

SENATE No. 64

The Commonwealth of Massachusetts

PRESENTED BY:

Joan B. Lovely

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 relative to supported decision-making agreements for certain adults with disabilities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joan B. Lovely</i>	<i>Second Essex</i>	
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>1/30/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/31/2019</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>1/31/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/31/2019</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>2/1/2019</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>3/6/2019</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>6/25/2019</i>

SENATE No. 64

By Ms. Lovely, a petition (accompanied by bill, Senate, No. 64) of Joan B. Lovely, Rebecca L. Rausch, Mike Connolly, Michael D. Brady and other members of the General Court for legislation relative to supported decision-making agreements for certain adults with disabilities. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

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

An Act relative to 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. Chapter 190B is hereby amended, after section 5-507, by inserting the
2 following new section:-

3 Section 5-508. Supported Decision-Making Agreements

4 (a) As used in this section, the following words shall have the following meanings unless
5 the context clearly requires otherwise:

6 "Adult" means an individual 18 years of age or older.

7 "Decision-maker" means an adult with a disability who has executed a supported
8 decision-making agreement.

9 "Disability" means, with respect to an individual, a physical or mental impairment that
10 substantially limits one or more major life activities.

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

16 "Supported decision-making agreement" is an agreement a decision-maker enters into
17 with one or more supporters under this section to use supported decision-making.

18 "Supporter" means an adult who has entered into a supported decision-making agreement
19 with a decision-maker.

20 (b) A decision-maker may voluntarily, without undue influence or coercion, enter into a
21 supported decision-making agreement with a supporter or supporters. The decision-maker may
22 amend or terminate a supported decision-making agreement at any time.

23 (c) Except as limited by a supported decision-making agreement, a supporter may
24 provide to the decision-maker the following decision-making assistance with the decision-
25 maker's affairs with the consent of the individual with the disability:

26 (1) assisting with making decisions, communicating decisions, and understanding
27 information about, options for, the responsibilities of, and the consequences of decisions;

28 (2) accessing, obtaining, and understanding information that is relevant to decisions
29 necessary for the decision-maker to manage his or her affairs, including medical, psychological,
30 financial, and educational information; and medical and other records;

31 (3) ascertaining the wishes and decisions of the decision-maker; assisting in
32 communicating those wishes and decisions to other persons; and advocating to ensure their
33 implementation; and

34 (4) accompanying the decision-maker and participating in discussions with other persons
35 when the decision-maker is making decisions or attempting to obtain information for decisions.

36 (d) A supporter may exercise only the authority granted to the supporter in the supported
37 decision-making agreement.

38 (1) Except as provided in paragraph (2), the supported decision-making agreement
39 extends until terminated by the decision-maker, all supporters, the terms of the agreement, or
40 court order, following notice and an opportunity to be heard, and if the decision-maker is
41 indigent and does not have counsel, appointment of counsel.

42 If the supported decision-making agreement includes more than one supporter, the
43 agreement shall survive for supporters who have not terminated unless it is terminated by the
44 decision-maker or by all supporters.

45 (2) The supported decision-making agreement is suspended when the disabled persons
46 protection commission, an elder protective services agency or a court of competent jurisdiction
47 finds that the adult with a disability has been abused, neglected, or exploited by a supporter or
48 supporters. The agreement may survive if one or more supporters who were not found to have
49 abused, neglected, or exploited the adult with a disability continues to be willing to serve as a
50 supporter and the decision-maker agrees.

51 (e)(1) A supporter is only authorized to assist the decision-maker in accessing, collecting,
52 or obtaining information that is relevant to a decision authorized under the supported decision-
53 making agreement and to which the decision-maker agrees that the supporter should have access.

54 (2) If a supporter assists the decision-maker in accessing, collecting, or obtaining
55 personal information, including protected health information under the Health Insurance
56 Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or educational records under
57 the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. section 1232g), the supporter
58 shall ensure the information is kept privileged and confidential, as applicable, and is subject to
59 neither unauthorized access, nor use, nor disclosure.

60 (f) The existence of a supported decision-making agreement does not preclude a decision-
61 maker from seeking personal information without the assistance of a supporter.

62 (g) A supported decision-making agreement must be signed voluntarily, without coercion
63 or undue influence, by the decision-maker and the supporter or supporters in the presence of two
64 or more subscribing witnesses who are at least 18 years of age, and unrelated to the person with
65 the disability, or a notary public.

66 (h)(1) Subject to subsection (j), a supported decision-making agreement is valid only if it
67 is in substantially the form of the agreement in subsection (i). The agreement is intended to be
68 personalized by the decision-maker to reflect his or her personal circumstances. The decision-
69 maker should describe in the agreement the type of decision making assistance he or she would
70 like from his or her supporters.

71 (i) Agreement:

72 SUPPORTED DECISION-MAKING AGREEMENT

73 Appointment of Supporter

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

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

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

78 Full Name:

79 Address:

80 Phone Number:

81 E-mail Address:

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

84 _____

85 _____

86 _____

87 _____

88 [Optional section:]

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

91 Y/N obtaining food, clothing, and shelter

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

94 Y/N managing my financial affairs.

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

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

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

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

102 _____

103 _____

104

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

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

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

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

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

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

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

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

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

119 Effective Date of Supported Decision-Making Agreement

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

123 Signed this day of , 20__

124 Consent of Supporter

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

128 _____

129 _____

130 (signature of supporter) (printed name of supporter)

131 Signature

132 (my signature) _____(my printed name)

133 _____

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

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

136 Commonwealth of Massachusetts

137 County of

138 This document was acknowledged before me

139 on (date)

140 by and

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

142 (signature of notarial officer)

143 (Seal, if any, of notary)

144 (printed name)

145 My commission expires: _____

146 WARNING:

147 IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE
148 OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT
149 THE DECISION-MAKER, THAT IS THE ADULT WITH A DISABILITY, IS BEING
150 ABUSED, NEGLECTED, OR EXPLOITED BY A SUPPORTER OR SUPPORTERS, THE
151 PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO
152 THE DISABLED PERSONS PROTECTION COMMISSION BY CALLING THE ABUSE
153 HOTLINE AT 1-800-426-9009 OR 1-888-822-0350 (TTY) OR, IF THE DECISION-MAKER,
154 THAT IS THE PERSON WITH A DISABILITY, IS AGE 60 OR OLDER TO THE ELDER
155 ABUSE PREVENTION HOTLINE AT 1-800-922-2275.

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

158 (k)(1) A person who receives the original or copy of a supported decision-making
159 agreement shall rely on the agreement and recognize a decision or request made or
160 communicated with the decision-making assistance of a supporter under this chapter as the
161 decision or request of the decision-maker.

162 (2) A person who, in good faith, acts in reliance on an authorization in a supported
163 decision-making agreement is not subject to civil or criminal liability or to discipline for

164 unprofessional conduct for relying on a decision made in accordance with a supported decision-
165 making agreement.

166 (l) Execution of a supported decision-making agreement may not be a condition of
167 participation in any activity, service, or program.

168 (m) If a person who receives a copy of a supported decision-making agreement or is
169 aware of the existence of a supported decision-making agreement has cause to believe that the
170 decision-maker is being abused, neglected, or exploited by the supporter, the person shall report
171 the alleged abuse, neglect, or exploitation to the disabled persons protection commission in
172 accordance with chapter 19D or the Elder Abuse Prevention Hotline in accordance with chapter
173 19C.

174 (n) Nothing in this section shall be interpreted to limit or restrict any individual's right to
175 execute a health care proxy pursuant to chapter 201D or a power of attorney pursuant to sections
176 5-501 through 5-507 of chapter 190B.

177 SECTION 2. Chapter 190B of the General Laws is hereby amended by striking, in
178 section 5-303, paragraph (b)(10) and inserting in place thereof the following :-

179 (10) The petition for guardianship must state:

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

182 (2) Whether any alternatives to guardianship and supports and services are feasible and
183 would avoid the need for guardianship.

184 SECTION 3. Chapter 6A of the General Laws is hereby amended by inserting after
185 section 16F the following section:-

186 Section 16F ½. The executive office of health and human services shall establish a
187 training program on supported decision-making. The training program shall include instruction
188 by state agencies including the department of developmental services, the department of mental
189 health, the executive office of elder affairs and a non-profit corporation or corporations.

190 The training program on supported decision-making shall be provided to a supporter or a
191 decision-maker receiving decision-making assistance, and shall include the rights and obligations
192 contained in section 5-508 of chapter 190B. The training shall be in any format accessible to the
193 individuals receiving such training. Such training shall at all stages include trainers with
194 disabilities and adults who receive or might receive supported decision-making assistance.

195 SECTION 4. Section 3 of chapter 71B of the General Laws is hereby amended by
196 inserting the following at the end thereof the following:-

197 For any student for whom adult guardianship is being considered at the Individual
198 Educational Program (IEP) team meeting, the IEP team shall inform the student and family (or
199 guardian if there is a guardian of the minor) at the earliest possible meeting of the availability of
200 supported decision-making as an alternative to guardianship. The IEP team shall assist the child
201 and his or her family or minor guardian in locating resources to assist in establishing a supported
202 decision-making plan if the child and family are interested in supported decision-making. If a
203 supported decision-making agreement is executed, the IEP team shall abide by decisions made
204 by the student pursuant to the supported decision-making agreement.

205 SECTION 5. Section 2 of chapter 71B of the General Laws is hereby amended by
206 inserting at the thereof the following:-

207 The department of elementary and secondary education shall promulgate a regulation that
208 requires school districts and charter schools to be part of the transitional planning process to
209 inform students and families of the availability of supported decision-making as an alternative to
210 guardianship in such cases where adult guardianship is being contemplated.

211 SECTION 6. This act shall take effect six months from the date of its passage.