

SENATE No. 2848

The Commonwealth of Massachusetts

—
**In the One Hundred and Ninety-Second General Court
(2021-2022)**
—

SENATE, April 28, 2022.

The committee on Children, Families and Persons with Disabilities, to whom was referred the petition (accompanied by bill, Senate, No. 124) of Joan B. Lovely, Susan L. Moran, Michael O. Moore, Anne M. Gobi and other members of the Senate for legislation relative to supported decision-making agreements for certain adults with disabilities, reports the accompanying bill (Senate, No. 2848).

For the committee,
Adam Gomez

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An Act relative to supported decision-making agreements for certain adults with disabilities.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 190B is hereby amended, after section 5-507, by inserting the
2 following new section:-

3 Section 5-508. Supported Decision-Making Agreements

4 (a) As used in this section, the following words shall have the following meanings unless
5 the context clearly requires otherwise:-

6 "Adult" means an individual 18 years of age or older.

7 "Coercion" means use of force or threats to persuade someone to do something.

8 "Decision-maker" means an adult who seeks to execute, or has executed, a supported
9 decision-making agreement with one or more supporters under this chapter.

10 "Executed" means the date on which a supported decision-making agreement is signed; if
11 the decision-maker and the supporters, sign the supported decision-making agreement on

12 different dates, the supported decision-making agreement shall be considered to be executed on
13 the last date it was signed.

14 "Supported decision-making" means the process of supporting and accommodating the
15 decision-maker, without impeding the self-determination of the decision-maker, in making life
16 decisions, including, but not limited to, decisions related to where the decision-maker wants to
17 live; the services, supports, financial decisions, and medical care the decision-maker wants to
18 receive; whom the decision-maker wants to live with; or where the decision-maker wants to
19 work.

20 "Supported decision-making agreement" is an agreement a decision-maker enters into
21 with one or more supporters under this section to use supported decision-making.

22 "Supporter" means an adult who has entered into a supported decision-making agreement
23 with a decision-maker.

24 (b) A decision-maker may voluntarily, without undue influence or coercion, enter into a
25 supported decision-making agreement with a supporter or supporters. The decision-maker may
26 change or terminate a supported decision-making agreement at any time, per the procedure(s)
27 outlines in section (e).

28 (c) Except as limited by a supported decision-making agreement, a supporter may
29 provide to the decision-maker the following decision-making assistance with the decision-
30 maker's affairs with the consent of the decision-maker:

31 (1) assisting with making decisions, communicating decisions, and understanding
32 information about, options for, the responsibilities of, and the consequences of decisions;

33 (2) accessing, obtaining, and understanding information that is relevant to decisions
34 necessary for the decision-maker to manage his or her affairs, including medical, psychological,
35 financial, and educational information; and medical and other records;

36 (3) ascertaining the wishes and decisions of the decision-maker; assisting in
37 communicating those wishes and decisions to other persons; and assisting to ensure the decision-
38 maker's wishes and decisions are implemented; and

39 (4) accompanying the decision-maker and participating in discussions with other persons
40 when the decision-maker is making decisions or attempting to obtain information for decisions.

41 (d) A supporter may exercise only the authority granted to the supporter in the supported
42 decision-making agreement.

43 (e) The supported decision-making agreement shall remain in effect until it is revoked,
44 suspended, or terminated in accordance with the provision of this section.

45 (1) If the agreement sets forth a termination date, the supported decision-making
46 agreement shall not be effective after the termination date.

47 (2) The decision-maker may revoke a supported decision-making agreement by notifying
48 the supporters in writing or by any other act evidencing a specific intent to revoke the agreement.

49 (3) Supporter may terminate participation in the agreement by written or oral notice to the
50 decision-maker and the remaining supporters. If the supported decision-making agreement
51 includes more than one supporter, the supported decision-making agreement shall survive for
52 supporters who have not terminated their participation unless it is otherwise terminated or
53 revoked in a manner set forth by this section.

54 (4) The disabled persons protection commission, an elder protective services agency, the
55 department of developmental services, the department of mental health, or any person may
56 petition the probate and family court to terminate, revoke, or suspend the operation of a
57 supported decision-making agreement on the grounds of abuse, neglect or exploitation by a
58 supporter or supporters. If, after notice to decision-maker and a hearing at which the decision-
59 maker shall have the right to be present and to be heard, the Court finds by a preponderance of
60 the evidence that that the decision-maker has been abused, neglected, or exploited by a supporter
61 or supporters, the court may revoke, terminate, or suspend for a time to be determined by the
62 court, the supported decision-making agreement because of a finding of abuse, neglect, or
63 exploitation. The agreement may survive if one or more supporters who were not found to have
64 abused, neglected, or exploited the adult with a disability continues to be willing to serve as a
65 supporter and the decision-maker agrees. The court may not order a supported decision-making
66 agreement to remain in effect over the objection of the decision-maker. If the decision-maker is
67 indigent, the court shall forthwith appoint counsel for the decision-maker upon the filing of any
68 petition under this paragraph.

69 (f)(1) A supporter is only authorized to assist the decision-maker in accessing, collecting,
70 or obtaining information that is relevant to a decision authorized under the supported decision-
71 making agreement and to which the decision-maker agrees that the supporter should have access.

72 (2) If a supporter assists the decision-maker in accessing, collecting, or obtaining
73 personal information, including health information, financial records or information, or
74 educational records, the supporter shall ensure the information is kept privileged and
75 confidential, as applicable, and is subject to neither unauthorized access, nor use, nor disclosure.

76 (g) The existence of a supported decision-making agreement does not preclude a
77 decision-maker from seeking personal information without the assistance of a supporter.

78 (h) A supported decision-making agreement must be signed voluntarily, without coercion
79 or undue influence, by the decision-maker and the supporter or supporters in the presence of two
80 or more witnesses who are at least 18 years of age, and unrelated to the decision-maker and who
81 are not supporters of the decision-maker, or a notary public.

82 (i)(1) A supported decision-making agreement is intended to be personalized by the
83 decision-maker to reflect his or her personal circumstances.

84 (2) A supported decision-making agreement shall be in writing and shall:

85 (i) identify the decision-maker and the supporters;

86 (ii) describe the kinds of decisions with which the decision-maker wants assistance from
87 each respective supporter;

88 (iii) indicate that the supporters agree to assist the decision-maker to make decisions, to
89 respect the decision-maker's decisions, and, if necessary, to assist the decision-maker to
90 communicate decisions, and, further, agree not to make decisions for the decision-maker;

91 (iv) indicate that the decision-maker may change, amend, or revoke the supported
92 decision-making agreement at any time for any reason subject to the requirements of section (g);

93 (v) include a statement that if a mandated reporter under the provisions of chapter 19A
94 section 15(a) or chapter 19C has reasonable cause to believe the decision-maker has been
95 abused, neglected or exploited by a supporter or supporters, the person shall report to, as
96 applicable, the disabled persons protection commission or an elder protective services agency in

97 accordance with the provision of the applicable chapter; and in addition any other person may
98 make such a report to the appropriate agency if any such person has reasonable cause to believe
99 the decision-maker has been abused, neglected or exploited by a supporter or supporters; and the
100 supported decision-making agreement shall include the contact information for the disabled
101 persons protection commission, the elder abuse hot line, and, the human rights officer of any
102 program providing services to the decision-maker;

103 (vi) be signed with the date of the signature by the decision-maker and the supporters, the
104 decision-maker's signature to be attested to by a notary public or, in the alternative, by two
105 witnesses who are unrelated to the decision-maker and who are not supporters of the decision-
106 making.

107 (j)(A) A person who receives the original or a copy of a supported decision-making
108 agreement shall rely on the agreement and recognize a decision or request made or
109 communicated with the decision-making assistance of a supporter under this chapter as the
110 decision or request of the decision-maker.

111 (B) A person who or entity which, in good faith, acts in reliance on an authorization in a
112 supported decision-making agreement is not subject to civil or criminal liability or to discipline
113 for unprofessional conduct for relying on a decision made in accordance with a supported
114 decision-making agreement.

115 (k) Execution of a supported decision-making agreement may not be a condition of
116 participation in any activity, service, or program.

117 (l) If a person who receives a copy of a supported decision-making agreement or is aware
118 of the existence of a supported decision-making agreement has cause to believe that the decision-

119 maker is being abused, neglected, or exploited by the supporter, the person may report the
120 alleged abuse, neglect, or exploitation to the disabled persons protection commission in
121 accordance with chapter 19D or the Elder Abuse Prevention Hotline in accordance with chapter
122 19C.

123 (m) Nothing in this section shall be interpreted to limit or restrict any individual's right to
124 execute a health care proxy pursuant to chapter 201D or a power of attorney pursuant to sections
125 5-501 through 5-507 of chapter 190B.

126 SECTION 2. Chapter 190B of the General Laws is hereby amended in section 5-303, by
127 inserting after paragraph (b)(9) the following paragraph (b)(9½):-

128 The petitioner shall file with the petition a copy of any supported decision-making
129 agreement executed by the person alleged to be incapacitated, if available.

130 SECTION 3: Chapter 190B of the General Laws is hereby amended in section 5-303
131 (b)(10) by inserting at the end thereof the following:-

132 whether alternatives to guardianship and available supports and services to prevent the
133 need for guardianship, including a supported decision-making agreement, were considered; and
134 why such alternatives to guardianship and supports and services are not feasible or would not
135 prevent the need for guardianship.

136 SECTION 4. Chapter 6A of the General Laws is hereby amended by inserting after
137 section 16F the following section:-

138 Section 16F ½. The executive office of health and human services shall establish a
139 training program on supported decision-making. The training program shall include instruction

140 by state agencies including the department of developmental services, the department of mental
141 health, the executive office of elder affairs and a non-profit corporation or corporations. The
142 training program on supported decision-making shall be provided to a supporter or a decision-
143 maker receiving decision-making assistance, and shall include the rights and obligations
144 contained in section 5-508 of chapter 190B. The training shall be in any format accessible to the
145 individuals receiving such training. Such training shall include trainers with disabilities and
146 adults who receive or might receive supported decision-making assistance.

147 SECTION 5. Section 2 of chapter 71B of the General Laws is hereby amended by
148 inserting at the thereof the following:-

149 The department of elementary and secondary education shall promulgate regulations
150 requiring school districts and charter schools to be part of the transitional planning process to
151 inform students and families of the availability of supported decision-making as an alternative to
152 guardianship in such cases where adult guardianship is being contemplated.

153 SECTION 6. Section 3 of chapter 71B of the General Laws is hereby amended by
154 inserting the following at the end thereof:-

155 For any student for whom adult guardianship is being considered at the Individual
156 Educational Program (IEP) team meeting, the IEP team shall inform the student and family (or
157 guardian if there is a guardian of the minor) at the earliest possible meeting of the availability of
158 supported decision-making as an alternative to guardianship. The IEP team shall assist the child
159 and his or her family or minor guardian in locating resources to assist in establishing a supported
160 decision-making plan if the child and family are interested in supported decision-making. If a

161 supported decision-making agreement is executed, the IEP team shall abide by decisions made
162 by the student pursuant to the supported decision-making agreement.

163 SECTION 7. This act shall take effect six months from the date of the Governor's
164 signature. A supported decision-making agreement executed before the effective date of the act
165 shall be valid for one year from the effective date of the act. Thereafter, only those supported
166 decision-making agreements which conform to the requirements of the act and which are
167 executed after the effective date of the act shall be valid.