faith and loyalty for the beneficiary's benefit, avoid self-dealing, manage assets prudently, and follow court or statutory rules. If a supporter also holds a legal fiduciary role (e.g., conservator, trustee, agent under a power of attorney), the higher fiduciary duties apply.

13. Is SDM recognized by SSA?

The Social Security Administration (SSA) does not formally recognize SDM Agreements as a substitute for SSA's representative payee process. However, a representative payee or other payee may choose to honor SDM principles and involve the person in decisions to the extent possible. SDM does not prevent a payee from using SDM practices in managing benefits, but SSA's rules about appointing and supervising payees remain in effect.

14. What information can I get at the self-help centers in the superior courts?

Superior Court self-help centers provide free legal information and practical assistance (not legal representation) for people navigating conservatorship and SDM issues. Typical services include:

- Guidance on forms and filing procedures for conservatorship petitions, termination petitions, and related matters.

- Information about alternatives to conservatorship, including SDM, powers of attorney, and advance directives.
- Referrals to legal aid, mediation, community resources, and local social services.
- Conservatorship Alternatives Program resources (established under AB 1663) to help people explore less-restrictive options and find local supports.

Check your local Superior Court's self-help pages or the statewide self-help conservatorship guide for county-specific services and links. Find your local Self-Help Center here: <https://selfhelp.courts.ca.gov/>

15. How can an SDM Agreement be terminated?

In California, a supported decision making agreement can be terminated at any time by the person with a disability. Termination of the agreement can occur in several different way including:

- Any party to the agreement can terminate the agreement by providing written or oral notice to all parties to the agreement.
- Any action such as defacing or destroying – demonstrating intent to terminate the agreement - can terminate the agreement.
- A supporter can terminate their role as a supporter by providing written or verbal notice to the person with a disability but that act does not terminate a SDM agreement where more than one person is a supporter.

A SDM agreement can also be terminated by the terms of the agreement. For example, if the agreement is for support to make a purchase the agreement ends when the purchase is made.

16. How can a person who is conserved under a limited conservatorship exit that conservatorship?

Under California Probate Code § 1860.5, a limited conservatorship continues until a court order ends it. To exit a limited conservatorship a conservatee, conservator, family member or friend of the conservatee can file a petition to terminate with the court. The petition must include facts and evidence that support why the conservatorship is no longer necessary. A court hearing is set and if the judge, upon reviewing the evidence, agrees with the petitioner then a court order will be issued to terminate the conservatorship.

It is important to make sure you have the correct petition as each county may have a different form. The Superior Court Self-Help Centers can help petitioners find the proper forms.

17. Where can I find additional information?

For more resources and information on SDM, visit:

The California Policy Center for Intellectual and Developmental Disabilities

<https://www.cpcidd.org/supported-decision-making/>

The California State Council on Developmental Disabilities – Supported Decision Making
Technical Assistance Program

<https://scdd.ca.gov/sdm-tap/>