


NRS 162C

Disability Rights and Nevada's Supported Decision-Making Act



Heather Schomberg (left), Travis Mills, Ian Zehnger, Assemblywoman Connie Munk, Kailin Kelderman, Jack Rovetti, Governor Steve Sisolak, Assemblywoman Lisa Krasner, Assemblywoman Lesley Cohen and Homa Woodrum celebrate after Sisolak signed Nevada's Supported Decision-Making Act during the 2019 session of the Nevada Legislature.

BY LESLEY E. COHEN, ESQ. AND HOMA S. WOODRUM, ESQ.,

On a spring morning in 2019 at the Capitol Building in Carson City, more than a dozen self-advocates accompanied by their proud families joined with Governor Steve Sisolak and legislative leaders, as well as state judicial and executive branch representatives for the signing of Assembly Bill 480, Nevada's Supported Decision-Making Act.

In his speech, Governor Sisolak told the disability rights self-advocates in attendance, "this bill belongs to you" and highlighted their stories, thanking them for testifying before the Legislature and sharing a glimpse into their daily lives.

They had testified about going to school, having jobs, living on their own and unequivocally being the "boss" of themselves. They had related their experiences and how, like anyone else, they needed a little help sometimes. This help included advice from parents, support from siblings, input from friends, community services and even apps on their phones for tracking things like bank accounts and medical appointments.

These passionate self-advocates stressed that, regardless of situations they were navigating, they were the best people to make their own choices about their lives.

Nevada's Supported Decision-Making Act is important because it affirms that needing assistance in aspects of daily life should not be a barrier to continuing recognition as the ultimate decision maker in one's own life. Previously, court-centered mechanisms such as guardianship have been presented to people with disabilities as one of the only paths to accessing services, but at great cost to personal autonomy (even with welcome reforms to guardianship in recent years).

The "School-to-Guardianship Pipeline"

In its report entitled: "Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination for

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People with Disabilities,” the National Council of Disability (NCD) relates that, “Guardianship has been referred to as a double edged sword—an instrument designed to protect vulnerable people in society from abuse or neglect, while simultaneously removing fundamental rights, which may increase opportunities for such abuse.”¹

The NCD also highlights what it calls the “School-to-Guardianship Pipeline for Youth with [Intellectual or Developmental Disabilities],” indicating that “it is worth noting that all parents have fears about whether their teenager will be ready for the responsibilities of adulthood when they turn 18, but it is only the parents of teenagers with disabilities who are regularly advised that they have the option of preventing the child from becoming legally an adult in the eyes of the world.”²

Cultural Attitudes and Disability Rights

In disability rights activist Jacobus tenBroek’s law review article entitled “The Right to Live in the World: The Disabled in the Law of Torts,” he similarly addresses societal barriers for persons with disabilities, writing that, “[t]hese include public imaginings about what the inherent physical limitations must be; public solicitude about the safety to be achieved by keeping the disabled out of harm’s way; public feelings of protective care and custodial security; public doubts about why the disabled should want to be abroad anyway; and public aversion to the sight of them and the conspicuous reminder of their plight.”³

It is crucial to understand the attitudes and biases of our legal system

when considering disability rights because so much in our legal system centers around risk. These include risks we might foresee with a given course of action, the responsibility for the harm that results, and ways to minimize negative outcomes going forward. We often rely on others in society to accept our decisions, but when that breaks down, the consequences are very real.

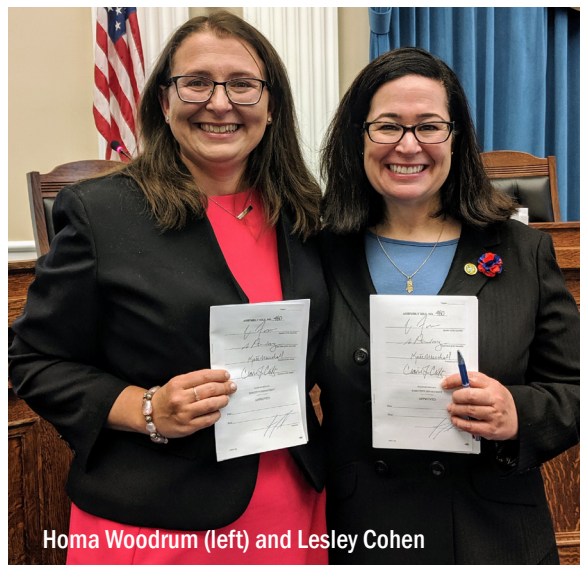
For example, in testimony to the Nevada Legislature, a mother shared her experience supporting an adult daughter with Down syndrome. As legislators listened with rapt attention, Nicole Schomberg relayed that when her daughter requested anesthesia for a dental procedure to alleviate an abscessed tooth, the appointment had to be set five months out as only one professional in the Reno area would accept her daughter’s consent.⁴

Even though the law presumes capacity, these societal barriers drive many to unnecessary guardianships to overcome them. Less restrictive alternatives are crucial.

Nevada Takes Action

Recognizing the danger of unnecessary guardianships, the Nevada Supreme Court’s Commission to Study the Administration of Guardianships issued its “Final Report” in September 2016 and included as its ninth policy statement of support efforts to seek a grant to study the utilization of supported decision-making as an alternative to guardianship.⁵ The results of that grant and the efforts of stakeholders led by Judge Frances Doherty of the Second Judicial District Court further affirmed the utility of

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Homa Woodrum (left) and Lesley Cohen

supported decision-making as an alternative to guardianship.⁶

On June 19, 2018, the Interim Legislative Committee on Seniors, Veterans and Adults With Special Needs (NRS 218E.750) heard testimony from Nevada’s Aging and Disability Services Division about guardianship and alternatives, and subsequently incorporated supported decision-making into their Bill Draft Requests for the upcoming legislative session with unanimous support.⁷

On July 1, 2019, Nevada’s Supported Decision-Making Act became law and further empowers individuals of all ages to seek input in their considered choices. The law now provides, as set forth in Nevada Revised Statutes 162C, that an individual may:

- 1) Choose one or more supporters;
- 2) Outline what those supporters can and can’t do in the course of assisting the principal; and
- 3) Third parties need to recognize:
 - a. (NRS 162C.310) the decisions made by the individual just as they would anyone of legal age’s decisions;
 - b. (NRS 162C.300) the fact that someone is getting assistance can’t be used against them to argue they don’t have capacity; and

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- c. (NRS 162C.320) the provider of services won't face liability for relying on the decision of the individual.

The types of decisions that can be covered by this agreement between a person and their supporter(s) range from medical, financial, legal, educational, residential, employment and "[o]ther services necessary to maintain the independence of an adult." NRS 162C.070 (2019).

Under Nevada law, a supported decision-making agreement need only be in a dated writing, signed by the principal and any supporter(s) as well as two adult witnesses, that details the assistance supporters may and may not provide. NRS 162C.200 (2019).

Looking Ahead

Supported decision-making is an accommodation to rebalance social barriers to legal rights many take for granted. Conceptually, it is not like an accommodation for a person with a disability; it is as an accommodation for those in society who need added guidance to embrace the decision-making capacity of others instead of discriminating against them.

Author and disability rights advocate Santa Perez offered the following in a presentation to attendees at the September 16, 2019, Self Advocacy Conference hosted by the Nevada Governor's Council on Developmental Disabilities:

People with disabilities need to come to the table not as voiceless tokens, but rather as active, opinionated and confident participants. For people to take

charge of their lives, they need to know their own disabilities, health care needs and not be afraid to ask questions if they don't understand. It's important to teach our youth about self-advocacy and self-determination at a young age, so they can self-direct their own lives as

they become adults. The more they know about their own disabilities and health care needs, the better they can self-direct their lives.

Attorneys should know that the Supported Decision-Making Act is something to share with prospective clients and those around them.

The goal is for people to decide for themselves if they need help and who will help them. As there is specifically no statutory form, people can customize their agreements to include whatever terms they choose within the guidelines of NRS 162C. If samples are needed, they are freely and readily available from legal aid entities, courts, state agencies, resource centers and more.⁸

Jurists and lawyers who have already embraced supported decision-making have been able to fashion less-restrictive models of support (instead of the language of protection employed in guardianship courts) that encourage lifelong learning and person-centered approaches. The future is bright.

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3. "The Right to Live in the World: The Disabled in the Law of Torts," Jacobus tenBroek, California Law Review Vol. 54, No. 2, May, 1966.
4. "Testimony for Public Hearing – Committee on Health and Human Services – April 8, 2019," Nicole Schomberg (Videos of the hearings are available online at <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6930/Exhibits>)
5. Final Report, Nevada Supreme Court's Commission to Study the Administration of Guardianships, September 2016, p. 5.
6. Supported Decision-Making Findings and Stakeholder Recommendations, Second Judicial District Court, December 15, 2017.
7. 2015's AB 128 (now NRS 162A.865) did incorporate some precepts of supported decision-making within the "Power of Attorney for adult with intellectual disability." The law was meant to give individuals a tool to have their health care choices recognized with the assistance of their agent and was an important early step.
8. The Second Judicial District Court, for example, has information and videos at <https://www.washoecourts.com/AdultGuardianship/AlternativesToGuardianship>

LESLEY E. COHEN is a Nevada attorney and represented Assembly District 29 in the Nevada Legislature, where she chaired the 2018 Interim Committee on Seniors, Veterans and Adults With Special Needs and presented Assembly Bill 480 during the 2019 Legislative Session. She is a graduate of the University of Nevada, Reno and DePaul University Law School.



HOMA S. WOODRUM is a Nevada attorney and graduate of the University of Nevada, Las Vegas and UNLV's William S. Boyd School of Law. She currently represents the Nevada Division of Health Care Financing and Policy as a Deputy Attorney General.

