HOUSE DOCKET, NO. 2134 FILED ON: 2/16/2021

HOUSE . . . . . No. 272

The Commonwealth of Massachusetts

PRESENTED BY:

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 Relative to Supported Decision Making.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Paul F. Tucker	*7th Essex*	*2/16/2021*
Kathleen R. LaNatra	*12th Plymouth*	*2/25/2021*
Lindsay N. Sabadosa	*1st Hampshire*	*3/17/2021*
Josh S. Cutler	*6th Plymouth*	*3/17/2021*
Danillo A. Sena	*37th Middlesex*	*3/17/2021*
Michael D. Brady	*Second Plymouth and Bristol*	*3/17/2021*
Gerard J. Cassidy	*9th Plymouth*	*3/29/2021*
James M. Murphy	*4th Norfolk*	*3/29/2021*
Vanna Howard	*17th Middlesex*	*3/29/2021*
Walter F. Timilty	*Norfolk, Bristol and Plymouth*	*3/29/2021*
Jack Patrick Lewis	*7th Middlesex*	*3/29/2021*
Mary S. Keefe	*15th Worcester*	*4/7/2021*
Steven C. Owens	*29th Middlesex*	*4/7/2021*
Norman J. Orrall	*12th Bristol*	*4/9/2021*
David Paul Linsky	*5th Middlesex*	*4/14/2021*
Steven Ultrino	*33rd Middlesex*	*4/20/2021*
Tommy Vitolo	*15th Norfolk*	*4/27/2021*
Natalie M. Higgins	*4th Worcester*	*8/17/2021*

Patricia A. Duffy	*5th Hampden*	*1/27/2022*
Thomas M. Stanley	*9th Middlesex*	*2/8/2022*

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HOUSE . . . . . No. 272

By Mr. Tucker of Salem, a petition (accompanied by bill, House, No. 272) of Paul F. Tucker and others relative to supported decision-making agreements. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act Relative to Supported Decision Making.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 190B is hereby amended, after section 5-507, by inserting the following new section:-

Section 5-508. Supported Decision-Making Agreements

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

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

“Coercion” means use of force or threats to persuade someone to do something.

"Decision-maker" means an adult who seeks to execute, or has executed, a supported decision-making agreement with one or more supporters under this chapter.

"Supported decision-making" means the process of supporting and accommodating the decision-maker, without impeding the self-determination of the decision-maker, in making life decisions, including, but not limited to, decisions related to where the decision-maker wants to live; the services, supports, financial decisions, and medical care the decision-maker wants to receive; whom the decision-maker wants to live with; or where the decision-maker wants to work.

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

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

(b) A decision-maker may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with a supporter or supporters. The decision-maker may change or terminate a supported decision-making agreement at any time, per the procedure(s) outlines in section (e).

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

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

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

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

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

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

(e) The supported decision-making agreement shall remain in effect until it is revoked, suspended, or terminated in accordance with the provision of this section.

(1) If the agreement sets forth a termination date, the supported decision-making agreement shall not be effective after the termination date.

(2) The decision-maker may revoke a supported decision-making agreement by notifying the supporters orally or in writing or by any other act evidencing a specific intent to revoke the agreement.

(3) Supporter may terminate participation in the agreement by written or oral notice to the decision-maker and the remaining supporters. If the supported decision-making agreement includes more than one supporter, the supported decision-making agreement shall survive for

supporters who have not terminated their participation unless it is otherwise terminated or revoked in a manner set forth by this section.

(4) The disabled persons protection commission, an elder protective services agency, the department of developmental services, the department of mental health, or an interested person may petition the probate and family court to terminate, revoke, or suspend the operation of a supported decision-making agreement. If, after notice to decision-maker and a hearing at which the decision-maker shall have the right to be present and to be heard, the Court finds by clear and convincing evidence that that the decision-maker has been abused, neglected, or exploited by a supporter or supporters, the court may revoke, terminate, or suspend for a time to be determined by the court, the supported decision-making agreement. The agreement may survive if one or more supporters who were not found to have abused, neglected, or exploited the adult with a disability continues to be willing to serve as a supporter and the decision-maker agrees. If the decision-maker is indigent, the court shall forthwith appoint counsel for the decision-maker upon the filing of any petition under this paragraph.

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

(2) If a supporter assists the decision-maker in accessing, collecting, or obtaining personal information, including protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. section 1232g), the supporter

shall ensure the information is kept privileged and confidential, as applicable, and is subject to neither unauthorized access, nor use, nor disclosure.

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

(h) A supported decision-making agreement must be signed voluntarily, without coercion or undue influence, by the decision-maker and the supporter or supporters in the presence of two or more witnesses who are at least 18 years of age, and unrelated to the decision-maker and who are not supporters of the decision-maker, or a notary public.

(i)(1) A supported decision-making agreement is intended to be personalized by the decision-maker to reflect his or her personal circumstances.

(2) A supported decision-making agreement shall be in writing and shall:

(i) identify the decision-maker and the supporters;

(ii) describe the kinds of decisions with which the decision-maker wants assistance from each respective supporter;

(iii) indicate that the supporters agree to assist the decision-maker to make decisions, to respect the decision-maker's decisions, and, if necessary, to assist the decision-maker to communicate decisions, and, further, agree not to make decisions for the decision-maker;

(iv) indicate that the decision-maker may change, amend, or revoke the supported decision-making agreement at any time for any reason subject to the requirements of section (g);

(v) include a statement that if any person suspects the decision-maker has been abused, neglected or exploited by a supporter or supporters, the person may report the suspicion to, as applicable, the disabled persons protection commission or an elder protective services agency and shall include the contact information for the disabled persons protection commission, the elder abuse hot line, and, the human rights officer of any program providing services to the decision-maker; and

(vi) be signed by the decision-maker and the supporters, the decision-maker's signature to be attested to by a notary public or, in the alternative, by two witnesses who are unrelated to the decision-maker and who are not supporters of the decision-making.

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

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

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

(l) 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 has cause to believe that the decision-maker is being abused, neglected, or exploited by the supporter, the person may report the

alleged abuse, neglect, or exploitation to the disabled persons protection commission in accordance with chapter 19D or the Elder Abuse Prevention Hotline in accordance with chapter 19C.

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

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

whether alternatives to guardianship and available supports and services to avoid guardianship, including a supported decision-making agreement, were considered; and why such alternatives to guardianship and supports and services are not feasible or would not avoid the need for guardianship.

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

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

The training program on supported decision-making shall be provided to a supporter or a decision-maker receiving decision-making assistance, and shall include the rights and obligations contained in section 5-508 of chapter 190B. The training shall be in any format accessible to the

individuals receiving such training. Such training shall include trainers with disabilities and adults who receive or might receive supported decision-making assistance.

SECTION 4. Section 2 of chapter 71B of the General Laws is hereby amended by inserting at the thereof the following:-

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

SECTION 5. Section 3 of chapter 71B of the General Laws is hereby amended by inserting the following at the end thereof:-

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

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