

As Introduced

**135th General Assembly
Regular Session
2023-2024**

S. B. No. 213

Senator Cirino

A BILL

To enact sections 5123.68, 5123.681, 5123.682,
5123.683, 5123.684, 5123.685, and 5123.686 of
the Revised Code to establish supported
decision-making as a nonrestrictive alternative
to guardianship for adults with developmental
disabilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5123.68, 5123.681, 5123.682,
5123.683, 5123.684, 5123.685, and 5123.686 of the Revised Code
be enacted to read as follows:

Sec. 5123.68. As used in sections 5123.68 to 5123.686 of
the Revised Code:

(A) "Adult" means an individual who is either of the
following:

(1) Eighteen years of age or older;

(2) An emancipated minor.

(B) "Principal" means an adult with a developmental
disability who seeks to enter, or has entered, into a supported
decision-making plan.

(C) "Supported decision-making" means the process of supporting and accommodating an adult with a developmental disability who is making, communicating, or implementing the adult's own life decisions without impeding the adult's self-determination. 19
20
21
22
23

"Supported decision-making" may include any matter impacting the adult's life. 24
25

(D) "Supported decision-making plan" is a plan between an adult with a developmental disability and one or more supporters chosen by the adult that may be informal and occur naturally or may be formal and documented through a written plan entered into pursuant to section 5123.683 of the Revised Code. 26
27
28
29
30

(E) "Supporter" means a person chosen by an adult with a developmental disability to support the adult with a developmental disability in a supported decision-making plan. 31
32
33

Sec. 5123.681. (A) Based on the principle that all adults with developmental disabilities should be afforded all of the rights set forth in section 5123.62 of the Revised Code, all adults with developmental disabilities are presumed to be capable of making decisions regarding their lives and activities of daily living and are presumed to be competent to handle their own affairs, unless otherwise determined by a court of competent jurisdiction. 34
35
36
37
38
39
40
41

(B) The fact that an adult has a developmental disability does not, by itself, void the presumption of capacity and competency described in division (A) of this section. 42
43
44

(C) The manner in which an adult with a developmental disability communicates with others is not grounds for a finding that the adult is incapable of managing the adult's affairs or 45
46
47

of entering into a supported decision-making plan. 48

(D) Execution of a supported decision-making plan by an 49
adult with a developmental disability is not evidence of 50
incapacity and shall not be used as such. 51

(E) An adult with a developmental disability who has 52
entered into a supported decision-making plan is not precluded 53
from acting independently of the plan, acting independently of 54
one or more supporters identified in the plan, or seeking 55
personal information without the assistance of a supporter. The 56
adult's choice to act independently of the plan or a supporter 57
is not evidence of incapacity and shall not be used as such. 58

(F) Evidence of either a formal or informal supported 59
decision-making plan may be presented as a nonrestrictive 60
alternative to guardianship pursuant to division (C)(5) of 61
section 2111.02 of the Revised Code. 62

(G) No adult with a developmental disability shall be 63
required to enter into a supported decision-making plan. 64

Sec. 5123.682. (A) A supported decision-making plan may be 65
created at the request and with the active participation of the 66
principal. A supported decision-making plan may be established 67
by either of the following: 68

(1) Pursuant to a written plan in accordance with section 69
5123.683 of the Revised Code; 70

(2) Naturally, without a written plan, when an adult with 71
a developmental disability relies upon natural supports or 72
chosen supporters to assist with decisions in the adult's daily 73
life. 74

(B) The department of developmental disabilities shall 75

develop both of the following: 76

(1) A model written supported decision-making plan that 77
may be used by a principal and one or more supporters; 78

(2) Informational materials about formal and informal 79
supported decision-making plans, intended for use by all of the 80
following: 81

(a) Adults with developmental disabilities; 82

(b) Family members of adults with developmental 83
disabilities; 84

(c) Social service, medical service, and financial service 85
professionals and other professionals likely to encounter 86
supported decision-making plans; 87

(d) The general public. 88

Sec. 5123.683. (A) A written supported decision-making 89
plan shall be executed in accordance with this section. 90

(B) (1) The written plan shall be entered into by the adult 91
with a developmental disability as the principal and one or more 92
supporters. 93

(2) The plan shall be signed and acknowledged voluntarily, 94
without coercion or undue influence, by the principal. 95

The principal's signature shall be witnessed by either a 96
notary public or two adult witnesses who are not parties to the 97
supported decision-making plan. The witnesses must attest that 98
the plan was signed of the principal's own free will and accord. 99

Sec. 5123.684. (A) Except as otherwise limited by the 100
principal, and pursuant to the principal's authority under 101
division (E) of section 5123.681 of the Revised Code, a 102

<u>supporter may assist the principal with all of the following:</u>	103
<u>(1) Understanding information, options, responsibilities,</u>	104
<u>and consequences associated with making decisions;</u>	105
<u>(2) Communicating the decisions to third parties;</u>	106
<u>(3) Obtaining and understanding information relevant to</u>	107
<u>life decisions, including medical, psychological, financial,</u>	108
<u>employment, medicaid, educational, or other records;</u>	109
<u>(4) Monitoring information about the principal's affairs</u>	110
<u>and services, including future services;</u>	111
<u>(5) Understanding the principal's personal values,</u>	112
<u>beliefs, and preferences, including the principal's cultural,</u>	113
<u>ethnic, or religious heritage, and using this information to</u>	114
<u>advocate for the implementation of the principal's wishes and</u>	115
<u>decisions;</u>	116
<u>(6) Accompanying the principal and participating in</u>	117
<u>discussions with third parties.</u>	118
<u>(B) (1) The supporter shall assist the principal in</u>	119
<u>accessing, collecting, or obtaining only information that is</u>	120
<u>relevant to a decision authorized by the supported decision-</u>	121
<u>making plan.</u>	122
<u>(2) If the supporter assists the principal in accessing,</u>	123
<u>collecting, or obtaining personal information protected under</u>	124
<u>the "Health Insurance Portability and Accountability Act of</u>	125
<u>1996," 42 U.S.C. 1320d-2, the "Family Educational Rights and</u>	126
<u>Privacy Act of 1974," 20 U.S.C. 1232g, or financial information</u>	127
<u>protected under the "Financial Services Modernization Act of</u>	128
<u>1999," 15 U.S.C. 6801 and 6821, the supporter shall keep the</u>	129
<u>information confidential.</u>	130

(3) The existence of a supported decision-making plan does 131
not preclude the principal from seeking personal information 132
without the assistance of the supporter. 133

(C) The supporter may undertake any actions permitted by 134
the principal in the supported decision-making plan. The 135
supporter owes the principal a fiduciary duty to act in 136
accordance with the supported decision-making plan. The 137
supporter shall not act in contradiction to the expressed wishes 138
or decision-making authority of the principal. 139

(D) (1) In the event the supporter has a conflict of 140
interest or potential conflict of interest in a decision made by 141
the principal, the supporter shall do both of the following: 142

(a) Fully disclose the conflict of interest to the 143
principal and any other members of the principal's support team, 144
including a service and support administrator or a qualified 145
intellectual disability professional; 146

(b) Refrain from advising or assisting the principal on or 147
with the decision. 148

(2) A supporter who intentionally fails to disclose a 149
conflict of interest or who otherwise breaches the supporter's 150
fiduciary duty to the principal is liable to the principal for 151
all reasonable damages incurred as a result. 152

Sec. 5123.685. A principal may modify or end either a 153
formal or informal supported decision-making plan at any time by 154
notifying the supporter. A principal may modify or end a 155
supported decision-making plan in writing and provide a copy of 156
the written notice to the supporter. 157

Sec. 5123.686. (A) Nothing in sections 5123.68 to 5123.686 158
of the Revised Code prohibits a third party from requiring the 159

principal to execute a release of information or other document 160
to confirm the continued validity of the supported decision- 161
making plan or to confirm the principal's authorization of the 162
third party to share information with a specific supporter. 163

(B) A person who acts in good faith while relying on a 164
supported decision-making plan is not liable for damages in a 165
civil action and is not subject to criminal prosecution or 166
professional disciplinary action unless they have actual 167
knowledge that either: 168

(1) The supported decision-making plan has been modified 169
or ended pursuant to section 5123.685 of the Revised Code. 170

(2) The principal has not authorized the supporter to 171
engage in the specific action taken. 172