

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Jay D. Livingstone and Michael J. Finn

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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>1/17/2025</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>	<i>1/17/2025</i>

HOUSE No.

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Fourth General Court
(2025-2026)**

An Act relative to supported decision-making agreements for certain adults.

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 190B
9 and dispute resolution. The executive office of health and human services shall consult with the
10 executive office of elder affairs, the department of developmental services, the department of
11 mental health, the department of public health, the Disability Law Center, the Massachusetts
12 Health and Hospital Association, the Massachusetts Medical Society, the Massachusetts Bankers
13 Association and adults who receive supported decision-making assistance and supporters who

14 assist in decision-making pursuant to a supported-decision making agreement in the development
15 of the training. The training shall be in a format accessible to the individuals receiving the
16 training.

17 SECTION 2. Section 2 of chapter 71B of the General Laws, as appearing in the 2022
18 Official Edition, is hereby amended by inserting, in line 86, after the words “et sec.” the
19 following paragraph:- The department of elementary and secondary education shall promulgate
20 regulations in consultation with the department of higher education requiring school districts, as
21 part of their transitional planning process for students with disabilities, to inform students and
22 their families of the availability of supported decision-making as an alternative to adult
23 guardianship and conservatorship for students with disabilities that are receiving services at age
24 sixteen. The department shall provide supported decision-making agreement training to schools
25 and post all training materials on the department’s website including a sample form for a
26 decision-maker to request the release of educational records.

27 SECTION 3. Section 3 of said chapter 71B of the General Laws, as so appearing, is
28 hereby amended by inserting, in line 301 after the word “program.” the following paragraph:- At
29 the first IEP meeting after a student has turned age sixteen or older, the IEP team shall inform the
30 student and their family or guardian, of the availability of supported decision-making agreements
31 as an alternative to guardianship and conservatorship. The IEP team shall assist the child and
32 their family or guardian in locating resources to assist in establishing a supported decision-
33 making plan if the child and their family or guardian are interested in supported decision-
34 making.

35 SECTION 4. Section 5-303 of said chapter 190B, as appearing in the 2022 Official
36 Edition, is hereby amended by inserting, in line 50, after the word “guardianship”, the following
37 words:- or a supported decision-making agreement.

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

40 (9½) a copy of any supported decision-making agreement executed by the person alleged
41 to be incapacitated, if available:-

42 SECTION 6. Subsection (c)(3) of section 5-404 of said chapter 190B, as so appearing, is
43 hereby amended, by inserting after the word “conservatorship” in the first instance, the following
44 words:- “or a supported decision-making agreement”.

45 SECTION 7. Subsection (b) of section 5-404 of said chapter 190B, as so appearing, is
46 hereby amended, by inserting after paragraph (8) the following paragraph:-

47 (8½) a copy of any supported decision-making agreement executed by the person alleged
48 to be incapacitated, if available:

49 SECTION 8. Chapter 190B of the General Laws is hereby amended by inserting after
50 section 5-507 the following sections:-

51 Section 5-601. Definitions:

52 As used in this section, the following words shall have the following meaning unless the
53 context clearly requires otherwise:

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

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

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

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

60 “Supported decision-making”, the process of supporting and accommodating the
61 decision-maker, without impeding the self-determination of the decision-maker, in making life
62 decisions, including, but not limited to: (i) decisions related to where the decision-maker wants
63 to live; (ii) the services, supports, financial decisions and medical care the decision-maker wants
64 to receive; (iii) whom the decision-maker wants to live with; and (iv) where the decision-maker
65 wants to work.

66 “Supported decision-making agreement”, a voluntary, written agreement, written in plain
67 language that is accessible and understood by the decision-maker and entered into by the
68 decision-maker with one or more supporters pursuant to section 5-602 used to support decision-
69 making.

70 “Supporter”, an adult who meets the requirements of section 5-602 and has executed a
71 supported decision-making agreement with a decision-maker.

72 Section 5-602.

73 (1)(a) A decision-maker may voluntarily enter into a supported decision-making
74 agreement with 1 or more supporters.

75 (b) The decision-maker may amend or terminate a supported decision-making agreement
76 at any time pursuant to section 5-602(3)(e).

77 (2)(a) Any person, eighteen years of age or older, may be a supporter.

78 (b) A person shall not serve as a supporter in a supported decision-making agreement
79 when:

80 (1) The decision-maker previously made, or makes, an allegation of elder abuse against
81 the supporter.

82 (2) The decision-maker has obtained or obtains a Protection from Abuse Order against
83 the supporter or a harassment prevention order against the supporter under chapter 258 of the
84 General Laws.

85 (3) The supporter is the subject of a civil or criminal order prohibiting contact with the
86 decision-maker;

87 (4) The supporter has been removed as the conservator of the decision-maker, based upon
88 a finding that they did not act in the conservatee's best interest; or

89 (5) The supporter is found criminally, civilly, or administratively liable for abuse,
90 neglect, mistreatment, coercion, or fraud.

91 (3)(a) Except as limited by a supported decision-making agreement, a supporter shall do
92 all the following:

93 (1) Respect the values, beliefs, and preferences of the decision-maker.

94 (2) Act honestly, diligently, and in good faith.

95 (3) Act within the scope identified by the decision-maker.

96 (4) Support and implement the direction, will, and preferences of the decision-maker.

97 (5) Maintain confidentiality of any information obtained by a supporter, unless the
98 decision-maker specifically authorizes its disclosure.

99 (6) Exercise only the authority granted to the supporter in the supported decision-making
100 agreement.

101 (b) Except as limited by a supported decision-making agreement, a supporter may, with
102 the consent of the decision-maker, provide to the decision-maker decision-making assistance
103 regarding the decision-maker's affairs, including, but not limited to: (i) communicating decisions
104 and understanding information about, options for, the responsibilities of and the consequences of
105 decisions; (ii) accessing, obtaining and understanding information that is relevant to decisions,
106 necessary for the decision-maker to manage their affairs, including, but not limited to, medical
107 records, including protected health information under the Health Insurance Portability and
108 Accountability Act of 1996 (Pub. L. 104-191); psychological and financial records; educational
109 records under the Family Education Rights and Privacy Act of 1974 (20 U.S.C. s. 1232g), or
110 information protected by 42 U.S.C.A. s. 290dd-2, 4 C.F.R. Part 2; as well as other educational
111 records including Individualized Education Programs, transcripts, a transition plan, a student
112 summary of performance and any other materials as requested; (iii) ascertaining the wishes and
113 decisions of the decision-maker, assisting in communicating those wishes and decisions to other
114 persons and assisting to ensure the decision-maker's wishes and decisions are implemented; and
115 (iv) accompanying the decision-maker and participating in discussions with other persons when

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

118 (c) Unless the supporter has a valid legal authorization to do so and the action is within
119 the scope of their authority, a supporter shall not do either of the following: (i) make decisions
120 for, or on behalf of, the decision-maker, or (ii) sign documents on behalf of the decision-maker.

121 (d) A supporter shall not participate in any life decision in which they have a conflict of
122 interest. This includes, but is not limited to, any decision in which the supporter, his or her
123 immediate family or partner, a business organization in which he or she is serving as officer,
124 director, trustee, partner or employee has a financial interest or other direct and substantial
125 interest in the outcome.

126 (e) A supporter shall only be authorized to assist the decision-maker in accessing,
127 collecting or obtaining information that is relevant to a decision authorized under the supported
128 decision-making agreement and to which the decision-maker agrees that the supporter should
129 have access pursuant to a written authorization in accordance with the applicable federal or state
130 privacy laws. The decision-maker may withdraw the authorization at any time in whatever
131 manner is authorized by applicable state or federal law. A supporter shall keep confidential any
132 information obtained in the process of assisting the decision-maker.

133 (f) A decision-maker may bring a civil action for damages and equitable relief, including
134 injunctive relief, resulting from a violation of this section or a regulation promulgated under this
135 section in any court of competent jurisdiction.

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

138 (5) To be valid, a supported decision-making agreement shall be signed and dated by the
139 decision-maker and each applicable supporter in the presence of a notary public. The decision-
140 maker may use reasonable modifications, such as assistive technology or physical assistance, to
141 sign the agreement.

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

144 (7) A supported decision-making agreement shall be personalized by the decision-maker
145 to reflect the decision-maker's personal circumstances. A supported decision-making agreement
146 shall:

147 (a) be in writing in plain language that is accessible and understood by the decision-
148 maker;

149 (b) identify the decision-maker and all supporters;

150 (c) describe the types of decisions with which each supporter shall assist the decision-
151 maker. If the decision-maker wants assistance to access their medical records, the agreement
152 must specifically reference that the supporter shall have access to protected health information
153 under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191). If the
154 decision-maker wants assistance to access their education records, the agreement must
155 specifically reference that the supporter shall have access to protected education records under
156 the Family Education Rights and Privacy Act of 1974 (20 U.S.C. s. 1232g) or information
157 protected by 42 U.S.C. a. s. 290dd-2, 4 C.F.R. Part2; as well as other education records including
158 Individualized Education Programs, transcripts, a transition plan, a student summary of
159 performance and any other materials.

160 (d) indicate that all supporters agree to assist the decision-maker in making such
161 decisions, to respect the decision maker's decisions and to assist the decision-maker in
162 communicating such decisions;

163 (e) state that supporters shall not make decisions for the decision-maker;

164 (f) indicate that the decision-maker may amend or terminate the supported decision-
165 making agreement at any time and for any reason subject to the requirements of section 5-
166 602(3)(e);

167 (g) list contact information for the disabled persons protection commission, the elder
168 abuse hotline and all programs providing services to the decision-maker; and

169 (h) include a statement from each supporter that they understand and accept their roles,
170 responsibilities and limitations as outlined in section 5-602(3)(a).

171 (8) A person who receives the original or a copy of a supported decision-making
172 agreement shall rely on the agreement and recognize a decision, request or communication made
173 with the decision-making assistance of a supporter as the decision, request or communication of
174 the decision-maker. A written confirmation from the decision-maker may be required affirming
175 that the supported decision-making agreement presented is current.

176 (9) A person or entity that, in good faith, acts in reliance on a decision made pursuant to a
177 supported decision-making agreement shall not be subject to civil or criminal liability or to
178 professional discipline.

179 (10)(a) The supported decision-making agreement shall remain in effect until it is
180 terminated or expires.

181 (b) A supportive decision-making agreement shall be terminated as follows:

182 (1) On any termination date set forth in the agreement but no more than a term of three
183 years, unless extended by agreement, in writing, of the decision-maker and supporters, pursuant
184 to section 5-602 with terms of execution.

185 (2) A supporter may terminate participation in a supported decision-making agreement at
186 any time, by written notice to the decision-maker and any other supporters to the agreement;
187 provided, however, that if the agreement has more than 1 supporter, the agreement shall remain
188 valid as to all other supporters.

189 (3) A decision-maker may terminate a supported decision-making agreement at any time
190 by written notice to all supporters to the agreement.

191 (4) Notice of the suspension of a supporter pursuant to section 5-602 shall be given in
192 writing and delivered in hand to said person or his or her attorney, or sent by registered mail to
193 said person at his or her residence or his place of business. Such notice so given, delivered or
194 sent shall automatically suspend the authority of such person to perform the duties of his or her
195 office or employment until he or she is notified in like manner that his or her suspension is
196 removed.

197 (5) The death or incapacitation of the decision-maker.

198 (6) In the event that the decision-maker becomes subject to a guardianship and
199 conservatorship order, the scope of the supported decision-making agreement may be limited in
200 whole or in part by the probate and family court to those decisions reserved for the decision-
201 maker after the issuance of the guardianship or conservatorship order.

202 (11)(a) The disabled persons protection commission, an elder protective services agency,
203 the department of developmental services, the department of mental health or any person
204 interested in the decision-maker's welfare may petition the probate and family court to revoke or
205 suspend the role of the supporter within one or more supported decision-making agreements on
206 the grounds of abuse, neglect, exploitation or failure of the supporter to follow their roles and
207 responsibilities resulting in serious physical, emotional, or financial harm to the decision-maker,
208 or on the grounds that the supporter is not qualified pursuant to section 5-602(2)(b). The court
209 shall provide notice to the decision-maker and supporter and provide an opportunity for the
210 decision-maker and supporter to be heard. The court shall revoke or suspend the role of the
211 supporter within the supported decision-making agreement, in whole or in part, if the court
212 makes a finding under any grounds set forth in this paragraph. The court shall not order a
213 supported decision-making agreement to remain in effect over the objection of the decision-
214 maker. If the decision-maker is indigent, the court shall appoint counsel for the decision-maker
215 upon the filing of any petition under this paragraph.

216 The court shall tally the number of individuals who appear before the court on supported
217 decision-making agreement issues. A report of the court's findings shall be submitted annually,
218 as of June 30, to the clerks of the senate and house of representatives, the joint committee on
219 committee on children, families and persons with disabilities and the senate house committees on
220 ways and means.

221 (b)(1) If a person who receives a copy of a supported decision-making agreement or is
222 aware of the existence of a supported decision-making agreement has cause to believe that the
223 decision maker is being abused, neglected or exploited by a supporter, the person may report the

224 alleged abuse, neglect or exploitation to the disabled persons protection commission pursuant to
225 chapter 19C or the elder abuse prevention hotline pursuant to chapter 19A.

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

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

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

235 SECTION 8. There shall be established pursuant to section 2A of chapter 4 of the
236 General Laws a special legislative commission, known as the Supported Decision-Making
237 Commission, to study, examine and make recommendations regarding: (i) the expansion of the
238 authorized state registry for health care authorizations to tally the number of individuals with a
239 supported decision-making agreement and that enables providers to verify that the supported
240 decision-making agreement presented by a decision-maker or a supporter is current; or (2) the
241 creation of one or more new online registries for authorizations for educational, financial, and
242 other information, including supported decision-making agreements, and that enables providers
243 to verify that the authorization, including supported decision making agreements, presented is
244 current.

245 (a) The commission shall consist of: the chairs of the joint committee on children,
246 families and persons with disabilities, who shall serve as co-chairs; 1 member to be appointed by
247 the senate president; 1 member to be appointed by the speaker of the house of representatives; 1
248 member to be appointed by the minority leader of the senate; 1 member to be appointed by the
249 minority leader of the house of representatives; the secretary of health and human services or a
250 designee; the secretary of the executive office of technology services and security or a designee;
251 the commissioner of public health or a designee; the commissioner of the division of insurance
252 or designee; the commissioner of the division of banks or designee; the chief justice of the trial
253 court or a designee; the chief justice of probate and family court or a designee; 1 member
254 representing the Massachusetts Health and Hospital Association; 1 member representing the
255 Massachusetts Bankers Association; 1 member representing The Arc of Massachusetts; and 1
256 member representing the Disability Law Center.

257 (b) State agencies shall make available to the commission any documents, data or
258 materials in a timely manner when reasonably requested by the commission.

259 (c) The commission shall submit a report of its findings and recommendations to the
260 clerks of the senate and house of representatives, the joint committee on committee on children,
261 families and persons with disabilities and the senate house committees on ways and means not
262 later than June 1, 2027.

263 SECTION 9. A supported decision-making agreement executed before July 31, 2026,
264 shall be valid until July 31, 2027. Thereafter, only supported decision-making agreements that
265 conform to the requirements of section 5-602 of chapter 190B of the General Laws shall be
266 valid.

267 SECTION 10. Section 6 shall take effect on July 31, 2026.

268 SECTION 11. The training program required by section 16F½ of chapter 6A of the
269 General Laws shall be implemented by the department of health and human services no later
270 than 6 months after the passage of this act.

271 SECTION 12. The department of elementary and secondary education shall promulgate
272 regulations pursuant to section 2 of chapter 71B of the General Laws no later than 6 months after
273 passage of this act.

274 SECTION 13. The executive office of health and human services shall promulgate
275 regulations no later than 6 months after the passage of this act.