

HOUSE BILL No. 2144

By Representative Rhiley

1-29

1 AN ACT enacting the supported decision-making agreements act; relating
2 to decision-making assistance for adults; amending K.S.A. 21-5417 and
3 repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. Sections 1 through 9, and amendments thereto, shall
7 be known and may be cited as the supported decision-making agreements
8 act.

9 New Sec. 2. As used in the supported decision-making agreements
10 act, unless the context indicates otherwise:

11 (a) "Adult" means an individual who is 18 years of age or older.

12 (b) "Affairs" means decisions related to the following affairs of a
13 principal:

14 (1) Monitoring health, obtaining, scheduling, implementing and
15 coordinating health and support services, understanding healthcare
16 information and options, providing for care and comfort, and other
17 healthcare and personal matters in which the principal makes decisions
18 about the principal's healthcare;

19 (2) managing income and assets and the use of income and assets for
20 clothing, support, care, comfort, education, shelter and payment of other
21 liabilities of the principal;

22 (3) handling personal, healthcare and financial matters that arise in
23 the course of daily living;

24 (4) monitoring information about the principal's support services,
25 including necessary or recommended future support services;

26 (5) living arrangements, including where and with whom the
27 principal wants to live; and

28 (6) working arrangements, including where the principal wants to
29 work.

30 (c) "Capacity" means the ability to understand and appreciate the
31 nature and consequences of a decision and the ability to reach and
32 communicate an informed decision.

33 (d) "Conservator" means a person appointed a conservator under the
34 act for obtaining a guardian or a conservator, or both, K.S.A. 59-3050 et
35 seq., and amendments thereto, or a similar law of another state.

36 (e) "Decision" means a decision relating to the affairs of a principal.

1 (f) "Decision-making assistance" means the decision-making
2 assistance described in section 7, and amendments thereto.

3 (g) "Good faith" means honesty in fact and the observance of
4 reasonable standards of fair dealing.

5 (h) "Guardian" means a person appointed a guardian under the act for
6 obtaining a guardian or a conservator, or both, K.S.A. 59-3050 et seq., and
7 amendments thereto, or a similar law of another state.

8 (i) "Immediate family member" means a spouse, child, sibling,
9 parent, grandparent, grandchild, stepparent, stepchild or stepsibling.

10 (j) "Person" means an individual, healthcare institution, healthcare
11 provider, corporation, partnership, limited liability company, association,
12 joint venture, government, governmental subdivision, governmental
13 agency, governmental instrumentality, public corporation, or another legal
14 or commercial entity.

15 (k) "Principal" means an adult who enters into a supported decision-
16 making agreement under the supported decision-making agreements act to
17 receive decision-making assistance.

18 (l) "Support services" means the following services:

19 (1) House repair, home cleaning, laundry, shopping and providing
20 meals;

21 (2) transportation, accompanying a principal and facilitating a
22 principal's written, oral and electronic communication;

23 (3) nurse visitations and attendant care;

24 (4) provision of healthcare;

25 (5) physical and psychosocial assessments;

26 (6) financial assessments and advice on banking, taxes, loans,
27 investments and management of real property;

28 (7) legal assessments and advice;

29 (8) education and educational assessments and advice;

30 (9) assistance with bathing, dressing, eating, range of motion,
31 toileting, transferring, ambulation and other direct assistance with the
32 activities of daily living;

33 (10) care planning; and

34 (11) services that assist in maintaining the independence of a
35 principal.

36 (m) "Supported decision-making agreement" means an agreement
37 authorized under section 3, and amendments thereto.

38 (n) "Supporter" means an adult who enters into a supported decision-
39 making agreement under the supported decision-making agreements act
40 and provides decision-making assistance.

41 New Sec. 3. (a) Except as provided in subsections (b) and (c), an
42 adult may enter into a supported decision-making agreement. A supported
43 decision-making agreement allows an adult to receive decision-making

1 assistance with the adult's affairs from one or more other adults.

2 (b) The adult wanting to receive decision-making assistance shall not
3 enter into a supported decision-making agreement unless the adult:

4 (1) Enters into the agreement voluntarily and without coercion or
5 undue influence; and

6 (2) understands the nature and effect of the agreement.

7 (c) An adult shall not enter into a supported decision-making
8 agreement if the agreement encroaches on the authority of a guardian or
9 conservator of the adult, unless the guardian or conservator approves in
10 writing the adult entering into the supported decision-making agreement.

11 (d) A supporter shall be an adult, but shall not be a person against
12 whom a protective order or restraining order has been entered by a court
13 on request of or on behalf of the principal.

14 New Sec. 4. (a) A supported decision-making agreement shall:

15 (1) Name one or more adults to provide a principal with decision-
16 making assistance;

17 (2) describe the decision-making assistance that each person acting as
18 a supporter may provide the principal; and

19 (3) contain a notice to third parties that summarizes the rights and
20 obligations of the supporter under the supported decision-making
21 agreements act and expressly identifies sections 1 through 9, and
22 amendments thereto.

23 (b) A supported decision-making agreement may:

24 (1) Name an alternate supporter to act in the place of a supporter and
25 the circumstances under which the alternate supporter may act;

26 (2) authorize a supporter to share information with another supporter
27 named in the agreement, including an alternate supporter.

28 (c) A supported decision-making agreement shall contain a separate
29 declaration by each supporter, including an alternate supporter, that states
30 the supporter's relationship with the principal, states the willingness of the
31 supporter to act as a supporter for the principal and indicates that the
32 supporter acknowledges the duties of a supporter under the supported
33 decision-making agreements act. Each declaration shall be signed by the
34 supporter making the declaration.

35 New Sec. 5. (a) A supported decision-making agreement shall be
36 valid if:

37 (1) The agreement is dated and in writing;

38 (2) the agreement satisfies the requirements of sections 3 and 4, and
39 amendments thereto;

40 (3) the agreement has been signed by the principal and each named
41 supporter, including any alternate supporter, and the:

42 (A) Signing takes place in the presence of two witnesses who also
43 sign the agreement; or

1 (B) signatures of the principal and each named supporter, including
2 any alternate supporter, are notarized; and

3 (4) when the principal has a guardian or conservator, the principal has
4 notified the guardian or conservator of the agreement.

5 (b) (1) Each witness under subsection (a) shall be an adult who
6 understands the means of communication used by the principal, except, if
7 there is an individual who understands the principal's means of
8 communication present to assist during the execution of the supported
9 decision-making agreement, the witnesses are not required to understand
10 the means of communication used by the principal.

11 (2) A witness under subsection (a) shall not be a supporter named in
12 the supported decision-making agreement or an employee or agent of a
13 supporter named in the supported decision-making agreement.

14 (c) A supported decision-making agreement shall be substantially in
15 compliance with the form set forth by the judicial council. The judicial
16 council shall develop a form for use under the supported decision-making
17 agreements act.

18 New Sec. 6. (a) A supported decision-making agreement may indicate
19 the date it becomes effective and its duration. If the agreement does not
20 indicate the date it becomes effective, the agreement becomes effective
21 immediately. If the agreement does not indicate its duration, the agreement
22 remains effective until terminated under this section.

23 (b) A principal may, at any time, terminate all or a portion of a
24 supported decision-making agreement. A supporter may, at any time,
25 terminate all or a portion of the supporter's obligations under a supported
26 decision-making agreement, including the declaration of support described
27 in section 4, and amendments thereto.

28 (c) A termination under this section shall be dated and in writing. The
29 termination shall be signed by the terminating party.

30 (d) If the adult who entered the supported decision-making agreement
31 becomes incapacitated such agreement remains valid unless a third party
32 has actual knowledge that the principal is incapacitated.

33 (e) A principal or supporter terminating all or a portion of a supported
34 decision-making agreement shall notify the other party to the agreement
35 that the agreement has been terminated. Notice shall be given in person, by
36 certified mail or by electronic means.

37 (f) If a portion of a supported decision-making agreement is
38 terminated under this section and the termination is consistent with this
39 section, the remainder of the agreement remains in effect.

40 New Sec. 7. (a) A supporter owes the adult a fiduciary duty to act in
41 accordance with the supported decision-making agreement.

42 (b) Except as limited by a supported decision-making agreement, a
43 supporter may provide to a principal the following decision-making

1 assistance about the principal's affairs:

2 (1) Assisting with making decisions, communicating decisions, and
3 understanding information about, options for, the responsibilities of, and
4 the consequences of decisions;

5 (2) accessing, obtaining, and understanding information that is
6 relevant to decisions necessary for the principal to manage the principal's
7 affairs, including medical, psychological, financial and educational
8 information, medical treatment records and other records;

9 (3) ascertaining the wishes and decisions of the principal, assisting in
10 communicating those wishes and decisions to other persons, and
11 advocating to ensure the implementation of the principal's wishes and
12 decisions; and

13 (4) accompanying the principal and participating in discussions with
14 other persons when the principal is making decisions or attempting to
15 obtain information for decisions.

16 (c) Under subsection (b), a supporter may use the principal's dated
17 consent to assist the principal in obtaining protected health information
18 under the health insurance portability and accountability act of 1996
19 (public law 104-191) or educational records under the family educational
20 rights and privacy act of 1974, 20 U.S.C. § 1232g.

21 (d) A supporter shall not:

22 (1) Exert undue influence on the principal;

23 (2) make decisions for or on behalf of the principal;

24 (3) sign for the principal or provide an electronic signature of the
25 principal to a third party;

26 (4) obtain, without the consent of the principal, information that is not
27 reasonably related to matters with which the supporter may assist the
28 principal under the supported decision-making agreement; or

29 (5) use, without the consent of the principal, information acquired for
30 a purpose authorized by the supported decision-making agreement for a
31 purpose other than assisting the principal to make a decision under the
32 supported decision-making agreement.

33 (e) A supporter who collects information on behalf of the principal
34 under the supported decision-making agreement shall:

35 (1) Keep the information confidential;

36 (2) not use the information for a use that is not authorized by the
37 principal;

38 (3) protect the information from unauthorized access, use or
39 disclosure; and

40 (4) dispose of the information properly when appropriate.

41 (f) A supporter acting in good faith in accordance with the provisions
42 of this act shall not be liable to either the principal or any third party for
43 any injuries, damages or other losses arising from a decision made by a

1 principal in which the supporter assisted the principal or was otherwise
2 involved.

3 New Sec. 8. (a) A person shall recognize a decision or request made
4 or communicated with the decision-making assistance of a supporter under
5 the supported decision-making agreements act as the decision or request of
6 the principal for the purposes of a provision of law, and the principal or
7 supporter may enforce the decision or request in law or equity on the same
8 basis as a decision or request of the principal.

9 (b) A person who, in good faith, either acts in reliance on an
10 authorization in a supported decision-making agreement or declines to
11 honor an authorization in a supported decision-making agreement is not
12 subject to civil or criminal liability or to discipline for unprofessional
13 conduct for:

14 (1) Complying with an authorization in a supported decision-making
15 agreement, if the person is complying based on an assumption that the
16 underlying supported decision-making agreement was valid when made
17 and has not been terminated;

18 (2) declining to comply with an authorization in a supported decision-
19 making agreement if the person is declining based on actual knowledge
20 that the supported decision-making agreement is unauthorized:

21 (A) If the financial institution cannot in good faith comply with the
22 limitations set forth in the agreement; and

23 (B) if the person makes, or has actual knowledge that another person
24 has made a report under K.S.A. 39-1402 or 39-1431, and amendments
25 thereto, stating a good faith belief that the adult may be subject to physical
26 or financial abuse, neglect, exploitation or abandonment by the supporter;
27 or

28 (3) declining to comply with an authorization related to healthcare in
29 a supported decision-making agreement, if the person is declining because
30 the action proposed to be taken under the supported decision-making
31 agreement is contrary to the good faith medical judgment of the person or
32 to a written policy of a healthcare institution that is based on reasons of
33 conscience.

34 New Sec. 9. (a) An adult who enters into a supported decision-
35 making agreement may act without the decision-making assistance of the
36 supporter.

37 (b) The execution of a supported decision-making agreement shall
38 not constitute evidence that the principal does not have capacity.

39 (c) In the application of the supported decision-making agreements
40 act:

41 (1) A decision that a principal is incapable of managing the principal's
42 affairs may not be based on the manner in which the principal
43 communicates with others; and

1 (2) a principal is considered to have capacity even if the capacity is
2 achieved by the principal receiving decision-making assistance, unless a
3 court has determined that the principal does not have capacity.

4 Sec. 10. K.S.A. 21-5417 is hereby amended to read as follows: 21-
5 5417. (a) Mistreatment of a dependent adult or an elder person is
6 knowingly committing one or more of the following acts:

7 (1) Infliction of physical injury, unreasonable confinement or
8 unreasonable punishment upon a dependent adult or an elder person;

9 (2) taking the personal property or financial resources of a dependent
10 adult or an elder person for the benefit of the defendant or another person
11 by taking control, title, use or management of the personal property or
12 financial resources of a dependent adult or an elder person through:

13 (A) Undue influence, coercion, harassment, duress, deception, false
14 representation, false pretense or without adequate consideration to such
15 dependent adult or elder person;

16 (B) a violation of the Kansas power of attorney act, K.S.A. 58-650 et
17 seq., and amendments thereto;

18 (C) a violation of the Kansas uniform trust code, K.S.A. 58a-101 et
19 seq., and amendments thereto; ~~or~~

20 (D) a violation of the act for obtaining a guardian or a conservator, or
21 both, K.S.A. 59-3050 et seq., and amendments thereto; or

22 (E) *a violation of the supported decision-making agreements act,*
23 *section 1 et seq., and amendments thereto; or*

24 (3) omission or deprivation of treatment, goods or services that are
25 necessary to maintain physical or mental health of such dependent adult or
26 elder person.

27 (b) Mistreatment of a dependent adult or an elder person as defined
28 in:

29 (1) (A) Subsection (a)(1) is a severity level 5, person felony, except as
30 provided in subsection (b)(1)(B);

31 (B) subsection (a)(1) is a severity level 2, person felony, when the
32 victim is a dependent adult who is a resident of an adult care home, as
33 described in subsection (e)(2)(A), during the commission of the offense;

34 (2) subsection (a)(2) if the aggregate amount of the value of the
35 personal property or financial resources is:

36 (A) \$1,000,000 or more is a severity level 2, person felony;

37 (B) at least \$250,000 but less than \$1,000,000 is a severity level 3,
38 person felony;

39 (C) at least \$100,000 but less than \$250,000 is a severity level 4,
40 person felony;

41 (D) at least \$25,000 but less than \$100,000 is a severity level 5,
42 person felony;

43 (E) at least \$1,500 but less than \$25,000 is a severity level 7, person

1 felony;

2 (F) less than \$1,500 is a class A person misdemeanor, except as
3 provided in subsection (b)(2)(G); and

4 (G) less than \$1,500 and committed by a person who has, within five
5 years immediately preceding commission of the crime, been convicted of a
6 violation of this section two or more times is a severity level 7, person
7 felony; and

8 (3) (A) subsection (a)(3) is a severity level 8, person felony, except as
9 provided in subsection (b)(3)(B); and

10 (B) subsection (a)(3) is a severity level 5, person felony, when the
11 victim is a dependent adult who is a resident of an adult care home, as
12 described in subsection (e)(2)(A), during the commission of the offense.

13 (c) It shall be an affirmative defense to any prosecution for
14 mistreatment of a dependent adult or an elder person as described in
15 subsection (a)(2) that:

16 (1) The personal property or financial resources were given as a gift
17 consistent with a pattern of gift giving to the person that existed before the
18 dependent adult or elder person became vulnerable;

19 (2) the personal property or financial resources were given as a gift
20 consistent with a pattern of gift giving to a class of individuals that existed
21 before the dependent adult or elder person became vulnerable;

22 (3) the personal property or financial resources were conferred as a
23 gift by the dependent adult or elder person to the benefit of a person or
24 class of persons, and such gift was reasonable under the circumstances; or

25 (4) a court approved the transaction before the transaction occurred.

26 (d) No dependent adult or elder person is considered to be mistreated
27 under subsection (a)(1) or (a)(3) for the sole reason that such dependent
28 adult or elder person relies upon or is being furnished treatment by
29 spiritual means through prayer in lieu of medical treatment in accordance
30 with the tenets and practices of a recognized church or religious
31 denomination of which such dependent adult or elder person is a member
32 or adherent.

33 (e) As used in this section:

34 (1) "Adequate consideration" means the personal property or
35 financial resources were given to the person as payment for bona fide
36 goods or services provided by such person and the payment was at a rate
37 customary for similar goods or services in the community that the
38 dependent adult or elder person resided in at the time of the transaction.

39 (2) "Dependent adult" means an individual 18 years of age or older
40 who is unable to protect the individual's own interest. Such term ~~shall~~
41 ~~include~~ includes, but is not limited to, any:

42 (A) Resident of an adult care home including, but not limited to,
43 those facilities defined by K.S.A. 39-923, and amendments thereto;

1 (B) adult cared for in a private residence;

2 (C) individual kept, cared for, treated, boarded, confined or otherwise
3 accommodated in a medical care facility;

4 (D) individual with intellectual disability or a developmental
5 disability receiving services through a community facility for people with
6 intellectual disability or residential facility licensed under K.S.A. 39-2001
7 et seq., and amendments thereto;

8 (E) individual with a developmental disability receiving services
9 provided by a community service provider as provided in the
10 developmental disability reform act; or

11 (F) individual kept, cared for, treated, boarded, confined or otherwise
12 accommodated in a state psychiatric hospital or state institution for people
13 with intellectual disability.

14 (3) "Elder person" means a person 60 years of age or older.

15 (f) An offender who violates the provisions of this section may also
16 be prosecuted for, convicted of, and punished for any other offense in
17 article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes Annotated, or
18 K.S.A. 21-6418, and amendments thereto.

19 Sec. 11. K.S.A. 21-5417 is hereby repealed.

20 Sec. 12. This act shall take effect and be in force from and after its
21 publication in the statute book.