

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Supported Decision-Making Agreement Act.

Section 5. Purpose; interpretation. The purpose of this Act is to recognize a less-restrictive alternative to guardianship for adults with intellectual and developmental disabilities who need assistance with decisions regarding daily living.

This Act shall be administered and interpreted in accordance with the following principles:

(1) All adults should be able to live in the manner they choose and to accept or refuse support, assistance, or protection as long as they do not harm others and are capable of making decisions about those matters.

(2) All adults should be able to be informed about and, to the best of their ability, participate in decisions regarding daily living.

(3) All adults should receive the most effective yet least restrictive and intrusive forms of support, assistance, and protection when they are unable to care for themselves or manage their affairs alone.

(4) The values, beliefs, wishes, cultural norms, and traditions that the principal holds should be respected.

Section 10. Definitions. As used in this Act:

"Adult" means a person who is at least 18 years of age.

"Everyday life decisions" means decisions that support one's existence, including, but not limited to, decisions regarding medical care and treatment, one's residence, work, finances, and social life.

"Principal" means an adult with intellectual or developmental disabilities who seeks to enter, or has entered, into a supported decision-making agreement with a supporter under this Act.

"Supported decision-making agreement" means an agreement between a principal and a supporter under this Act.

"Supporter" means an adult who has entered into a supported decision-making agreement with a principal under this Act.

Section 15. Presumption of capability.

(a) All adults are presumed to be capable of making decisions regarding daily living and to have capacity unless otherwise determined by a court. A diagnosis of mental illness, intellectual disability, or developmental disability, of itself, does not void the presumption of capacity.

(b) The manner in which an adult communicates with others

is not grounds for deciding that the adult is incapable of managing the affairs of the adult.

(c) The execution of a supported decision-making agreement may not be used as evidence of capacity or incapacity in any civil or criminal proceeding and does not preclude the ability of the adult who has entered into a supported decision-making agreement to act independently of the agreement.

Section 20. Supporter disqualifications. The following persons are disqualified from acting as a supporter:

(1) a person who is an employer or employee of the principal, unless the person is an immediate family member of the principal;

(2) a person directly providing paid support services to the principal, unless the person is an immediate family member of the principal;

(3) a person who works for an agency that is financially responsible for the care of the principal;

(4) a person who is listed on the Health Care Worker Registry maintained by the Illinois Department of Public Health as ineligible to work;

(5) an individual who is the subject of a civil or criminal order prohibiting contact with the principal; and

(6) a person who has been convicted of:

(i) a sex offense;

(ii) aggravated assault;

- (iii) fraud;
- (iv) theft;
- (v) forgery; or
- (vi) extortion.

Section 25. Authority of the supporter. A supporter may exercise the authority granted to the supporter in the supported decision-making agreement.

Section 30. Supporter duties.

(a) Except as otherwise provided by a supported decision-making agreement, a supporter may:

(1) Assist the principal in understanding information, options, responsibilities, and consequences of the life decisions of the principal, including those decisions related to the affairs or support services of the principal.

(2) Help the principal access, obtain, and understand any information that is relevant to any given life decision, including a medical, psychological, financial, or educational decision, or any treatment records or records necessary to manage the affairs or support services of the principal.

(3) Assist the principal in finding, obtaining, making appointments for, and implementing the support services or plans for support services of the principal.

(4) Help the principal monitor information about the affairs or support services of the principal, including keeping track of future necessary or recommended services.

(5) Ascertain the wishes and decisions of the principal in order to advocate that the wishes and decisions of an individual with disabilities are implemented.

(b) A supporter shall act with the care, competence, and diligence ordinarily exercised by an individual in a similar circumstance, with due regard to the possession of, or lack of, special skills or expertise.

(c) A supporter shall seek training and education regarding the responsibilities and limitations of the supporter role. The Guardianship and Advocacy Commission shall provide public information about this Act and the supporter role, responsibilities, and limitations.

The Guardianship and Advocacy Commission shall develop training and education materials for both principals and supporters, including, but not limited to, sample agreements that will be posted on the website of the Commission along with public awareness materials.

Section 35. Supporter prohibitions. A supporter is prohibited from:

(1) Exerting undue influence upon, or making decisions on behalf of, the principal.

(2) Obtaining, without the consent of the principal, information that is not reasonably related to matters with which the supporter is authorized to assist under the supported decision-making agreement.

(3) Using, without the consent of the principal, information acquired for a purpose other than assisting the principal to make a decision under the supported decision-making agreement.

(4) Receiving compensation for acting as a supporter, except as otherwise provided by this Act.

Section 40. Access to personal information.

(a) A supporter is only authorized to assist the principal in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement.

(b) If a supporter assists a principal in accessing, collecting, or obtaining personal information, including protected health information under the Health Insurance Portability and Accountability Act of 1996 or educational records under the Family Educational Rights and Privacy Act of 1974, the supporter shall ensure that the information is kept privileged and confidential, as applicable, and is not subject to unauthorized access, use, or disclosure.

(c) The existence of a supported decision-making agreement does not preclude a principal from seeking personal

information without the assistance of the supporter.

Section 45. Authorization and witnesses. A principal and his or her supporter entering into a supported decision-making agreement shall sign and date the agreement in the presence of 2 or more subscribing witnesses who are at least 18 years of age. The principal's supporter shall not serve as a witness to the support decision-making agreement.

Section 50. Agreement instrument. A supported decision-making agreement is valid if it substantially follows the following form:

"SUPPORTED DECISION-MAKING AGREEMENT

Important Information for the Supporter: Duties

If you agree to provide support to the principal, you have a duty to:

- (1) act in good faith;
- (2) act within the authority granted in this agreement;
- (3) act loyally and without self-interest; and
- (4) avoid conflicts of interest.

Appointment of Supporter

I, (insert principal's name), make this agreement of my own free will.

I agree and designate that the following individual is my supporter:

Name:.....
Address:
Phone Number:.....
Email Address:

My supporter is to help me make decisions for myself and may help me with making everyday life decisions relating to the following:

(Yes/No) obtaining food, clothing, and shelter.

(Yes/No) taking care of my physical and emotional health.

(Yes/No) managing my financial affairs.

(Yes/No) applying for public benefits.

(Yes/No) helping me find work.

(Yes/No) assisting with residential services.

(Yes/No) helping me with school.

(Yes/No) helping me advocate for myself.

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may:

- (1) help me access, collect, or obtain information

that is relevant to a decision, including medical, psychological, financial, educational, housing, and treatment records;

(2) help me understand my options so that I can make an informed decision; and

(3) help me communicate my decision to appropriate persons.

I want my supporter to have:

(Yes/No) A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996 is attached.

(Yes/No) A release allowing my supporter to see confidential information under the Mental Health and Developmental Disabilities Confidentiality Act is attached.

(Yes/No) A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974 and the Illinois School Records Act is attached.

(Yes/No) A release allowing my supporter to see substance abuse records under Confidentiality of Alcohol and Drug Abuse Patient Records regulations is attached.

This supported decision-making agreement is effective immediately and will continue until (insert date) or until the

agreement is terminated by my supporter or me or by operation of law.

Signed this day of, 20....

(Signature of Principal) (Printed name of principal)

Consent of Supporter

I, (name of supporter), consent to act as a supporter under this agreement.

(Signature of supporter) (Printed name of supporter)

(Witness 1 signature) (Printed name of witness 1)

(Witness 2 signature) (Printed name of witness 2)

WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE ADULT PROTECTIVE SERVICES HOTLINE: 1-866-800-1409, 1-888-206-1327 (TTY)."

This form is not intended to exclude other forms or

agreements that identify the principal, supporter, and types of supports.

Section 55. Reliance on agreement; limitation of liability.

(a) A person who receives the original or a copy of a supported decision-making agreement shall rely on the agreement.

(b) A person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a supported decision-making agreement.

Section 60. Recognition of supporters. A decision or request made or communicated with the assistance of a supporter in conformity with this Act shall be recognized for the purposes of any provision of law as the decision or request of the principal and may be enforced by the principal or supporter in law or equity on the same basis as a decision or request of the principal.

Section 65. Reporting of suspected abuse, neglect, or exploitation. If a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement and has cause to believe that the adult with a disability is being abused, neglected,

or exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to the Adult Protective Services Hotline: 1-866-800-1409, 1-888-206-1327 (TTY).

Section 70. Term of agreement; revocation.

(a) A supported decision-making agreement extends until terminated by either party or by the terms of the agreement.

(b) A supported decision-making agreement is terminated if:

(1) the Office of Inspector General or Adult Protective Services substantiated an allegation of abuse or neglect by the supporter; or

(2) there is a restraining order against the supporter by the principal.

(c) A principal may revoke his or her supported decision-making agreement and invalidate the supported decision-making agreement at any time by:

(1) canceling or destroying the supported decision-making agreement or directing another in the presence of the principal to destroy the decision-making agreement;

(2) executing a statement, in writing, that is signed and dated by the principal, expressing his or her intent to revoke the supported decision-making agreement; or

(3) verbally expressing the intent of the principal to

revoke the supported decision-making agreement in the presence of 2 witnesses.

(d) Unless the supported decision-making agreement provides a different method for the resignation of the support, a supporter may resign by giving notice to the principal.

(e) The last signed agreement holds.

Section 99. Effective date. This Act takes effect 6 months after becoming law.