

HOUSE BILL No. 2034

By Committee on Federal and State Affairs

1-16

1 AN ACT enacting the supported decision-making agreements act; relating
2 to decision-making assistance for adults; **amending K.S.A. 2018**
3 **Supp. 21-5417 and repealing the existing section.**
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 **New Section 1.** Sections 1 through 9, and amendments thereto, shall
7 be known and may be cited as the supported decision-making agreements
8 act.

9 **New Sec. 2.** As used in the supported decision-making agreements
10 act, unless the context indicates otherwise:

11 (a) "Adult" means an individual who is 18 years of age or older.

12 (b) "Affairs" means decisions related to the following affairs of a
13 principal:

14 (1) Monitoring health, obtaining, scheduling, implementing and
15 coordinating health and support services, understanding health care
16 information and options, providing for care and comfort, and other health
17 care and personal matters in which the principal makes decisions about the
18 principal's health care;

19 (2) managing income and assets and the use of income and assets for
20 clothing, support, care, comfort, education, shelter and payment of other
21 liabilities of the principal;

22 (3) handling personal, health care and financial matters that arise in
23 the course of daily living;

24 (4) monitoring information about the principal's support services,
25 including necessary or recommended future support services;

26 (5) living arrangements, including where and with whom the
27 principal wants to live; and

28 (6) working arrangements, including where the principal wants to
29 work.

30 (c) "Capacity" means the ability to understand and appreciate the
31 nature and consequences of a decision and the ability to reach and
32 communicate an informed decision.

33 (d) "Conservator" means a person appointed a conservator under the
34 act for obtaining a guardian or a conservator, or both, K.S.A. 59-3050 et

1 seq., and amendments thereto, or a similar law of another state.

2 (e) "Decision" means a decision relating to the affairs of a principal.

3 (f) "Decision-making assistance" means the decision-making
4 assistance described in section 7, and amendments thereto.

5 (g) ***"Good faith" means honesty in fact and the observance of***
6 ***reasonable standards of fair dealing.***

7 (h) "Guardian" means a person appointed a guardian under the act for
8 obtaining a guardian or a conservator, or both, K.S.A. 59-3050 et seq., and
9 amendments thereto, or a similar law of another state.

10 ~~(h)~~(i) "Immediate family member" means a spouse, child, sibling,
11 parent, grandparent, grandchild, stepparent, stepchild or stepsibling.

12 ~~(i)~~(j) "Person" means an individual, healthcare institution, healthcare
13 provider, corporation, partnership, limited liability company, association,
14 joint venture, government, governmental subdivision, governmental
15 agency, governmental instrumentality, public corporation, or another legal
16 or commercial entity.

17 ~~(j)~~(k) "Principal" means an adult who enters into a supported
18 decision-making agreement under the supported decision-making
19 agreements act to receive decision-making assistance.

20 ~~(k)~~(l) "Support services" means the following services:

21 (1) House repair, home cleaning, laundry, shopping and providing
22 meals;

23 (2) transportation, accompanying a principal, and facilitating a
24 principal's written, oral and electronic communication;

25 (3) nurse visitations and attendant care;

26 (4) provision of healthcare;

27 (5) physical and psychosocial assessments;

28 (6) financial assessments and advice on banking, taxes, loans,
29 investments and management of real property;

30 (7) legal assessments and advice;

31 (8) education and educational assessments and advice;

32 (9) assistance with bathing, dressing, eating, range of motion,
33 toileting, transferring, ambulation and other direct assistance with the
34 activities of daily living;

35 (10) care planning; and

36 (11) services that assist in maintaining the independence of a
37 principal.

38 ~~(l)~~(m) "Supported decision-making agreement" means an agreement
39 authorized under section 3, and amendments thereto.

40 ~~(m)~~(n) "Supporter" means an adult who enters into a supported
41 decision-making agreement under the supported decision-making
42 agreements act and provides decision-making assistance.

43 **New Sec. 3.** (a) Except as provided in subsections (b) and (c), an

1 adult may enter into a supported decision-making agreement. A supported
2 decision-making agreement allows an adult to receive decision-making
3 assistance with the adult's affairs from one or more other adults.

4 (b) The adult wanting to receive decision-making assistance shall not
5 enter into a supported decision-making agreement unless the adult:

6 (1) Enters into the agreement voluntarily and without coercion or
7 undue influence; and

8 (2) understands the nature and effect of the agreement.

9 (c) An adult shall not enter into a supported decision-making
10 agreement if the agreement encroaches on the authority of a guardian or
11 conservator of the adult, unless the guardian or conservator approves in
12 writing the adult entering into the supported decision-making agreement.

13 (d) A supporter shall be an adult, but shall not be:

14 (1) An employer or employee of the principal, unless the employer or
15 employee is an immediate family member of the principal;

16 (2) a person who provides paid support services, except decision-
17 making assistance, directly to the principal, unless the person is an
18 immediate family member of the principal; or

19 (3) a person against whom a protective order or restraining order has
20 been entered by a court on request of or on behalf of the principal.

21 **New Sec. 4.** (a) A supported decision-making agreement shall:

22 (1) Name one or more adults to provide a principal with decision-
23 making assistance;

24 (2) describe the decision-making assistance that each supporter may
25 provide the principal; and

26 (3) contain a notice to third parties that summarizes the rights and
27 obligations of the supporter under the supported decision-making
28 agreements act and expressly identifies sections 1 through 9, and
29 amendments thereto.

30 (b) A supported decision-making agreement may:

31 (1) Name an alternate supporter to act in the place of a supporter and
32 the circumstances under which the alternate supporter may act;

33 (2) authorize a supporter to share information with another supporter
34 named in the agreement, including an alternate supporter.

35 (c) A supported decision-making agreement shall contain a separate
36 declaration by each supporter, including an alternate supporter, that states
37 the supporter's relationship with the principal, states the willingness of the
38 supporter to act as a supporter for the principal and indicates that the
39 supporter acknowledges the duties of a supporter under the supported
40 decision-making agreements act. Each declaration shall be signed by the
41 supporter making the declaration.

42 **New Sec. 5.** (a) A supported decision-making agreement shall be
43 valid if:

- 1 (1) The agreement is dated and in writing;
- 2 (2) the agreement satisfies the requirements of sections 3 and 4, and
3 amendments thereto;
- 4 (3) the agreement has been signed by the principal and each named
5 supporter, including any alternate supporter, and the:
- 6 (A) Signing takes place in the presence of two witnesses who also
7 sign the agreement; or
- 8 (B) signatures of the principal and each named supporter, including
9 any alternate supporter, are notarized; and
- 10 (4) when the principal has a guardian or conservator, the principal has
11 notified the guardian or conservator of the agreement.

12 (b) (1) Each witness under subsection (a) shall be an adult who
13 understands the means of communication used by the principal, except, if
14 there is an individual who understands the principal's means of
15 communication present to assist during the execution of the supported
16 decision-making agreement, the witnesses are not required to understand
17 the means of communication used by the principal.

18 (2) A witness under subsection (a) shall not be a supporter named in
19 the supported decision-making agreement or an employee or agent of a
20 supporter named in the supported decision-making agreement.

21 (c) A supported decision-making agreement shall be substantially in
22 compliance with the form set forth by the judicial council. The judicial
23 council shall develop a form for use under the supported decision-making
24 agreements act.

25 **New Sec. 6.** (a) A supported decision-making agreement may indicate
26 the date it becomes effective and its duration. If the agreement does not
27 indicate the date it becomes effective, the agreement becomes effective
28 immediately. If the agreement does not indicate its duration, the agreement
29 remains effective until terminated under this section.

30 (b) A principal may, at any time, terminate all or a portion of a
31 supported decision-making agreement. A supporter may, at any time,
32 terminate all or a portion of the supporter's obligations under a supported
33 decision-making agreement, including the declaration of support described
34 in section 4, and amendments thereto.

35 (c) A termination under this section shall be dated and in writing. The
36 termination shall be signed ~~and the~~

37 ~~(1) Signing shall take place in the presence of two witnesses who also~~
38 ~~sign the termination; or~~

39 ~~(2) signature shall be notarized~~ **by the terminating party.**

40 (d) A principal or supporter terminating all or a portion of a supported
41 decision-making agreement shall notify the other party to the agreement
42 that the agreement has been terminated. Notice shall be given in person, by
43 certified mail or by electronic means.

1 (e) If a portion of a supported decision-making agreement is
2 terminated under this section and the termination is consistent with this
3 section, the remainder of the agreement remains in effect.

4 **New Sec. 7.** (a) A supporter shall act with the care, competence and
5 diligence ordinarily exercised by individuals in similar circumstances.

6 (b) Except as limited by a supported decision-making agreement, a
7 supporter may provide to a principal the following decision-making
8 assistance about the principal's affairs:

9 (1) Assisting with making decisions, communicating decisions, and
10 understanding information about, options for, the responsibilities of, and
11 the consequences of decisions;

12 (2) accessing, obtaining, and understanding information that is
13 relevant to decisions necessary for the principal to manage the principal's
14 affairs, including medical, psychological, financial and educational
15 information, medical treatment records and other records;

16 (3) ascertaining the wishes and decisions of the principal, assisting in
17 communicating those wishes and decisions to other persons, and
18 advocating to ensure the implementation of the principal's wishes and
19 decisions; and

20 (4) accompanying the principal and participating in discussions with
21 other persons when the principal is making decisions or attempting to
22 obtain information for decisions.

23 (c) Under subsection (b), a supporter may use the principal's dated
24 consent to assist the principal in obtaining protected health information
25 under the health insurance portability and accountability act of 1996
26 (public law 104-191) or educational records under the family educational
27 rights and privacy act of 1974, 20 U.S.C. § 1232g.

28 (d) A supporter shall not:

29 (1) Exert undue influence on the principal;

30 (2) make decisions for or on behalf of the principal;

31 (3) sign for the principal or provide an electronic signature of the
32 principal to a third party;

33 (4) obtain, without the consent of the principal, information that is not
34 reasonably related to matters with which the supporter may assist the
35 principal under the supported decision-making agreement; or

36 (5) use, without the consent of the principal, information acquired for
37 a purpose authorized by the supported decision-making agreement for a
38 purpose other than assisting the principal to make a decision under the
39 supported decision-making agreement.

40 (e) A supporter who collects information on behalf of the principal
41 under the supported decision-making agreement shall:

42 (1) Keep the information confidential;

43 (2) not use the information for a use that is not authorized by the

1 principal;

2 (3) protect the information from unauthorized access, use or
3 disclosure; and

4 (4) dispose of the information properly when appropriate.

5 **(f) A supporter acting in good faith in accordance with the**
6 **provisions of this act shall not be liable to either the principal or any**
7 **third party for any injuries, damages or other losses arising from a**
8 **decision made by a principal in which the supporter assisted the**
9 **principal or was otherwise involved.**

10 **New Sec. 8.** (a) A person shall recognize a decision or request made
11 or communicated with the decision-making assistance of a supporter under
12 the supported decision-making agreements act as the decision or request of
13 the principal for the purposes of a provision of law, and the principal or
14 supporter may enforce the decision or request in law or equity on the same
15 basis as a decision or request of the principal.

16 (b) A person who, in good faith, either acts in reliance on an
17 authorization in a supported decision-making agreement or declines to
18 honor an authorization in a supported decision-making agreement is not
19 subject to civil or criminal liability or to discipline for unprofessional
20 conduct for:

21 (1) Complying with an authorization in a supported decision-making
22 agreement, if the person is complying based on an assumption that the
23 underlying supported decision-making agreement was valid when made
24 and has not been terminated;

25 (2) declining to comply with an authorization in a supported decision-
26 making agreement if the person is declining based on actual knowledge
27 that the supported decision-making agreement is invalid or has been
28 terminated; or

29 (3) declining to comply with an authorization related to healthcare in
30 a supported decision-making agreement, if the person is declining because
31 the action proposed to be taken under the supported decision-making
32 agreement is contrary to the good faith medical judgment of the person or
33 to a written policy of a healthcare institution that is based on reasons of
34 conscience.

35 ~~(e) As used in this section, "good faith" means honesty in fact and the~~
36 ~~observance of reasonable standards of fair dealing.~~

37 **New Sec. 9.** (a) An adult who enters into a supported decision-
38 making agreement may act without the decision-making assistance of the
39 supporter.

40 (b) ~~A person shall not use~~ The execution of a supported decision-
41 making agreement ~~as~~ **shall not constitute** evidence that the principal does
42 not have capacity.

43 (c) In the application of the supported decision-making agreements

1 act:

2 (1) A decision that a principal is incapable of managing the principal's
 3 affairs may not be based on the manner in which the principal
 4 communicates with others; and

5 (2) a principal is considered to have capacity even if the capacity is
 6 achieved by the principal receiving decision-making assistance, *unless a*
 7 *court has determined that the principal does not have capacity.*

8 **Sec. 10. K.S.A. 2018 Supp. 21-5417 is hereby amended to read as**
 9 **follows: 21-5417. (a) Mistreatment of a dependent adult or an elder**
 10 **person is knowingly committing one or more of the following acts:**

11 (1) **Infliction of physical injury, unreasonable confinement or**
 12 **unreasonable punishment upon a dependent adult or an elder person;**

13 (2) **taking the personal property or financial resources of a**
 14 **dependent adult or an elder person for the benefit of the defendant or**
 15 **another person by taking control, title, use or management of the**
 16 **personal property or financial resources of a dependent adult or an**
 17 **elder person through:**

18 (A) **Undue influence, coercion, harassment, duress, deception,**
 19 **false representation, false pretense or without adequate consideration**
 20 **to such dependent adult or elder person;**

21 (B) **a violation of the Kansas power of attorney act, K.S.A. 58-650**
 22 **et seq., and amendments thereto;**

23 (C) **a violation of the Kansas uniform trust code, K.S.A. 58a-101**
 24 **et seq., and amendments thereto;**~~or~~

25 (D) **a violation of the act for obtaining a guardian or a**
 26 **conservator, or both, K.S.A. 59-3050 et seq., and amendments thereto;**
 27 **or**

28 (E) *a violation of the supported decision-making agreement act,*
 29 *section 1 et seq., and amendments thereto; or*

30 (3) **omission or deprivation of treatment, goods or services that**
 31 **are necessary to maintain physical or mental health of such dependent**
 32 **adult or elder person.**

33 (b) **Mistreatment of a dependent adult or an elder person as**
 34 **defined in:**

35 (1) **Subsection (a)(1) is a severity level 5, person felony;**

36 (2) **subsection (a)(2) if the aggregate amount of the value of the**
 37 **personal property or financial resources is:**

38 (A) **\$1,000,000 or more is a severity level 2, person felony;**

39 (B) **at least \$250,000 but less than \$1,000,000 is a severity level 3,**
 40 **person felony;**

41 (C) **at least \$100,000 but less than \$250,000 is a severity level 4,**
 42 **person felony;**

43 (D) **at least \$25,000 but less than \$100,000 is a severity level 5,**

1 person felony;

2 (E) at least \$1,500 but less than \$25,000 is a severity level 7,
3 person felony;

4 (F) less than \$1,500 is a class A person misdemeanor, except as
5 provided in subsection (b)(2)(G); and

6 (G) less than \$1,500 and committed by a person who has, within
7 five years immediately preceding commission of the crime, been
8 convicted of a violation of this section two or more times is a severity
9 level 7, person felony; and

10 (3) subsection (a)(3) is a severity level 8, person felony.

11 (c) It shall be an affirmative defense to any prosecution for
12 mistreatment of a dependent adult or an elder person as described in
13 subsection (a)(2) that:

14 (1) The personal property or financial resources were given as a
15 gift consistent with a pattern of gift giving to the person that existed
16 before the dependent adult or elder person became vulnerable;

17 (2) the personal property or financial resources were given as a
18 gift consistent with a pattern of gift giving to a class of individuals that
19 existed before the dependent adult or elder person became vulnerable;

20 (3) the personal property or financial resources were conferred as
21 a gift by the dependent adult or elder person to the benefit of a person
22 or class of persons, and such gift was reasonable under the
23 circumstances; or

24 (4) a court approved the transaction before the transaction
25 occurred.

26 (d) No dependent adult or elder person is considered to be
27 mistreated under subsection (a)(1) or (a)(3) for the sole reason that
28 such dependent adult or elder person relies upon or is being furnished
29 treatment by spiritual means through prayer in lieu of medical
30 treatment in accordance with the tenets and practices of a recognized
31 church or religious denomination of which such dependent adult or
32 elder person is a member or adherent.

33 (e) As used in this section:

34 (1) "Adequate consideration" means the personal property or
35 financial resources were given to the person as payment for bona fide
36 goods or services provided by such person and the payment was at a
37 rate customary for similar goods or services in the community that the
38 dependent adult or elder person resided in at the time of the
39 transaction.

40 (2) "Dependent adult" means an individual 18 years of age or
41 older who is unable to protect the individual's own interest. Such term
42 shall include, but is not limited to, any:

43 (A) Resident of an adult care home including, but not limited to,

1 those facilities defined by K.S.A. 39-923, and amendments thereto;

2 (B) adult cared for in a private residence;

3 (C) individual kept, cared for, treated, boarded, confined or
4 otherwise accommodated in a medical care facility;

5 (D) individual with intellectual disability or a developmental
6 disability receiving services through a community facility for people
7 with intellectual disability or residential facility licensed under K.S.A.
8 2018 Supp. 39-2001 et seq., and amendments thereto;

9 (E) individual with a developmental disability receiving services
10 provided by a community service provider as provided in the
11 developmental disability reform act; or

12 (F) individual kept, cared for, treated, boarded, confined or
13 otherwise accommodated in a state psychiatric hospital or state
14 institution for people with intellectual disability.

15 (3) "Elder person" means a person 60 years of age or older.

16 (f) An offender who violates the provisions of this section may
17 also be prosecuted for, convicted of, and punished for any other
18 offense in article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes
19 Annotated, or K.S.A. 2018 Supp. 21-6418, and amendments thereto.

20 Sec. 11. K.S.A. 2018 Supp. 21-5417 is hereby repealed.

21 Sec. ~~10~~: 12. This act shall take effect and be in force from and after
22 its publication in the statute book.