

HOUSE No. 172

The Commonwealth of Massachusetts

PRESENTED BY:

Aaron Vega and Paul F. Tucker

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Aaron Vega</i>	<i>5th Hampden</i>	<i>1/14/2019</i>
<i>Paul F. Tucker</i>	<i>7th Essex</i>	<i>1/17/2019</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>2/1/2019</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>1/31/2019</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>1/31/2019</i>
<i>Natalie M. Blais</i>	<i>1st Franklin</i>	<i>2/1/2019</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/1/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/31/2019</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>2/1/2019</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>2/1/2019</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>2/1/2019</i>
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>1/30/2019</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/1/2019</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/30/2019</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>1/22/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>1/17/2019</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>	<i>1/23/2019</i>

<i>Jonathan Hecht</i>	<i>29th Middlesex</i>	<i>2/1/2019</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>1/30/2019</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>	<i>1/30/2019</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>	<i>1/28/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/30/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/29/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/1/2019</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>1/23/2019</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>1/31/2019</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>	<i>2/1/2019</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>1/30/2019</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>1/31/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>1/30/2019</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/29/2019</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/1/2019</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>	<i>1/31/2019</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>1/31/2019</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/16/2019</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>1/23/2019</i>
<i>John C. Velis</i>	<i>4th Hampden</i>	<i>1/31/2019</i>

HOUSE No. 172

By Messrs. Vega of Holyoke and Tucker of Salem, a petition (accompanied by bill, House, No. 172) of Aaron Vega, Paul F. Tucker and others relative to establishing supported decision-making for adults with certain disabilities. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relating to authorizing 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. General Laws. chapter 190B is amended by adding Section 5-508 to read as
2 follows:

3 SUPPORTED DECISION-MAKING AGREEMENT ACT GENERAL PROVISIONS

4 (1) DEFINITIONS. In this section:

5 (a) "Adult" means an individual 18 years of age or older.

6 (b) "Disability" means, with respect to an individual, a physical or mental impairment
7 that substantially limits one or more major life activities.

8 (c) "Decision maker" means the person making the decision, that is, the principal.

9 (d) "Principal" is an adult with a disability who has executed a supported decision-
10 making agreement, that is, the decision maker.

11 (e) "Supported decision-making" means a process of supporting and accommodating a
12 principal to assist the principal to make life decisions, including decisions related to where the
13 principal wants to live, the services, supports, financial decisions, and medical care the principal
14 wants to receive, whom the principal wants to live with, and where the principal wants to work,
15 without impeding the self-determination of the principal.

16 (f) "Supported decision-making agreement" is an agreement a principal enters into with
17 one or more supporters under this chapter to use supported decision-making.

18 (g) "Supporter" means an adult who has entered into a supported decision-making
19 agreement with a principal.

20 (2) PURPOSE. The purposes of this section is to recognize that with support many
21 people with disabilities can make their own decisions, to help such persons to exercise their
22 human rights to make decisions, and to create a process which adults with disabilities who need
23 assistance with decisions may choose to use to make and communicate decisions.

24 (3) SUPPORTED DECISION-MAKING AGREEMENT. A principal may voluntarily,
25 without undue influence or coercion, enter into a supported decision-making agreement with a
26 supporter or supporters. The principal may amend or terminate a supported decision-making
27 agreement at any time.

28 (4) DECISION-MAKING ASSISTANCE OF SUPPORTER. Except as limited by a
29 supported decision-making agreement, a supporter may provide to the principal the following
30 decision-making assistance about the principal's affairs with the consent of the individual with
31 the disability:

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

34 (b) accessing, obtaining, and understanding information that is relevant to decisions
35 necessary for the principal to manage his or her affairs, including medical, psychological,
36 financial, and educational information, medical treatment records, and other records;

37 (c) ascertaining the wishes and decisions of the principal, assisting in communicating
38 those wishes and decisions to other persons, and advocating to ensure their implementation; and

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

41 (5) AUTHORITY OF A SUPPORTER. A supporter may

42 exercise only the authority granted to the supporter in the supported decision-making
43 agreement.

44 (6) TERM OF AGREEMENT.

45 (a) Except as provided by Subsection (b), the supported decision-making agreement
46 extends until terminated by the principal, by all of the supporters, by the terms of the agreement,
47 or by court order, following notice and an opportunity to be heard, and if the principal is indigent
48 and does not have counsel, appointment of counsel.

49 If the supported decision-making agreement includes more than one supporter, the
50 agreement shall survive as to supporters who have not terminated unless it is terminated by the
51 principal or by all of the supporters.

52 (b) The supported decision-making agreement is suspended when the Disabled Persons
53 Protection Commission, an Elder Protective Services Agency or a court of competent jurisdiction
54 finds that the adult with a disability has been abused, neglected, or exploited by a supporter or
55 supporters. The agreement may survive if one or more supporters who were not found to have
56 abused, neglected, or exploited the adult with a disability continue to be willing to serve as a
57 supporter and the principal agrees.

58 (7) ACCESS TO PERSONAL INFORMATION.

59 (a) A supporter is only authorized to assist the principal in accessing, collecting, or
60 obtaining information that is relevant to a decision authorized under the supported decision-
61 making agreement and to which the principal agrees that the supporter should have access.

62 (b) If a supporter assists the principal in accessing, collecting, or obtaining personal
63 information, including protected health information under the Health Insurance Portability and
64 Accountability Act of 1996 (Pub. L. No. 104-191) or educational records under the Family
65 Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), the supporter shall
66 ensure the information is kept privileged and confidential, as applicable, and is not subject to
67 unauthorized access, use, or disclosure.

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

70 (8) AUTHORIZING AND WITNESSING OF SUPPORTED DECISION-MAKING

71 AGREEMENT. A supported decision-making agreement must be signed voluntarily, without
72 coercion or undue influence, by the principal and the supporter or supporters in the presence of

73 two or more subscribing witnesses who are at least 18 years of age and are not related to the
74 person with the disability or a notary public.

75 (9) FORM OF SUPPORTED DECISION-MAKING AGREEMENT.

76 (a) Subject to Subsection (c), a supported decision-making agreement is valid only if it is
77 in substantially the form of the agreement in subsection (b). The agreement is intended to be
78 personalized by the principal to reflect his or her personal circumstances. The principal should
79 describe in the agreement the type of decision making assistance he or she would like from his or
80 her supporters.

81 (b) Agreement:

82 SUPPORTED DECISION-MAKING AGREEMENT

83 Appointment of Supporter

84 (1) I, (insert your name)(address)(date of birth), make this agreement of my own free
85 will. It is my intention that I be the decision maker.

86 (2) [If there is more than one supporter, provide the following for each supporter]

87 As the decision maker, I choose as my supporter(s) the following person(people):

88 Full Name:

89 Address:

90 Phone Number:

91 E-mail Address:

92 My supporter, [name of supporter], may help me with making everyday life decisions
93 relating to the following areas of my life: [describe here]

94 _____
95 _____
96 _____
97 _____

98 [Optional section:]

99 As the decision maker I would like assistance from, (name of supporter) with making
100 decisions about:

101 Y/N obtaining food, clothing, and shelter

102 Y/N taking care of my health, including helping me make large and small health care
103 decisions.

104 Y/N managing my financial affairs.

105 Y/N accessing and using public supports and services.

106 Y/N taking care of myself, including managing the people who work with me, making
107 decisions about my diet, safety and other day to day activities.

108 Y/N making legal decisions, including retaining a lawyer if I need one and working with
109 the lawyer.

110 I do not want assistance from my supporter, (name of supporter), with decision making
111 about the following areas of my life: [describe here]

112 _____

113 _____

114

115 [Repeat section (2) for each additional supporter if there are any]

116 (3) My supporter(s) is(are) NOT allowed to make decisions for me. I am the decision
117 maker.

118 (4) To help me with my decisions, my supporter(s) may:

119 1. Request information or records that are relevant to a decision, including medical,
120 psychological, financial, educational, or treatment records;

121 2. Help me understand my options so I can make an informed decision by discussing
122 with me the good things and bad things (pros and cons) of a decision

123 3. Give me information in a way that I can understand;

124 or

125 4. Help me communicate my decision to appropriate persons.

126 Y/N A release allowing my supporter to see protected health information under the
127 Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

128 Y/N A release allowing my supporter to see educational records under the Family
129 Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) is attached.

130 Effective Date of Supported Decision-Making Agreement

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

134 Signed this day of , 20__

135 Consent of Supporter

136 I, (name of supporter), consent to act as a supporter under this agreement. I understand
137 that as _____'s supporter my job is to honor and present his/her wishes and in the event I
138 cannot perform my duties I will withdraw from this agreement.

139 _____

140 _____

141 (signature of supporter) (printed name of supporter)

142 Signature

143 (my signature) _____(my printed name)

144 _____

145 (witness 1 signature) (printed name of witness 1)

146 (witness 2 signature) (printed name of witness 2)

147 Commonwealth of Massachusetts

148 County of

149 This document was acknowledged before me

150 on (date)

151 by and

152 (name of adult with a disability) (name of supporter)

153 (signature of notarial officer)

154 (Seal, if any, of notary)

155 (printed name)

156 My commission expires:_____

157 WARNING:

158 IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE

159 OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT

160 THE DECISION MAKER, THAT IS THE ADULT WITH A DISABILITY, IS BEING

161 ABUSED, NEGLECTED, OR EXPLOITED BY A SUPPORTER OR SUPPORTERS, THE

162 PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO

163 THE DISABLED PERSONS PROTECTION COMMISSION BY CALLING THE ABUSE

164 HOTLINE AT 1-800-426-9009 OR 1-888-822-0350 (TTY) OR, IF THE DECISION MAKER,

165 THAT IS THE PERSON WITH A DISABILITY, IS AGE 60 OR OLDER TO THE ELDER
166 ABUSE PREVENTION HOTLINE AT 1-800-922-2275.

167 (c) A supported decision-making agreement may be in any form
168 not inconsistent with Subsection (a) and the other requirements of this chapter.

169 (10) RELIANCE ON AGREEMENT; LIMITATION OF LIABILITY.

170 (a) A person who receives the original or a copy of a supported decision-making
171 agreement shall rely on the agreement and recognize a decision or request made or
172 communicated with the decision-making assistance of a supporter under this chapter as the
173 decision or request of the principal.

174 (b) A person who, in good faith, acts in reliance on an authorization in a supported
175 decision-making agreement is not subject to civil or criminal liability or to discipline for
176 unprofessional conduct for relying on a decision made in accordance with a supported decision-
177 making agreement.

178 (11) AGREEMENT MAY NOT BE A CONDITION OF PARTICIPATION. Execution
179 of a supported decision-making agreement may not be a condition of participation in any
180 activity, service, or program.

181 (12). REPORTING OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION. If a
182 person who receives a copy of a supported decision-making agreement or is aware of the
183 existence of a supported decision-making agreement has cause to believe that the principal is
184 being abused, neglected, or exploited by the supporter, the person shall report the alleged abuse,

185 neglect, or exploitation to the Disabled Persons Protection Commission in accordance with G.L.
186 c. 19D, or the Elder Abuse Prevention Hotline in accordance with G.L. c. 19C.

187 (13) HEALTH CARE PROXY AND DURABLE POWER OF ATTORNEY. Nothing in
188 this chapter shall be interpreted to limit or restrict any individual's right to execute a health care
189 proxy pursuant to the terms of G.L. c. 201D or a power of attorney pursuant to the terms of G.L.
190 c. 190B secs. 5-501 through 5-507.

191 SECTION 2. General Laws Chapter 190B Section 5-303(b)(10) is repealed and the
192 following is added:

193 Section 5-303(b)(10): The petition for guardianship must state:

194 (1) Whether alternatives to guardianship and available supports and services to avoid
195 guardianship, including a supported decision-making agreement, were considered; and,

196 (2) Whether any alternatives to guardianship and supports and services are feasible and
197 would avoid need for guardianship.

198 SECTION 3. TRAINING ON SUPPORTED DECISION-MAKING

199 General Laws Chapter 6A, Section 16 is amended to add the following after the last
200 paragraph of Section 16:

201 The executive office of health and human services shall establish a training program on
202 supported decision-making. The training program shall include instruction by state agencies
203 including the department of developmental services, the department of mental health, the
204 executive office of elder affairs and/or a non-profit corporation or corporations.

205 The training program on supported decision-making shall be provided to a supporter or a
206 principal receiving decision-making assistance, and shall include the rights and obligations
207 contained in General Laws Chapter 190B Sec. 5-508. The training shall be in any format
208 accessible to the individuals receiving such training. Such training shall at all stages include
209 trainers with disabilities and adults who receive or might receive supported decision-making
210 assistance.

211 SECTION 4. SUPPORTED DECISION-MAKING AND TRANSITIONAL PLANNING

212 (1) General Laws Chapter 71(b) Sec. 3 is amended to add the following after the last
213 paragraph of Section 3:

214 For any student for whom adult guardianship is being considered at the Individual
215 Educational Program (IEP) team meeting, the IEP team shall inform the student and family (or
216 guardian if there is a guardian of the minor) at the earliest possible meeting of the availability of
217 supported decision-making as an alternative to guardianship. Furthermore, the IEP team shall
218 assist the child and his or her family or minor guardian in locating resources to assist in
219 establishing a supported decision-making plan if the child and family are interested in supported
220 decision-making. Finally, if a supported decision-making agreement is executed, the IEP team
221 shall abide by decisions made by the student pursuant to the supported decision-making
222 agreement.

223 (2) General Laws Chapter 71(b) Sec. 2 is amended to add the following after the last
224 paragraph of Section 2:

225 The department of elementary and secondary education shall promulgate a regulation that
226 requires school districts and charter schools to be part of the transitional planning process to

227 inform students and families of the availability of supported decision-making as an alternative to
228 guardianship in such cases where adult guardianship is being contemplated.

229 SECTION 5. This Act shall be effective immediately.