

SENATE No. 109**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>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>1/26/2023</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>2/8/2023</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>2/8/2023</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/8/2023</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Norfolk</i>	<i>2/8/2023</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/8/2023</i>
<i>John C. Velis</i>	<i>Hampden and Hampshire</i>	<i>2/8/2023</i>
<i>Jacob R. Oliveira</i>	<i>Hampden, Hampshire and Worcester</i>	<i>2/21/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/21/2023</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>3/23/2023</i>
<i>Lydia Edwards</i>	<i>Third Suffolk</i>	<i>3/23/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>7/17/2023</i>
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	<i>1/29/2024</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>1/29/2024</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Plymouth and Bristol</i>	<i>5/3/2024</i>

SENATE No. 109

By Ms. Lovely, a petition (accompanied by bill, Senate, No. 109) of Joan B. Lovely, Sean Garballey, Angelo J. Puppolo, Jr., John F. Keenan 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.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 3132 OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

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 6A of the General Laws is hereby amended by inserting after
2 section 16F the following section:-

3 Section 16F½. The executive office of health and human services shall establish a
4 training program on supported decision-making. The training program shall include instruction
5 by state agencies including, but not limited to, the department of developmental services, the
6 department of mental health and the executive office of elder affairs. The training program shall
7 be provided to any supporter or decision-maker pursuant to section 5-601 of chapter 190B and
8 shall include instruction on the rights and obligations contained in section 5-602 of chapter
9 190B. The executive office of health and human services shall consult with adults who receive

supported decision-making assistance and supporters who assist in decision-making pursuant to a supported-decision making agreement in the development of the training. The training shall be in a format accessible to the individuals receiving the training.

SECTION 2. Section 2 of chapter 71B of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by adding the following paragraph:-

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

SECTION 3. Section 3 of said chapter 71B of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

For any student for whom adult guardianship is being considered at the IEP team meeting, the IEP team shall inform the student and their family or guardian, at the earliest possible meeting, of the availability of supported decision-making agreements as an alternative to guardianship. The IEP team shall assist the child and their family or guardian in locating resources to assist in establishing a supported decision-making plan if the child and their family or guardian are interested in supported decision-making.

SECTION 4. Section 5-303 of said chapter 190B, as appearing in the 2020 Official Edition, is hereby amended by inserting, after the word “requested”, in line 49, the following words:-

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

SECTION 5. Subsection (b) of section 5-303 of said chapter 190B, as so appearing, is hereby amended, by inserting after paragraph (9) the following paragraph:-

(9½) a copy of any supported decision-making agreement executed by the person alleged to be incapacitated, if available;.

SECTION 6. Chapter 190B of the General Laws is hereby amended by inserting after section 5-507 the following 2 sections:-

Section 5-601. As used in this section, the following words shall have the following meaning unless the context clearly requires otherwise:

“Adult”, an individual 18 years of age or older.

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

“Decision-maker”, an adult who seeks to execute, or has executed, a supported decision-making agreement with 1 or more supporters under this chapter.

“Executed”, a supported decision-making agreement that is signed by both the decision maker and all supporters in accordance with requirements set forth in this chapter.

“Supported decision-making”, 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: (i) decisions related to where the decision-maker wants to live; (ii) the services, supports, financial decisions and medical care the decision-maker wants to receive; (iii) whom the decision-maker wants to live with; and (iv) where the decision-maker wants to work.

“Supported decision-making agreement”, an agreement a decision-maker enters into 1 supporter pursuant to section 5-602 to use supported decision-making.

“Supporter”, an adult who has executed a supported decision-making agreement with a decision-maker.

Section 5-602. (a) A decision-maker may voluntarily enter into a supported decision-making agreement with 1 or more supporters. The decision-maker may amend or terminate a supported decision-making agreement at any time pursuant to section (e).

(b)(1) Except as limited by a supported decision-making agreement, a supporter may, with the consent of the decision-maker, provide to the decision-maker with decision-making assistance regarding the decision-maker’s affairs, including, but not limited to: (i) assisting with making decisions, communicating decisions and understanding information about, options for, the responsibilities of and the consequences of decisions; (ii) accessing, obtaining and understanding information that is relevant to decisions, necessary for the decision-maker to manage their affairs, including, but not limited to, medical, psychological, financial and educational information and medical and other records; (iii) ascertaining the wishes and decisions of the decision-maker, assisting in communicating those wishes and decisions to other persons and assisting to ensure the decision-maker’s wishes and decisions are implemented; and (iv) accompanying the decision-maker and participating in discussions with other persons when

the decision-maker is making decisions or attempting to obtain information needed to make decisions.

(2) A supporter shall only be 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. A supporter shall keep confidential any information obtained in the process of assisting the decision-maker and may exercise only the authority granted to the supporter in the supported decision-making agreement.

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

(c)(1) To be valid, a supported decision-making agreement shall be signed and dated by the decision-maker and each applicable supporter in the presence of a notary public or not less than 2 witnesses who are: (i) not less than 18 years of age; (ii) unrelated to the decision-maker and any supporter; and (iii) not supporters to the agreement.

Evidence of undue influence or coercion in the creation or signing of a supported decision-making agreement shall render the supported decision-making agreement invalid.

(2) A supported decision-making agreement shall be personalized by the decision-maker to reflect the decision-maker's personal circumstances. A supported decision-making agreement shall: (i) be in writing; (ii) identify the decision-maker and all supporters; (iii) describe the types of decisions with which each supporter shall assist the decision-maker; (iv) indicate that all supporters agree to assist the decision-maker in making such decisions, to respect the decision-maker's decisions and to assist the decision-maker in communicating such decisions; (v) state

that supporters shall not make decisions for the decision-maker; (vi) indicate that the decision-maker may amend or terminate the supported decision-making agreement at any time and for any reason subject to the requirements of subsection (e); and (vii) list contact information for the disabled persons protection commission, the elder abuse hotline and all programs providing services to the decision-maker.

(d) A person who receives the original or a copy of a supported decision-making agreement shall rely on the agreement and recognize a decision, request or communication made with the decision-making assistance of a supporter as the decision, request or communication of the decision-maker. A person or entity that, in good faith, acts in reliance on a decision made pursuant to a supported decision-making agreement shall not be subject to civil or criminal liability or to professional discipline.

(e)(1) The supported decision-making agreement shall remain in effect until it is terminated. A supportive decision-making agreement shall be terminated on any termination date set forth in the agreement. A supporter may terminate participation in a supported decision-making agreement at any time, by written notice to the decision-maker and any other supporters to the agreement; provided, however, that if the agreement has more than 1 supporter, the agreement shall remain valid as to all other supporters. A decision-maker may terminate a supported decision-making agreement at any time by written notice to all supporters to the agreement.

(2) The disabled persons protection commission, an elder protective services agency, the department of developmental services, the department of mental health or any person interested in the decision-maker's welfare may petition the probate and family court to revoke or suspend a

supported decision-making agreement on the grounds of abuse, neglect or exploitation by 1 or more supporters. The court shall provide notice to the decision-maker and provide an opportunity for the decision-maker and supporter to be heard. The court may revoke or suspend the supported decision-making agreement, in whole or in part, if the court makes a finding of abuse, neglect or exploitation by the supporter. The court shall not order a supported decision-making agreement to remain in effect over the objection of the decision-maker. If the decision-maker is indigent, the court shall appoint counsel for the decision-maker upon the filing of any petition under this paragraph.

(f) 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 a supporter, the person may report the alleged abuse, neglect or exploitation to the disabled persons protection commission pursuant to chapter 19C or the elder abuse prevention hotline pursuant to chapter 19A.

If a mandated reporter pursuant to subsection (a) of section 15 of said chapter 19A or said chapter 19C has reasonable cause to believe that the decision-maker has been abused, neglected or exploited by a supporter, the mandated reporter shall make a report to the disabled persons protection commission or an elder protective services agency, as applicable.

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

(h) Nothing in this section shall be interpreted to limit or restrict the right of an individual to execute a health care proxy pursuant to chapter 201D or a power of attorney pursuant to this chapter.

138 SECTION 7. A supported decision-making agreement executed before January 1, 2024
139 shall be valid until January 1, 2025. Thereafter, only supported decision-making agreements that
140 conform to the requirements of section 5-602 of chapter 190B of the General Laws shall be
141 valid.

142 SECTION 8. Section 6 shall take effect on January 1, 2024.

143 SECTION 9. The training program required by section 16F½ of chapter 6A of the
144 General Laws shall be implemented by the department of health and human services not later
145 than July 1, 2024.

146 SECTION 10. The department of elementary and secondary education shall promulgate
147 regulations pursuant to section 2 of chapter 71B of the General Laws not later than July 1, 2024.