



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB4842

Introduced 2/18/2020, by

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Supported Decision-Making Agreement Act. Authorizes the creation of supported decision-making agreements and allows a supporter to assist a principal in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement. Provides that all adults are presumed to be capable of managing their affairs and to have capacity unless otherwise determined by a court. Provides that certain persons are disqualified from acting as a supporter. Provides that a supporter may exercise the authority granted to the supporter in the supported decision-making agreement. Provides for the duties of a supporter in a supported decision-making agreement. Prohibits a supporter from doing certain actions in relation to the principal. Requires a notary public or 2 or more witnesses to be present and sign and date a supported decision-making agreement. Provides a form for a supported decision-making agreement. Provides that a person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission under certain circumstances. Provides that a decision or request made or communicated with the assistance of a supporter shall be recognized as the decision or request of the principal and may be enforced by the principal or supporter on the same basis as a decision or request of the principal. Provides that if a person who receives a copy or is aware of the existence of a supported decision-making agreement and has cause to believe that the principal 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. Provides for the termination of a supported decision-making agreement. Provides that a principal may revoke the supported decision-making agreement and invalidate the supported decision-making agreement at any time. Provides that a supporter may resign by giving notice to the principal. Effective immediately.

LRB101 17489 LNS 66899 b

1 AN ACT concerning civil law.

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

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

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

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

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

16 (2) All adults should be able to be informed about and,  
17 to the best of their ability, participate in the management  
18 of their affairs.

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

23 (4) The values, beliefs, wishes, cultural norms, and

1 traditions that an adult holds should be respected in  
2 managing the affairs of an adult.

3 Section 10. Definitions. As used in this Act:

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

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

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

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

12 Section 15. Presumption of capability.

13 (a) All adults are presumed to be capable of managing their  
14 affairs and to have capacity unless otherwise determined by a  
15 court. A diagnosis of mental illness, intellectual disability,  
16 or developmental disability, of itself, does not void the  
17 presumption of capacity.

18 (b) The manner in which an adult communicates with others  
19 is not grounds for deciding that the adult is incapable of  
20 managing the affairs of the adult.

21 (c) The execution of a supported decision-making agreement  
22 may not be used as evidence of incapacity and does not preclude  
23 the ability of the adult who has entered into a supported  
24 decision-making agreement to act independently of the

1 agreement.

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

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

7 (2) a person directly providing paid support services  
8 to the principal, with the exception of supported  
9 decision-making services, unless the person is an  
10 immediate family member of the principal;

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

13 (4) a person who has had a court find that he or she  
14 has committed abuse, neglect, or exploitation of the  
15 principal, a child, an elderly individual, or a person with  
16 a disability;

17 (5) a person against whom the principal has obtained an  
18 order of protection or an individual who is the subject of  
19 a civil or criminal order prohibiting contact with the  
20 principal; and

21 (6) a person who has been convicted of:

22 (i) a sex offense;

23 (ii) aggravated assault;

24 (iii) fraud;

25 (iv) theft;

1 (v) forgery; or

2 (vi) extortion.

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

6 Section 30. Supporter duties.

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

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

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

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

23 (4) Help the principal monitor information about the  
24 affairs or support services of the principal, including

1 keeping track of future necessary or recommended services.

2 (5) Ascertain the wishes and decisions of the  
3 principal, assist in communicating those wishes and  
4 decisions to other persons, and advocate to ensure that the  
5 wishes and decisions of the principal are implemented.

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

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

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

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

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

22 Section 40. Access to personal information.

23 (a) A supporter is only authorized to assist the principal  
24 in accessing, collecting, or obtaining information that is

1 relevant to a decision authorized under the supported  
2 decision-making agreement.

3 (b) If a supporter assists a principal in accessing,  
4 collecting, or obtaining personal information, including  
5 protected health information under the Health Insurance  
6 Portability and Accountability Act of 1996 or educational  
7 records under the Family Educational Rights and Privacy Act of  
8 1974, the supporter shall ensure that the information is kept  
9 privileged and confidential, as applicable, and is not subject  
10 to unauthorized access, use, or disclosure.

11 (c) The existence of a supported decision-making agreement  
12 does not preclude a principal from seeking personal information  
13 without the assistance of the supporter.

14 Section 45. Authorization and witnesses. A principal and  
15 his or her supporter entering into a supported decision-making  
16 agreement shall sign and date the agreement in the presence of  
17 a notary public or in the presence of 2 or more subscribing  
18 witnesses who are at least 18 years of age.

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

22 "SUPPORTED DECISION-MAKING AGREEMENT

23 Important Information for the Supporter: Duties



- 1 (Yes/No) applying for public benefits.  
2 (Yes/No) helping me find work.  
3 (Yes/No) assisting with residential services.  
4 (Yes/No) helping me with school.  
5 (Yes/No) helping me advocate for myself.

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

8 (1) help me access, collect, or obtain information that  
9 is relevant to a decision, including medical,  
10 psychological, financial, educational, housing, and  
11 treatment records;

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

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

16 I want my supporter to have:

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

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

24 (Yes/No) A release allowing my supporter to see

1 educational records under the Family Educational Rights  
2 and Privacy Act of 1974 and the Illinois School Records Act  
3 is attached.

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

7 This supported decision-making agreement is effective  
8 immediately and will continue until (insert date) or until the  
9 agreement is terminated by my supporter or me or by operation  
10 of law.

11 Signed this .... day of ....., 20....

12 (Signature of Principal) (Printed name of principal)

13 Consent of Supporter

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

16 (Signature of supporter) (Printed name of supporter)

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

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

19 WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

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

7 This form is not intended to exclude other forms or  
8 agreements that identify the principal, supporter, and types of  
9 supports.

10 Section 55. Reliance on agreement; limitation of  
11 liability.

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

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

19 Section 60. Recognition of supporters. A decision or  
20 request made or communicated with the assistance of a supporter  
21 in conformity with this Act shall be recognized for the  
22 purposes of any provision of law as the decision or request of  
23 the principal and may be enforced by the principal or supporter

1 in law or equity on the same basis as a decision or request of  
2 the principal.

3 Section 65. Reporting of suspected abuse, neglect, or  
4 exploitation. If a person who receives a copy of a supported  
5 decision-making agreement or is aware of the existence of a  
6 supported decision-making agreement and has cause to believe  
7 that the adult with a disability is being abused, neglected, or  
8 exploited by the supporter, the person shall report the alleged  
9 abuse, neglect, or exploitation to the Adult Protective  
10 Services Hotline: 1-866-800-1409, 1-888-206-1327 (TTY).

11 Section 70. Term of agreement; revocation.

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

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

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

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

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

24 (1) canceling or destroying the supported

1 decision-making agreement or directing another in the  
2 presence of the principal to destroy the decision-making  
3 agreement;

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

7 (3) verbally expressing the intent of the principal to  
8 revoke the supported decision-making agreement in the  
9 presence of 2 witnesses.

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

13 Section 99. Effective date. This Act takes effect upon  
14 becoming law.