

What to Know About Supported Decision-Making and Other Options for Adulthood

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What We Will Cover...

- Decision-making
- Supported decision-making
- Options for supporting decision-making in adulthood
- How to select an option and move forward
- How you can help!
- Resources



Decision-Making

- Understanding the issue
- Determining options and consequences
- Gathering information
- Evaluating options
- Making a choice
- Communicating or implementing choice
- Observing results

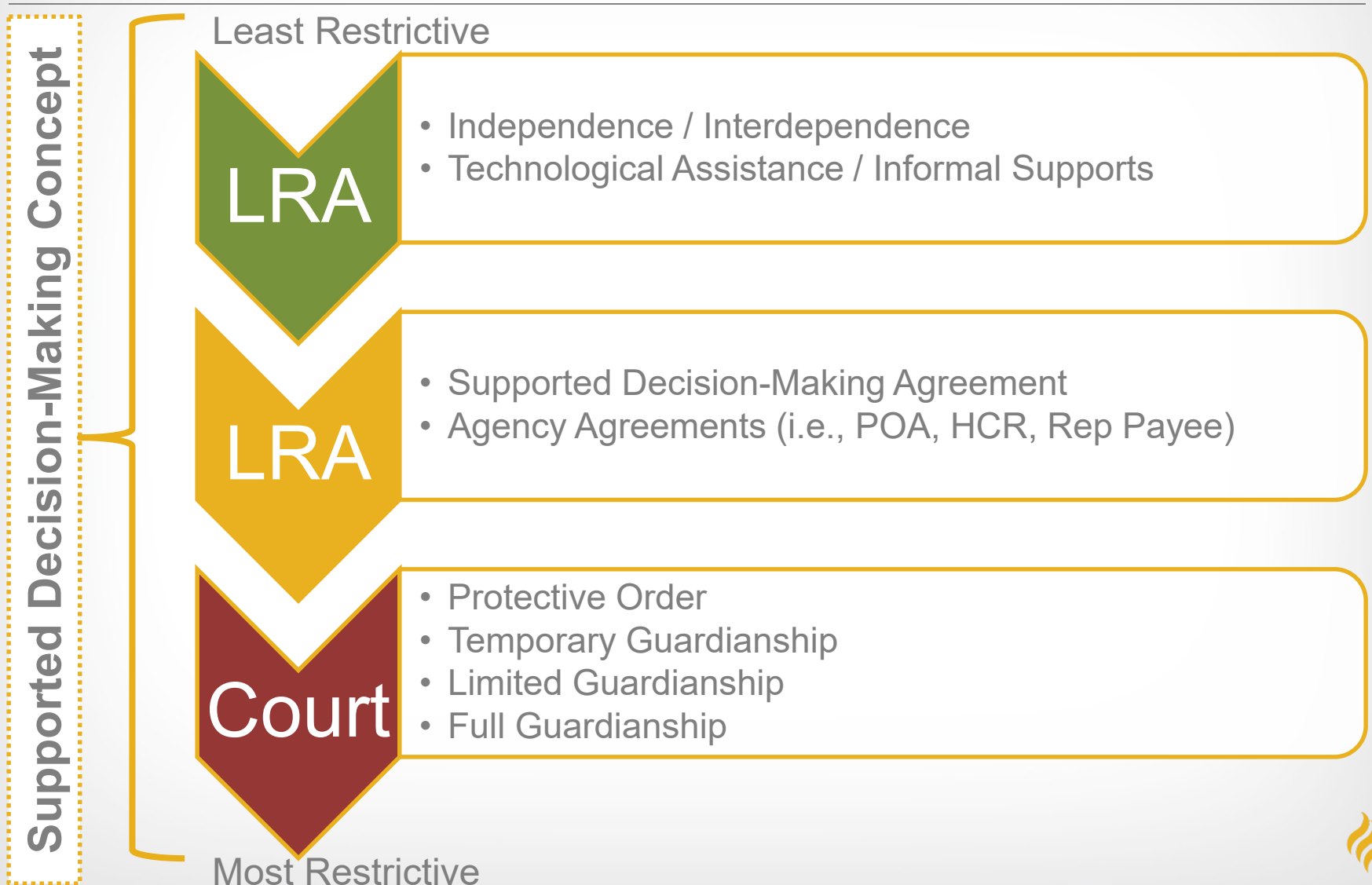


What options are available?

- Not just guardianship!
- Goal is to start with the least restrictive options possible
- Capacity as a spectrum – depends on situation, internal and external factors, skills
- Many options can be used in combination or change over time



Spectrum of Assistance

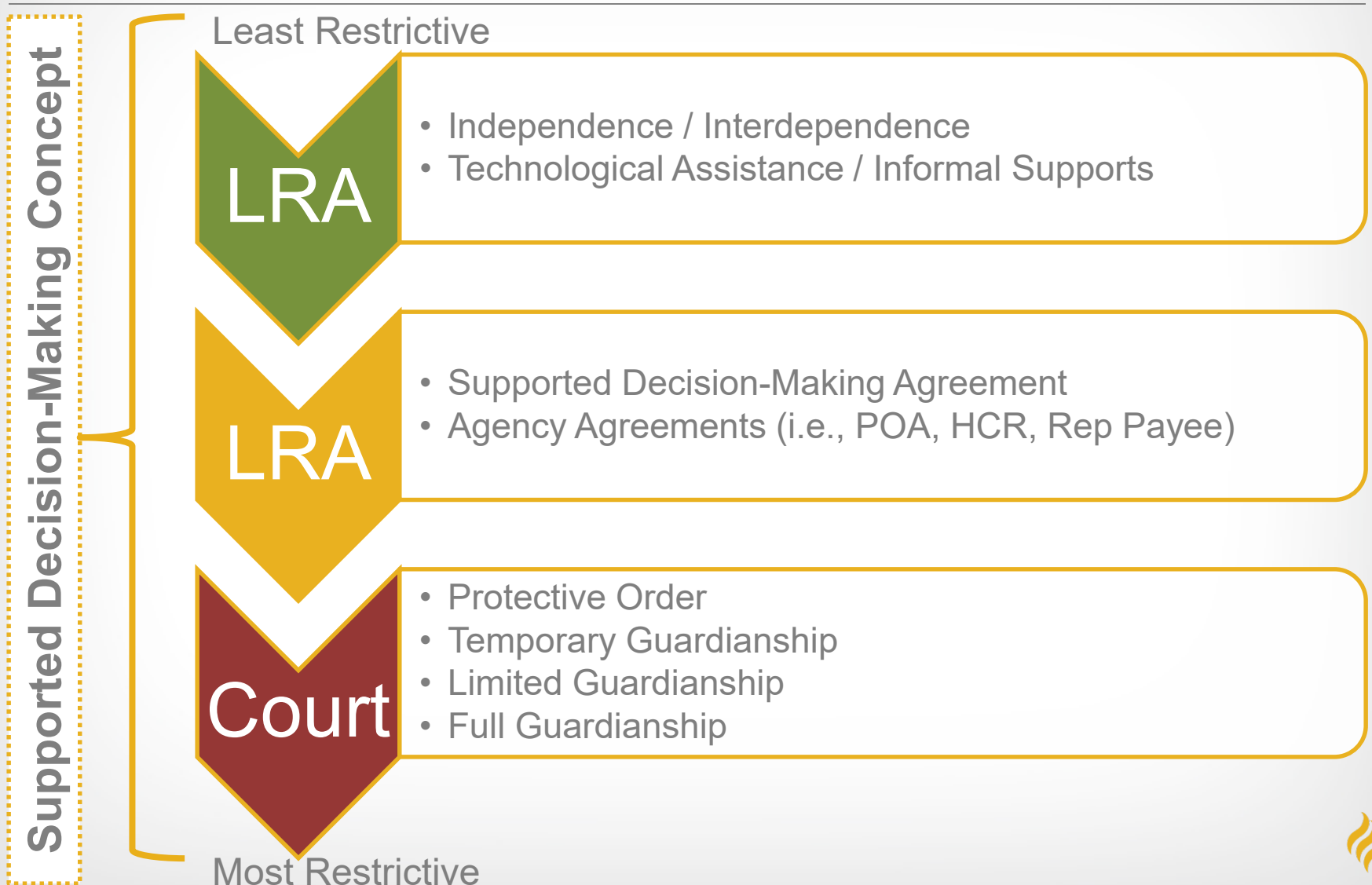


Interdependence / Technology

- Ways to help fill the gaps in someone's needs with minimal involvement
- Formal (paid services) or informal (family or friends)



Spectrum of Assistance



Less Restrictive Alternatives

- “Less Restrictive Alternatives” – an approach to meeting a person’s needs that restricts fewer rights of the person than would the appointment of a guardian.
- Includes (but not limited to):
 - Supported Decision Making Agreement
 - Appropriate technological assistance
 - Appointment of a representative payee
 - Appointment of a Health Care Representative
 - Creation of a Power of Attorney



Supported Decision-Making

- Ind. Code § 29-3-14-1

“Supported Decision-Making refers to the process of supporting and accommodating an adult in the decision-making process to make, communicate, and effectuate life decisions, without impeding the self-determination of the adult.”




SDM – Plain Language

- Accommodates the decision-making process
- Where people choose and use trusted friends, family members, and/or professionals (“supporters”) to help them through the decision-making process
- Person using SDM retains all decision-making authority
- Concept to increase empowerment and self-determination



Examples of SDM

- Understanding the issue – “explain to me in English...”
 - Determining options and consequences – “help me see the big picture.”
 - Gathering information – “help me write out what questions to ask.” “help me figure out what are good sources of information.”
 - Evaluating options – “help me make a pro/con list.” “help me express my values” 
-


Examples of SDM

- Making a choice – “help me get ‘unstuck.’”
- Communicating or implementing choice – “help me express my choice”*, “help me understand what I need to do next.”
- Observing results – “support the choice I’ve made.”



Research on SDM

People with more self-determination have:

- Improved psychological health including better adjustment to increased care needs.
- O'Connor & Vallerand, 1994
 - Better quality of life, more employment and community integration. e.g. Powers et al., 2012; Shogren, Wehmeyer, Palmer, Rifenburg, & Little, 2014;
 - Increased health, welfare, and safety e.g., Khemka, Hickson, and Reynolds, 2005. 
-

Research on SDM

- When denied self-determination, people experience “low self-esteem, passivity, and feelings of inadequacy and incompetency.” - Winick, 1995.
- People subjected to overbroad or undue guardianship can experience a “significant negative impact on their physical and mental health, longevity, ability to function, and reports of subjective well-being” - Wright, 2010



Who can use SDM?

- Anyone who needs help making decisions.
- Concept can be used within other decision-making arrangements.
- Any diagnosis or disability



People without “supporters”

- Think creatively about who is involved in the person’s life.
- What community-based activities does the person enjoy that might be an opportunity for meaningful relationship development?
- Other options for building decision-making skills.



Supported Decision-Making Agreements

- States requirements for entering into a SDM Agreement.
- Describes the responsibilities and prohibitions of a supporter.
 - Expressly states that supporter is not a surrogate decision-maker for the adult.
- Describes components of a valid SDMA.
- Describes when a SDMA terminates.



Supported Decision-Making Agreements

- Provides third party protections for relying on or declining to honor a SDM Agreement.
- Provides protections from liability for supporters, except in cases of fraud, misrepresentation, recklessness, or willful or wanton misconduct.

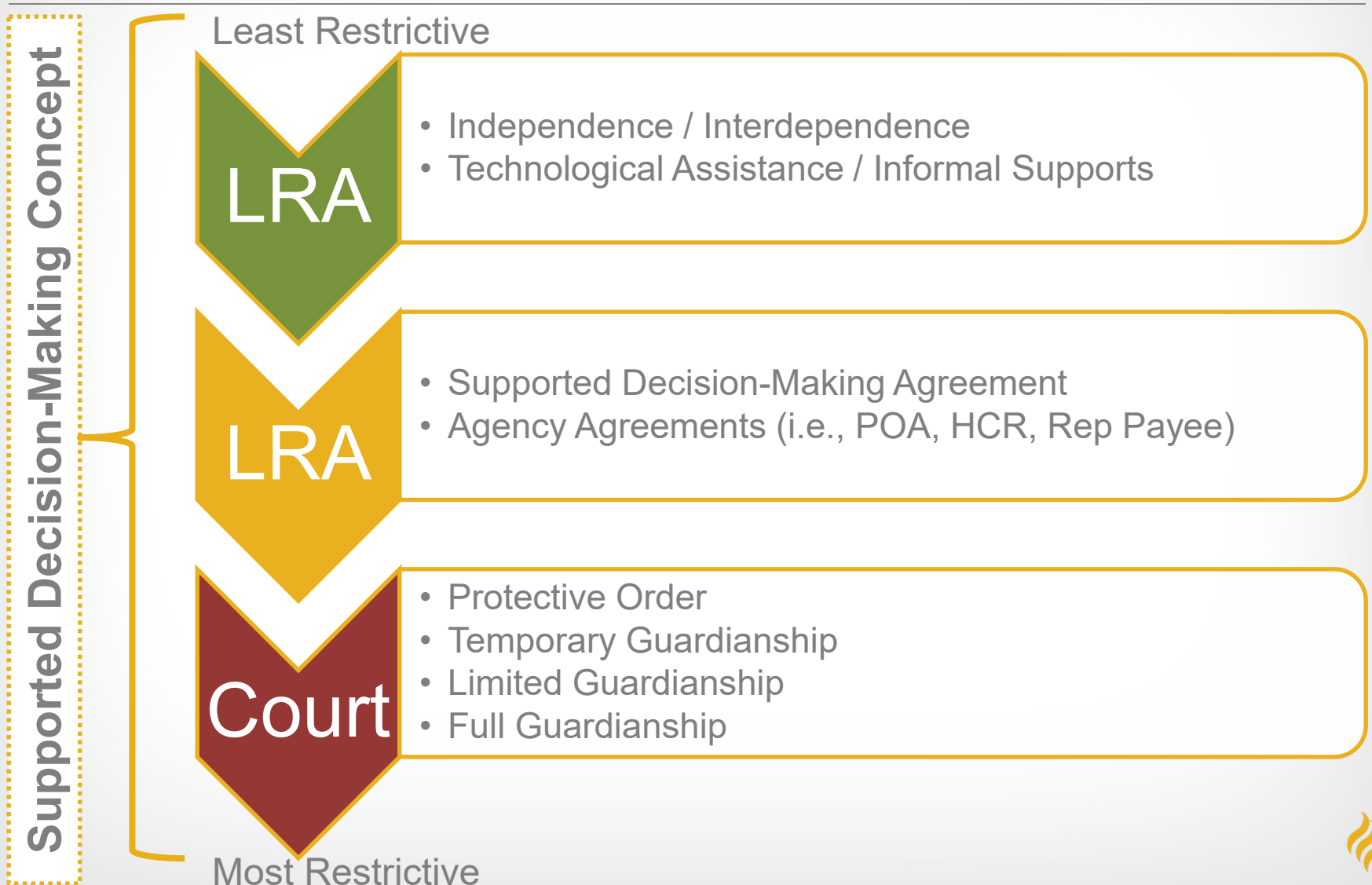


Supported Decision-Making Agreements

- No special form needed
- Common components of a form
 - Info and acknowledgement by adult
 - Description of areas where support is needed
 - Incorporation/reference to other documents
 - List of supporters
 - Signature (notarized)
 - Supporter Appointment Addendum
- Proactive implementation



Spectrum of Assistance

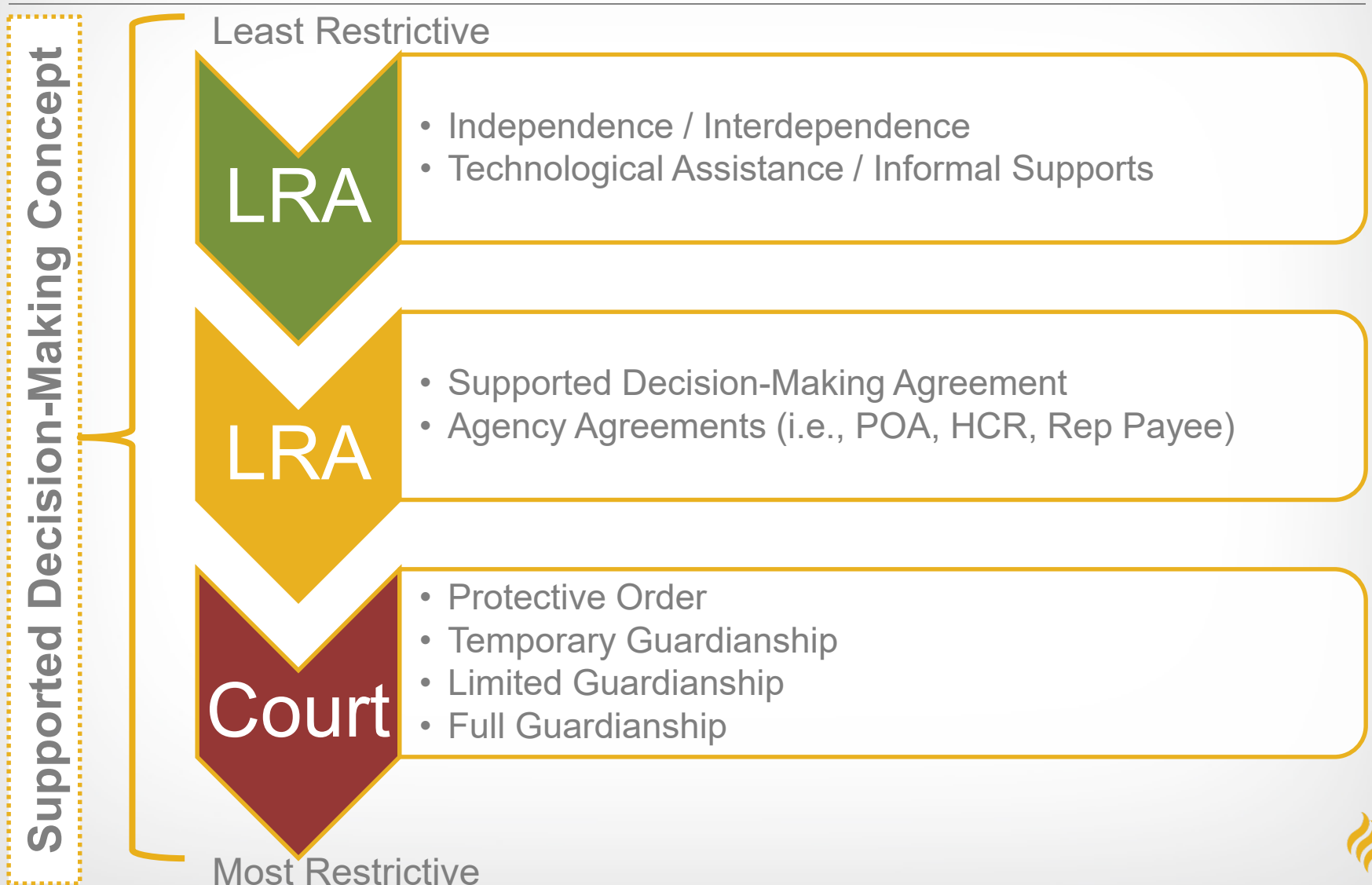


Agency Agreements

- Person has capacity to appoint someone else to act or make decisions on their behalf.
- Don't require court oversight.
- Can be revoked by the person.
- Part of general advanced planning.



Spectrum of Assistance



Protective Orders

- Way for a court to ratify or approve a specific event without needing to appoint a guardian.



Guardianship

- Temporary – 90 days with option for cause for additional 90 days.
- Limited – person retains decision-making authority for all other areas.
- Full – All decisions made by the guardian.
- Difficult to terminate.



Guardianship

- Petition filed with physician statement, guardianship registry form.
- Notice to interested parties
- Guardian ad Litem appointed – recommendations to court, not advocate for AIP.
- Hearing – AIP can have counsel, call and cross witnesses
- Court makes determination.



Petition for Guardianship

- Name, age, address of person
- Nature of the incapacity, reason for seeking guardianship.
- Approximate value, description of property.
- Requested limitations.
- Proposed guardian contact information.
- Proposed guardian interest and names of any other persons guardian serves.
- Relatives (blood or marriage) for notice. ... AND



Changes to Petition for Guardianship

- Must include a description of the petitioner's efforts to use LRAs before seeking guardianship including:
 - LRAs that were considered or implemented;
 - If LRA was not considered or implemented, reason why;
 - Reason LRA is insufficient to meet the person's needs



What does this mean?

- *Implemented* LRA – describe why LRA is no longer working, what has changed?
- *Considered* LRA – look at various options, what skills are needed to make LRA a viable option? Can the person work towards a LRA in the future?
- NOT required to use/try LRA prior to filing.



Comparing Options

LESS
LIMITING

SUPPORTED DECISION-MAKING



Diana



Supporter

Diana makes her own decisions with the help of another person of her choosing.

POWER OF ATTORNEY



Diana



Power of Attorney
Designee

Diana names someone else to make decisions and act on her behalf.

GUARDIANSHIP



Court



Guardian



Diana

Court appoints a person to make decisions for Diana with court oversight.

MORE
LIMITING



What protections are in place?

- Presumption of capacity
- Dignity of risk
- Prevention through empowerment
- No guarantee of safety under any arrangement
- Mandatory reporting



How to Choose

Person not currently under guardianship

1. Learn more about options.
2. Fill out Person-Driven Support Worksheet.
3. Have others complete the Support Assessment.
4. Think about potential supporters.



Qualities for Circle of Support

- Adult (over 18)
- Person's stated trust, preference
- Length of time person has known them
- Relationship with person
- Likely to agree with/honor person's choices
- Available
- Able to provide support in stated way
- Suitability
- Secondary, additional, back-up people?



How to Choose

5. Go over assessments with your supporters.
6. Start to develop a plan or decide on options.
7. Write out your plan, use the SDMA template, or consult with an attorney who can help you write a plan or draft other necessary documents.



How to Choose

5. Have your supporters sign the consents.
6. Sign your document in the presence of a notary (SDM, POA)
7. Proactive implementation - Share with your regular providers.



How do you fit in?

- Talking about options.
- Encouraging opportunities for decision-making.
- Referring to resources!



Resources

- Indiana Disability Rights (www.IndianaSDM.org)
- WINGS/American Bar Association
(https://www.americanbar.org/groups/law_aging/resources/wings-court-stakeholder-partnerships.html)
- Indiana Adult Guardianship Office
(<http://www.in.gov/judiciary/iocs/3425.htm>)
- Arc of Indiana (<https://www.arcind.org/future-planning/guardianship/>)
- National Resource Center for Supported Decision-Making (www.supporteddecisionmaking.org)



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