

HOUSE No. 4349

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, February 3, 2020.

The committee on Children, Families and Persons with Disabilities, to whom was referred the petition (accompanied by bill, House, No. 172) of Aaron Vega, Paul F. Tucker and others relative to establishing supported decision-making for adults with certain disabilities, reports recommending the accompanying bill (House, No. 4349) ought to pass.

For the committee,

KAY KHAN.

FILED ON: 1/29/2020

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

8 "Decision-maker" means an adult with a developmental, intellectual or physical
9 disability, as defined by section 1 of chapter 123B, or who is otherwise eligible for guardianship
10 under title v of chapter 190B who has executed a supported decision-making agreement.

11 "Supported decision-making" means the process of supporting and accommodating the
12 decision-maker, without impeding the self-determination of the decision-maker, in making life

13 decisions, including, but not limited to, decisions related to where the decision-maker wants to
14 live; the services, supports, financial decisions, and medical care the decision-maker wants to
15 receive; whom the decision-maker wants to live with; or where the decision-maker wants to
16 work.

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

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

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

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

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

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

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

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

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

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

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

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

47 (3) Supporter may terminate participation in the agreement by written or oral notice to the
48 decision-maker and the remaining supporters. If the supported decision-making agreement
49 includes more than one supporter, the supported decision-making agreement shall survive for
50 supporters who have not terminated their participation unless it is otherwise terminated or
51 revoked in a manner set forth by this section.

52 (4) The disabled persons protection commission, an elder protective services agency, the
53 department of developmental services, the department of mental health, or an interested person

54 may petition the probate and family court to terminate, revoke, or suspend the operation of a
55 supported decision-making agreement. If, after notice to decision-maker and a hearing at which
56 the decision-maker shall have the right to be present and to be heard, the Court finds by clear and
57 convincing evidence that that the decision-maker has been abused, neglected, or exploited by a
58 supporter or supporters, the court may revoke, terminate, or suspend for a time to be determined
59 by the court, the supported decision-making agreement. The agreement may survive if one or
60 more supporters who were not found to have abused, neglected, or exploited the adult with a
61 disability continues to be willing to serve as a supporter and the decision-maker agrees. If the
62 decision-maker is indigent, the court shall forthwith appoint counsel for the decision-maker upon
63 the filing of any petition under this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

99

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

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

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

110 (l) If a person who receives a copy of a supported decision-making agreement or is aware
111 of the existence of a supported decision-making agreement has cause to believe that the decision-
112 maker is being abused, neglected, or exploited by the supporter, the person may report the
113 alleged abuse, neglect, or exploitation to the disabled persons protection commission in
114 accordance with chapter 19D or the Elder Abuse Prevention Hotline in accordance with chapter
115 19C.

116 (m) Nothing in this section shall be interpreted to limit or restrict any individual's right to
117 execute a health care proxy pursuant to chapter 201D or a power of attorney pursuant to sections
118 5-501 through 5-507 of chapter 190B.

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

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

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

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

131 The training program on supported decision-making shall be provided to a supporter or a
132 decision-maker receiving decision-making assistance, and shall include the rights and obligations
133 contained in section 5-508 of chapter 190B. The training shall be in any format accessible to the
134 individuals receiving such training. Such training shall include trainers with disabilities and
135 adults who receive or might receive supported decision-making assistance.

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

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

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

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

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