



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB3849

Introduced 2/22/2021, by Rep. Lindsey LaPointe

#### 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 with an intellectual or developmental disability 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 making decisions regarding daily living 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 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. Provides that any interested party with a reasonable basis to believe that the supporter is abusing or neglecting the principal shall have the right to petition for the appointment of a limited temporary guardian and a guardian ad litem for the purpose of determining if the support decision-making agreement should be terminated. 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.

LRB102 12658 LNS 17997 b

A BILL FOR

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  
7 Act is to recognize a less-restrictive alternative to  
8 guardianship for adults with intellectual and developmental  
9 disabilities who need assistance with decisions regarding  
10 daily living.

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

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

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

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

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

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

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

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

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

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

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

18          Section 15. Presumption of capability.

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

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

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

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

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

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

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

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

18 (4) a person against whom there has been a finding of  
19 abuse, neglect, or exploitation of the principal, a child,  
20 an elderly individual, or a person with a disability;

21 (5) a person against whom the principal has obtained  
22 an order of protection or an individual who is the subject  
23 of a civil or criminal order prohibiting contact with the  
24 principal; and

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

- 1 (i) a sex offense;
- 2 (ii) aggravated assault;
- 3 (iii) fraud;
- 4 (iv) theft;
- 5 (v) forgery; or
- 6 (vi) extortion.

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

10 Section 30. Supporter duties.

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

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

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

24 (3) Assist the principal in finding, obtaining, making

1 appointments for, and implementing the support services or  
2 plans for support services of the principal.

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

6 (5) Ascertain the wishes and decisions of the  
7 principal, assist in communicating those wishes and  
8 decisions to other persons, and advocate to ensure that  
9 the wishes and decisions of the principal are implemented.

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

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

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

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

23 (2) Obtaining, without the consent of the principal,  
24 information that is not reasonably related to matters with  
25 which the supporter is authorized to assist under the

1 supported decision-making agreement.

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

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

8 Section 40. Access to personal information.

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

13 (b) If a supporter assists a principal in accessing,  
14 collecting, or obtaining personal information, including  
15 protected health information under the Health Insurance  
16 Portability and Accountability Act of 1996 or educational  
17 records under the Family Educational Rights and Privacy Act of  
18 1974, the supporter shall ensure that the information is kept  
19 privileged and confidential, as applicable, and is not subject  
20 to unauthorized access, use, or disclosure.

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

24 Section 45. Authorization and witnesses. A principal and

1 his or her supporter entering into a supported decision-making  
2 agreement shall sign and date the agreement in the presence of  
3 2 or more subscribing witnesses who are at least 18 years of  
4 age. The principal's supporter shall not serve as a witness to  
5 the support decision-making agreement.

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

9 "SUPPORTED DECISION-MAKING AGREEMENT

10 Important Information for the Supporter: Duties

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

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

18 Appointment of Supporter

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



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

3 Name:.....

4 Address: .....

5 Phone Number:.....

6 Email Address: .....

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

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

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

13 (Yes/No) managing my financial affairs.

14 (Yes/No) applying for public benefits.

15 (Yes/No) helping me find work.

16 (Yes/No) assisting with residential services.

17 (Yes/No) helping me with school.

18 (Yes/No) helping me advocate for myself.

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

21 (1) help me access, collect, or obtain information  
22 that is relevant to a decision, including medical,  
23 psychological, financial, educational, housing, and  
24 treatment records;

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

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

5 I want my supporter to have:

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

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

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

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

20 This supported decision-making agreement is effective  
21 immediately and will continue until (insert date) or until the  
22 agreement is terminated by my supporter or me or by operation  
23 of law.

24 Signed this .... day of ....., 20....

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

2 Consent of Supporter

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

5 (Signature of supporter) (Printed name of supporter)

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

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

8 WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

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

16 This form is not intended to exclude other forms or  
17 agreements that identify the principal, supporter, and types  
18 of supports.

1           Section 55. Reliance on agreement; limitation of  
2 liability.

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

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

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

17          Section 65. Reporting of suspected abuse, neglect, or  
18 exploitation. If a person who receives a copy of a supported  
19 decision-making agreement or is aware of the existence of a  
20 supported decision-making agreement and has cause to believe  
21 that the adult with a disability is being abused, neglected,  
22 or exploited by the supporter, the person shall report the  
23 alleged abuse, neglect, or exploitation to the Adult  
24 Protective Services Hotline: 1-866-800-1409, 1-888-206-1327

1 (TTY).

2 Section 66. Third party right of action. Any interested  
3 party with a reasonable basis to believe that the supporter is  
4 abusing or neglecting the principal shall have the right to  
5 petition for the appointment of a limited temporary guardian  
6 and a guardian ad litem for the purpose of determining if the  
7 support decision-making agreement should be terminated.

8 Section 70. Term of agreement; revocation.

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

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

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

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

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

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

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

4           (3) verbally expressing the intent of the principal to  
5           revoke the supported decision-making agreement in the  
6           presence of 2 witnesses.

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

11          (e) The last signed agreement holds.

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