

HOUSE No. 201

The Commonwealth of Massachusetts

PRESENTED BY:

Christopher M. Markey

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:
<i>Christopher M. Markey</i>	<i>9th Bristol</i>	<i>1/20/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/2/2023</i>
<i>Marc T. Lombardo</i>	<i>22nd Middlesex</i>	<i>2/23/2023</i>

HOUSE No. 201

By Representative Markey of Dartmouth, a petition (accompanied by bill, House, No. 201) of Christopher M. Markey, Vanna Howard and Marc T. Lombardo relative to supported decision-making agreements. Children, Families and Persons with Disabilities.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 272 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.

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 who seeks to execute, or has executed, a supported
9 decision-making agreement with one or more supporters under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

108 (l) If a person who receives a copy of a supported decision-making agreement or is aware
109 of the existence of a supported decision-making agreement has cause to believe that the decision-
110 maker is being abused, neglected, or exploited by the supporter, the person may report the

111 alleged abuse, neglect, or exploitation to the disabled persons protection commission in
112 accordance with chapter 19D or the Elder Abuse Prevention Hotline in accordance with chapter
113 19C.

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

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

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

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

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

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

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

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

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

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

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

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