

SENATE No.

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:

Joan B. Lovely

DISTRICT/ADDRESS:

Second Essex

SENATE No.

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 109 OF 2023-2024.]

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 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 An Act relative to authorizing supported decision-making agreements for certain adults
2 with disabilities

3 SECTION 1. Chapter 6A of the General Laws is hereby amended by inserting after
4 section 16F the following section:-

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

12 executive office of elder affairs, the department of developmental services, the department of
13 mental health, the department of public health, the Disability Law Center, the Massachusetts
14 Health and Hospital Association, the Massachusetts Medical Society, the Massachusetts Bankers
15 Association and adults who receive supported decision-making assistance and supporters who
16 assist in decision-making pursuant to a supported-decision making agreement in the development
17 of the training. The training shall be in a format accessible to the individuals receiving the
18 training.

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

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

34 in locating resources to assist in establishing a supported decision-making plan if the child and
35 their family or guardian are interested in supported decision-making.

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

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

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

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

45 Section 5-601. Definitions:

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

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

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

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

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

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

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

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

66 Section 5-602.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

91 (5) Maintain confidentiality of any information obtained by a supporter, unless the
92 decision-

93 maker specifically authorizes its disclosure.

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

96 (b)(1) Except as limited by a supported decision-making agreement, a supporter may,
97 with the consent of the decision-maker, provide to the decision-maker decision-making
98 assistance regarding the decision-maker's affairs, including, but not limited to: (i)
99 communicating decisions and understanding information about, options for, the responsibilities
100 of and the consequences of decisions; (ii) accessing, obtaining and understanding information
101 that is relevant to decisions, necessary for the decision-maker to manage their affairs, including,
102 but not limited to, medical records, including protected health information under the Health
103 Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191); psychological and
104 financial records; educational records under the Family Education Rights and Privacy Act of
105 1974 (20 U.S.C. s. 1232g), or information protected by 42 U.S.C.A. s. 290dd-2, 4 C.F.R. Part 2;
106 as well as other educational records including Individualized Education Programs, transcripts, a
107 transition plan, a student summary of performance and any other materials as requested; (iii)
108 ascertaining the wishes and decisions of the decision-maker, assisting in communicating those
109 wishes and decisions to other persons and assisting to ensure the decision-maker's wishes and
110 decisions are implemented; and (iv) accompanying the decision-maker and participating in
111 discussions with other persons when the decision-maker is making decisions or attempting to
112 obtain information needed to make decisions.

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

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

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

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

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

133 (5) To be valid, a supported decision-making agreement shall be signed and dated by the
134 decision-maker and each applicable supporter in the presence of a notary public. The decision-

135 maker may use reasonable modifications, such as assistive technology or physical assistance, to
136 sign the agreement.

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

139 (7) A supported decision-making agreement shall be personalized by the decision-maker
140 to reflect the decision-maker's personal circumstances. A supported decision-making agreement
141 shall:

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

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

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

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

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

159 (f) indicate that the decision-maker may amend or terminate the supported decision-
160 making agreement at any time and for any reason subject to the requirements of subsection (e);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

229 SECTION 7. A supported decision-making agreement executed before July 31, 2025,
230 shall be valid until July 31, 2026. Thereafter, only supported decision-making agreements that
231 conform to the requirements of section 5-602 of chapter 190B of the General Laws shall be
232 valid.

233 SECTION 8. Section 6 shall take effect on July 31, 2025.

234 SECTION 9. The training program required by section 16F¹/₂ of chapter 6A of the
235 General Laws shall be implemented by the department of health and human services no later
236 than 6 months after the passage of this act.

237 SECTION 10. The department of elementary and secondary education shall promulgate
238 regulations pursuant to section 2 of chapter 71B of the General Laws no later than 6 months after
239 passage of this act.

240 SECTION 11. The executive office of health and human services shall promulgate
241 regulations no later than 6 months after the passage of this act.