



Commission on
Law and Aging



**The Time for
Real Change,
Enduring Change,
is Now:**

**Highlights from the
7th World Congress
on Adult Capacity**

Friday, Nov. 4, 2022 | 1-2pm

Presented by:

Elizabeth Moran

Senior Attorney/Chief Counsel
American Bar Association

Commission on Law and Aging

Elizabeth.Moran@americanbar.org
(202)662-1577

Our Pledge of Allegiance

*written in 1892,
and formally
adopted
by Congress in 1942*

"I pledge allegiance to the Flag of
the United States of America,
and to the Republic for which it
stands,
one Nation under God,
indivisible,
with liberty and
justice for all."

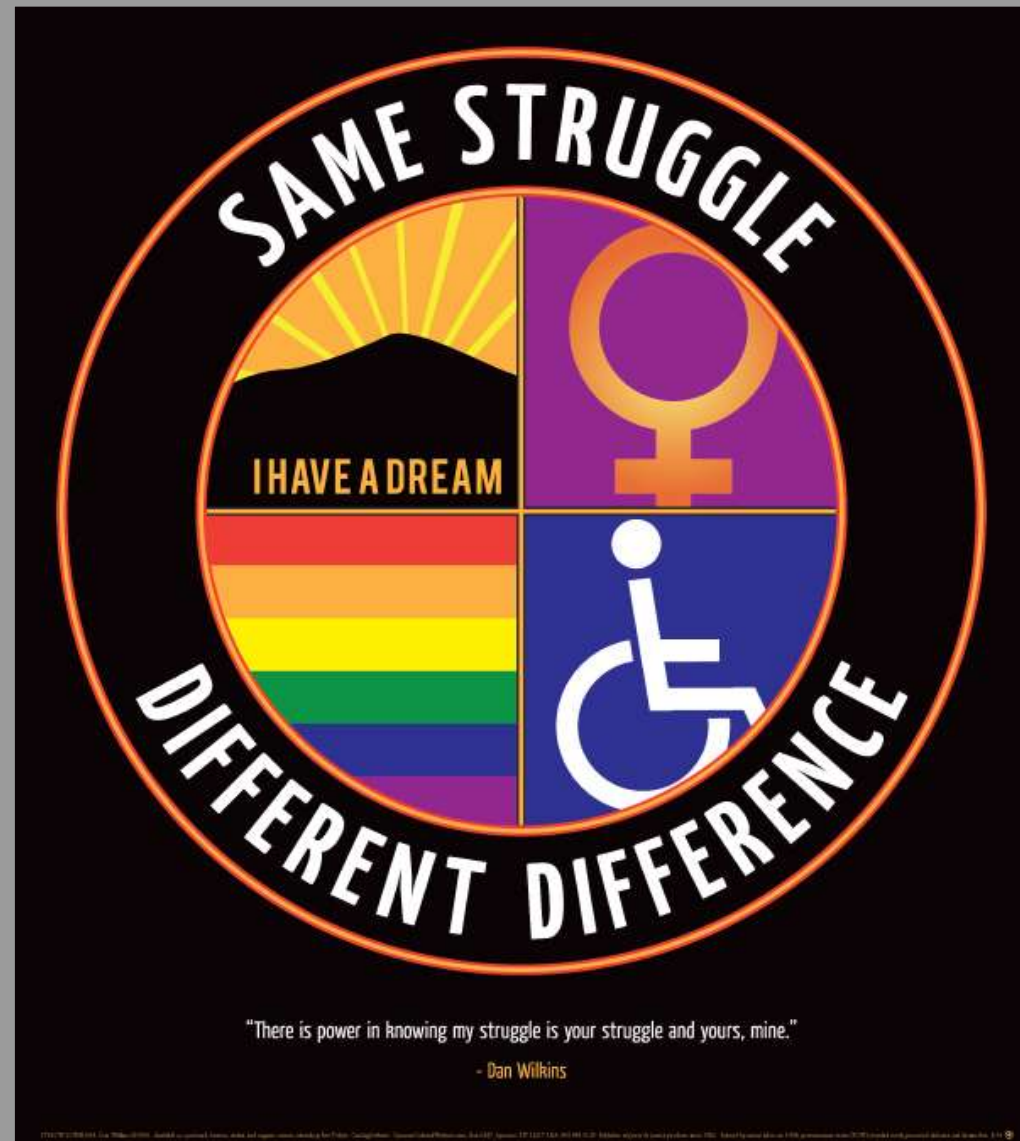


Americans with Disabilities Act (ADA) *July 26, 1990*

Prohibits discrimination and **guarantees** that people with disabilities have the **same opportunities** as **everyone else**.

Modeled after the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 -- the ADA is an "**equal opportunity**" law for people with disabilities.

“Effective Communication:” Title II of the ADA requires that State and local governments, including courts, provide people with disabilities an equal opportunity to access and benefit from all of their programs, services, and activities.





**“Every
person
can make choices
and
has a right
to make
decisions.”**

ABA
AMERICAN BAR ASSOCIATION
Commission on
Law and Aging

~ Don Hoyle,
The Arc of Michigan



CONGRESS History

**1st World
Congress on Adult
Guardianship
(2010), Yokohama,
Japan**

**3rd World
Congress on Adult
Guardianship
(2014),
Washington, D.C.**

**5th World
Congress on Adult
Guardianship
(2018), Seoul,
South Korea**

**2nd World Congress
on Adult
Guardianship
(2012), Melbourne,
Australia**

**4th World
Congress on Adult
Guardianship
(2016), Erkner,
Germany**

**6th World
Congress on Adult
Guardianship
(2020), Cancelled
due to COVID-19**

**7th World
Congress on Adult
Capacity (2022),
Edinburgh,
Scotland**

<https://international-guardianship.com/index.htm>

WCAC 2022 Key Statistics

Top 5 Countries

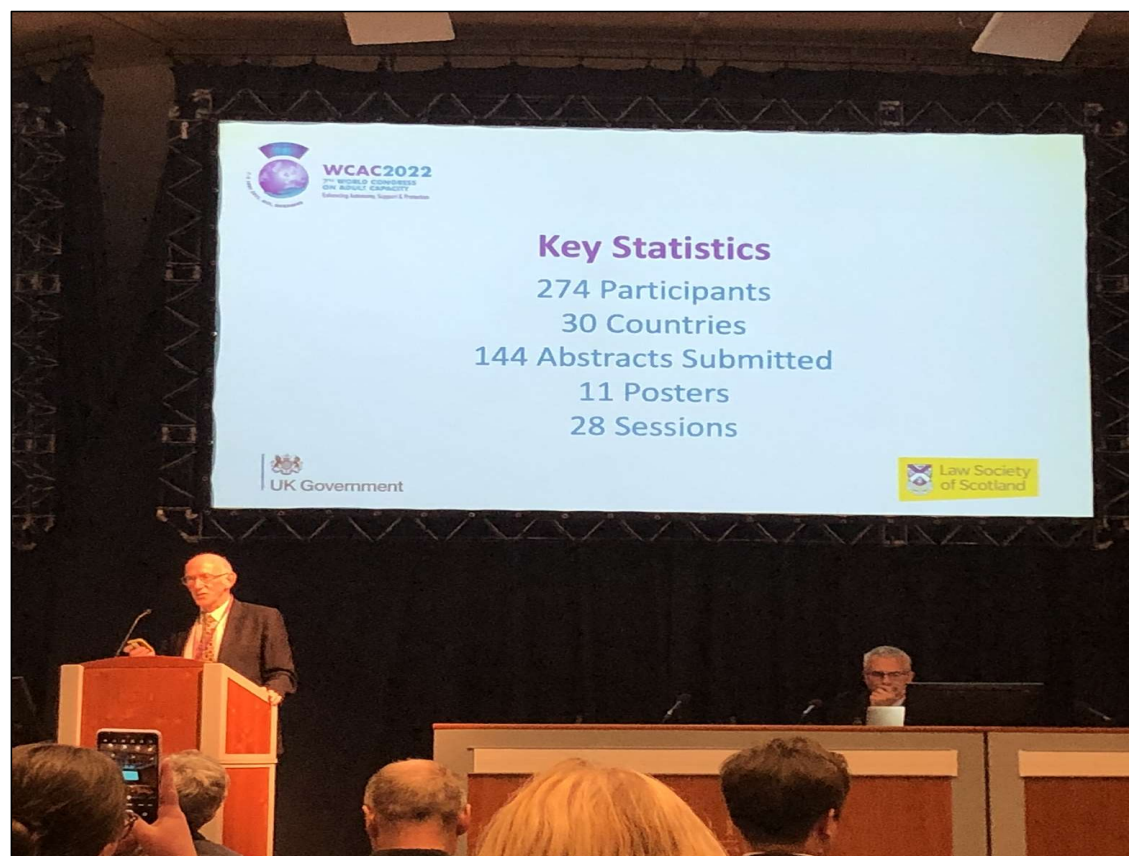
United Kingdom – 112

Spain – 24

United States – 21

Germany – 15

South Korea - 14



Themes & Breakout Sessions

- **Law, Policy and Practice Review (x9 Sessions)**
- **Achieving Respect for the Adults Rights, Will and Preferences:**
 - **Guardianship**
 - **SDM**
 - **Legal Capacity**
 - **Advanced Decision Making**
 - **Guardianship/Deputyship**
 - **Financial Matters**
 - **Supporting Capacity (x3 sessions)**
- **Rights, Ethics, and Law During National Emergencies**
- **Research and Ethics**
- **Monitoring, Regulation, Remedies, and Enforcement**

2006 CRPD

United Nations Convention on the Rights of Persons with Disabilities

The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights by persons with disabilities.

The articles of the Convention recognize *all* rights, civil, cultural, economic, political, and social.



<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

Specific Rights covered in the CRPD

- * **Equal protection before the law**
- * **Liberty and security of the person**
- * **Freedom from torture**
- * **Protection of the integrity of the person**
- * **Liberty of movement and nationality**
- * **Freedom of expression**
- * **Respect for privacy**
- * **Right to participation in public life**
- * **Freedom from exploitation**
- * **Respect for home and the family**
- * **Right to live in the community**
- * **Right to education**
- * **Right to life**
- * **Right to health**
- * **Habilitation and rehabilitation**
- * **Right to work**
- * **Right to an adequate standard of living**
- * **Right to participate in cultural life**

CRPD Article 12

Equal Recognition Before the Law

1. **Right to recognition everywhere** as persons before the law.
2. **Enjoy legal capacity on an equal basis with others in all aspects of life.**
3. States Parties shall **take appropriate measures to provide access** by persons with disabilities **to the support they may require in exercising their legal capacity.**
4. States Parties shall **ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse.**
5. States Parties shall **take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit...**

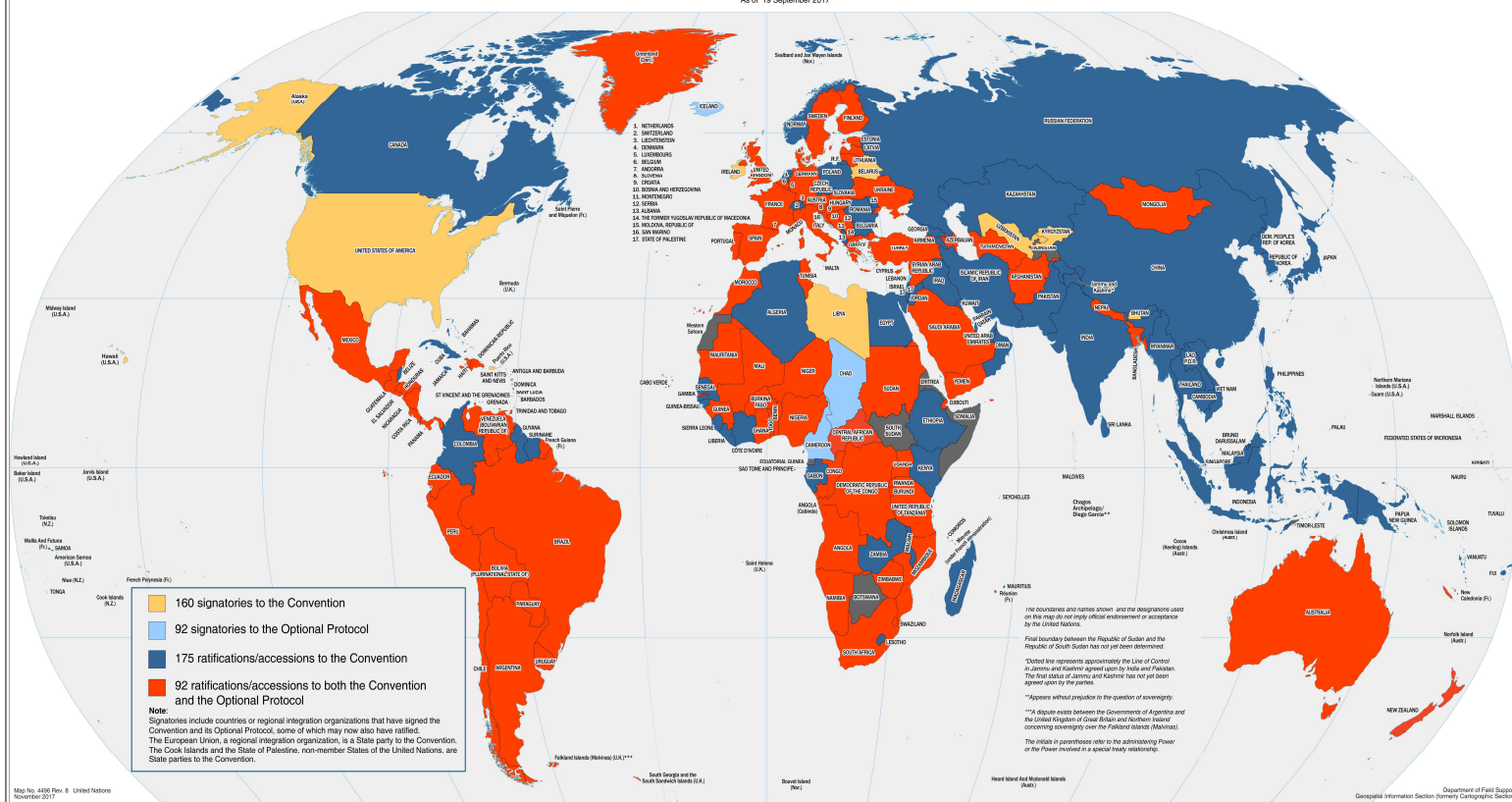
CRPD Article 13 Access to Justice

1. States Parties shall ensure **effective access to justice** for persons with disabilities **on an equal basis with others**, including through the **provision of procedural and age-appropriate accommodations**, in order to **facilitate their effective role as direct and indirect participants**, including as witnesses, **in all legal proceedings, including at investigative and other preliminary stages.**
2. States Parties shall **promote appropriate training for those working in the field of administration of justice**, including police and prison staff.

CRPD and Optional Protocol Signatures and Ratifications

■ Not Signed ■ Signed Convention ■ Signed Convention & Protocol ■ Ratified Convention ■ Ratified Convention & Protocol

As of 19 September 2017



**160 signatories
175 ratifications**

The United States is one of only 8 nations that have not formally confirmed or ratified the CRPD:

1. Bhutan
2. Cameroon
3. Lebanon
4. Liechtenstein
5. Solomon Islands
6. Tajikistan
7. Tonga
8. United States of America

WCAC 2022 Highlights and Resources

- **South Korea** – Guardian responsible for violations of rules and damages
- **Germany** – Last resort if person unable to make a decision and likely to be harmed significantly
- **Ireland** – 1 of 4 jurisdictions which are moving towards compliance with the CRPD by abolishing substitute decision-making
- **Peru** – Another 1 of 4 jurisdictions moving toward compliance with CRPD
- **Scottish Mental Health Law Review** (Interim Report, 2021)
<https://cms.mentalhealthlawreview.scot/wp-content/uploads/2021/07/Scottish-Mental-Health-Law-Review-Interim-Report-July-2021.pdf>
- **UK Equal Treatment Bench Book** (Feb. 2021, UK) -
<https://www.judiciary.uk/announcements/equal-treatment-bench-book-new-edition/>
- **The Advocate's Gateway Toolkits** (UK) <https://www.theadvocatesgateway.org/toolkits-1-1-1>

The Elephant In The Room: Safety

NOTHING: Not
Guardianship, Not
Supported Decision-
Making is 100% "Safe."

HOWEVER:
**Supported Decision-
Making *Increases* Self-
Determination**

*(Blanck & Martinis, 2015), which is correlated with
increased Safety (Khemka, Hickson, & Reynolds, 2005).*

The Problem

“The typical ward has fewer rights than the typical convicted felon

By appointing a guardian, the court entrusts to someone else the power to choose where they will live, what medical treatment they will get and, in rare cases, when they will die.

It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen.”

House Select Committee on Aging, H.R. Rpt. 100-641 (opening statement of Chairman Claude Pepper)

Research tells us...

People under 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

**Effective Communication and
Decision-Making Supports**
are at the heart of ensuring

“liberty and justice for all,”

“the pursuit of happiness,”

and honoring an individual’s

civil and human rights.

Some final thoughts...

- UN Convention on Rights of Persons with Disabilities (CRPD)
 - Opportunities to learn from our global neighbors.
 - Our work here in the United States is far from done
 - Guardianship Court Improvement Program
 - National review and data collection of American law as it relates to guardianship legislation, policy, and practice
 - We must change our language, policies, and practices to better align with the CRPD
 - We must draft and implement reform legislation and develop resources
 - Ireland's Assisted Decision-Making (Capacity) Act
 - UK's Equal Treatment Bench Book
 - Advocate's Gateway Toolkit
- ...to provide guidance on best practices and toolkits for practitioners and advocates when preparing for cases involving a witness or a defendant with effective communication needs
- The time for real change, enduring change, is now.

P.S. I also encourage you to mark your calendar for 8th World Congress on Adult Capacity (2024) in Buenos Aires, Argentina. It will, undoubtedly, be an opportunity not to be missed.

Additional Resources:



Commission on
Law and Aging

Convention on the Rights of Persons with Disabilities (CRPD), United Nations | Department of Economic and Social Affairs Disability, retrieved on 7/9/2022 at <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

Equal Treatment Bench Book (Feb. 2021, UK) - <https://www.judiciary.uk/announcements/equal-treatment-bench-book-new-edition/>

UK Advocates Gateway Toolkit, <https://www.theadvocatesgateway.org/toolkits-1-1-1>

ADA Best Practices Tool Kit for State and Local Governments, Chapter 3, General Effective Communication Requirements Under Title II of the ADA, retrieved 7/22/2022 at <https://www.ada.gov/pcatoolkit/chap3toolkit.htm>

The World is Watching: Highlights from the 7th World Congress on Adult Capacity, ABA Commission on Law and Aging BiFocal, Bifocal Vol. 43 Issue 6 (July 2022)

Something to Talk About: Supported Decision Making and Access to Justice for All
[*Something to Talk About: Supported Decision Making and Access to Justice for All*](#)

4th National Guardianship Summit | Recommendations
<http://law.syr.edu//academics/conferences-symposia/the-fourth-national-guardianship-summit-autonomy-and-accountability> See also (video): <https://youtu.be/SBqwFqS51BM>



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Questions?