



Equal Recognition Before the Law Article 12 CRPD

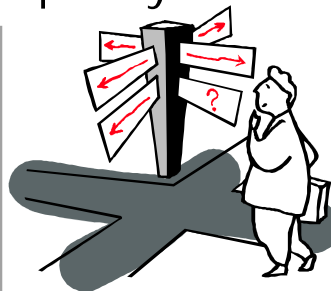
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What is the Right to Legal Capacity?

Article 12:


- Right to Make Decisions
- Non-discrimination
- Access to supports
- Safeguards




Article 5: Reasonable Accommodation




Legal Capacity:
Making Decisions About



Health Care



Finances/Property



Personal Life – where and how to live, work, be supported; relationships

‘Who’ Exercises Legal Capacity?

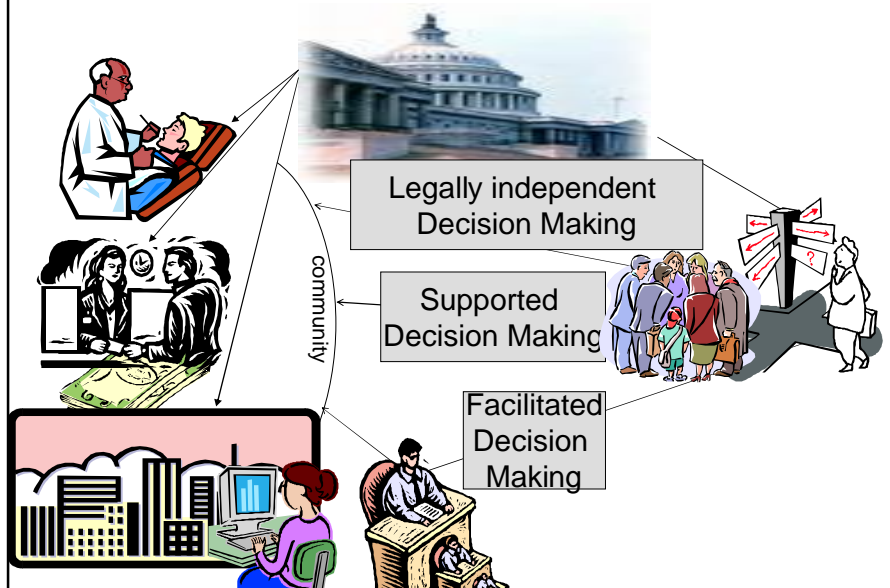
An adult/person of the age of majority – to whom, at a minimum, at least one other person can describe their will and intention.



Types of Decision Making Supports

- Life Planning – for meaningful decisions
- Independent Advocacy – to challenge other parties
- Communicational and Interpretive – to assist in communication
- Representational – to help represent a person to others
- Relationship-Building – to facilitate personal relationships & support networks/representatives
- Administrative – to assist in implementing agreements

Types of Decision Making Status





In disagreements:

How do we decide who gets what decision-making status and what supports for what decisions?

Legally Independent

With decision-making supports and reasonable accommodation on the part of other parties, are the other parties able to understand the person's will/intention sufficient to enter an agreement? But without formally appointed representatives.



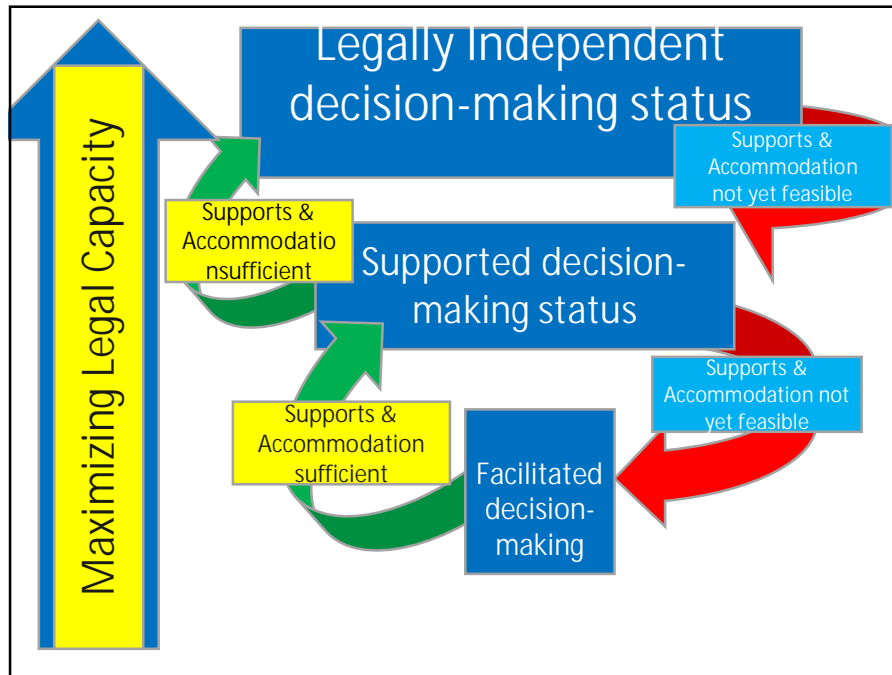
Supported Decision Making

If not legally independent,

- is the person able to appoint a trusted representative/network to assist in expressing will/making decisions? Or
- is there a person or group of persons who know and understand the person and are committed to assisting and representing? Or
- Can someone be appointed who the person could communicate with, and who would assist?

Facilitated Decision Making

If not, as a last resort, appoint a facilitator – time-limited, decision-specific to facilitate making of needed decisions based on best understanding of person's intention, with ongoing duty to invest in creation of decision-making supports – especially personal relationships.



Safeguards – Why?

OVER-protection

or

UNDER-protection

How do we get the balance right?



Safeguards: Principles

- Respect for autonomy and right to make individual decisions
- Personal dignity and integrity – right to privacy, bodily integrity, individual personality and identity
- Duty to protect against substantial and serious risk, abuse, neglect

Areas to Safeguard:

- Access to supports and accommodation for decision making
- Integrity of the decision-making process – for legally independent, supported and facilitated
- Against serious and substantial risk, abuse and neglect



Main Safeguards

1. A mandated authority with powers to:
 - hear concerns/complaints from individuals, third parties, supporters, concerned citizens
 - inquire/investigate concerns
 - rule on duty to accommodate and State responsibility to provide supports
 - decide what type of decision-making status in a particular situation – independent, supported or facilitated – e.g. 'is the person able to appreciate and understand on his/her own' with supports and

Main Safeguards...

2. Mandatory appointment of monitors for supported and facilitated decision making
3. Legislated duties of supporters, facilitators, monitors
 - To raise concerns, inquire and report to authority as needed
 - To monitor investment in relationship building for those in facilitated status



Safeguarding: Access to Supports and Accommodations

Disputes

- Is the person able to access needed accommodations and supports – life planning, independent advocacy, communicational, etc.?
- Legal independence - Does the person 'appreciate and understand' the nature and consequences of the particular decision – or are more supports and accommodations needed?
- What does the person want? Conflict among supporters/facilitators?

Safeguarding: Integrity of Decision- Making Process

- Mandate duty to accommodate & provide supports
- Legislate responsibilities of third parties
- Require monitors for supported & facilitated
- Provide access to independent advocacy and relationship building
- Provide for making complaints and investigating allegations of lack of accommodation, supports, or that supporters or facilitators are not meeting their responsibilities.



Safeguarding: Against Risk, Abuse, Neglect

Legal Independence

- Is the person able to act legally independently? Appreciate and understand risks and outcomes? If yes...
- Does the person have needed supports and accommodations, including independent advocacy? If not, these must be arranged.
- Is the situation of serious effect or risk – bodily harm to oneself or others? If not, and person is legally independent, inquiry ends. People can choose risk.

... Against Risk, Abuse, Neglect

Legal Independence

- If actions *do* place the individual or others at substantial risk or are harming...
- Mandate supports – non-violent and non-restraining.
- If supports and services rejected or ineffective:
 - Automatic appointment of supported or facilitated?
 - Restraints?
 - Involuntary commitment for mental health assessment?
 - Criminal justice intervention?
 - Other?



Safeguards – Risk, Abuse, Neglect

Supported Decision Making Status

- Do the person and support representatives *together* 'appreciate and understand' consequences of decisions?
- If yes, do they have decision-making supports required – advocacy, life planning, etc.
- Are the support representatives meeting their responsibilities?
- If yes, and actions do not bring substantial risk, abuse, or neglect, the inquiry ends.

Safeguards

Supported and Facilitated Decision Making

- If actions do bring serious risk of harm to the person or others, supporters are in breach of their responsibilities
 - If unintentional, provide additional supports
 - If intentional, change supporters/facilitators
- Major non-therapeutic interventions cannot be decided outside of legally independent status
 - If there is question about whether an intervention is 'therapeutic' a hearing is required.