

HOUSE BILL No. 2122

By Committee on Federal and State Affairs

1-22

1 AN ACT enacting the supported decision-making agreements act; relating
2 to decision-making assistance for adults; amending K.S.A. 2020 Supp.
3 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 healthcare
16 information and options, providing for care and comfort, and other
17 healthcare and personal matters in which the principal makes decisions
18 about the principal's healthcare;

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

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

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

3 (g) "Good faith" means honesty in fact and the observance of
4 reasonable standards of fair dealing.

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

8 (i) "Immediate family member" means a spouse, child, sibling,
9 parent, grandparent, grandchild, stepparent, stepchild or stepsibling.

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

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

18 (l) "Support services" means the following services:

19 (1) House repair, home cleaning, laundry, shopping and providing
20 meals;

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

23 (3) nurse visitations and attendant care;

24 (4) provision of healthcare;

25 (5) physical and psychosocial assessments;

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

28 (7) legal assessments and advice;

29 (8) education and educational assessments and advice;

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

33 (10) care planning; and

34 (11) services that assist in maintaining the independence of a
35 principal.

36 (m) "Supported decision-making agreement" means an agreement
37 authorized under section 3, and amendments thereto.

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

41 New Sec. 3. (a) Except as provided in subsections (b) and (c), an
42 adult may enter into a supported decision-making agreement. A supported
43 decision-making agreement allows an adult to receive decision-making

1 assistance with the adult's affairs from one or more other adults.

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

4 (1) Enters into the agreement voluntarily and without coercion or
5 undue influence; and

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

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

11 (d) A supporter shall be an adult, but shall not be a person against
12 whom a protective order or restraining order has been entered by a court
13 on request of or on behalf of the principal.

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

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

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

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

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

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

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

28 (c) A supported decision-making agreement shall contain a separate
29 declaration by each supporter, including an alternate supporter, that states
30 the supporter's relationship with the principal, states the willingness of the
31 supporter to act as a supporter for the principal and indicates that the
32 supporter acknowledges the duties of a supporter under the supported
33 decision-making agreements act. Each declaration shall be signed by the
34 supporter making the declaration.

35 New Sec. 5. (a) A supported decision-making agreement shall be
36 valid if:

37 (1) The agreement is dated and in writing;

38 (2) the agreement satisfies the requirements of sections 3 and 4, and
39 amendments thereto;

40 (3) the agreement has been signed by the principal and each named
41 supporter, including any alternate supporter, and the:

42 (A) Signing takes place in the presence of two witnesses who also
43 sign the agreement; or

1 (B) signatures of the principal and each named supporter, including
2 any alternate supporter, are notarized; and

3 (4) when the principal has a guardian or conservator, the principal has
4 notified the guardian or conservator of the agreement.

5 (b) (1) Each witness under subsection (a) shall be an adult who
6 understands the means of communication used by the principal, except, if
7 there is an individual who understands the principal's means of
8 communication present to assist during the execution of the supported
9 decision-making agreement, the witnesses are not required to understand
10 the means of communication used by the principal.

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

14 (c) A supported decision-making agreement shall be substantially in
15 compliance with the form set forth by the judicial council. The judicial
16 council shall develop a form for use under the supported decision-making
17 agreements act.

18 New Sec. 6. (a) A supported decision-making agreement may indicate
19 the date it becomes effective and its duration. If the agreement does not
20 indicate the date it becomes effective, the agreement becomes effective
21 immediately. If the agreement does not indicate its duration, the agreement
22 remains effective until terminated under this section.

23 (b) A principal may, at any time, terminate all or a portion of a
24 supported decision-making agreement. A supporter may, at any time,
25 terminate all or a portion of the supporter's obligations under a supported
26 decision-making agreement, including the declaration of support described
27 in section 4, and amendments thereto.

28 (c) A termination under this section shall be dated and in writing. The
29 termination shall be signed by the terminating party.

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

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

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

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

42 (1) Assisting with making decisions, communicating decisions, and
43 understanding information about, options for, the responsibilities of, and

1 the consequences of decisions;

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

6 (3) ascertaining the wishes and decisions of the principal, assisting in
7 communicating those wishes and decisions to other persons, and
8 advocating to ensure the implementation of the principal's wishes and
9 decisions; and

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

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

18 (d) A supporter shall not:

19 (1) Exert undue influence on the principal;

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

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

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

26 (5) use, without the consent of the principal, information acquired for
27 a purpose authorized by the supported decision-making agreement for a
28 purpose other than assisting the principal to make a decision under the
29 supported decision-making agreement.

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

32 (1) Keep the information confidential;

33 (2) not use the information for a use that is not authorized by the
34 principal;

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

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

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

43 New Sec. 8. (a) A person shall recognize a decision or request made

1 or communicated with the decision-making assistance of a supporter under
2 the supported decision-making agreements act as the decision or request of
3 the principal for the purposes of a provision of law, and the principal or
4 supporter may enforce the decision or request in law or equity on the same
5 basis as a decision or request of the principal.

6 (b) A person who, in good faith, either acts in reliance on an
7 authorization in a supported decision-making agreement or declines to
8 honor an authorization in a supported decision-making agreement is not
9 subject to civil or criminal liability or to discipline for unprofessional
10 conduct for:

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

15 (2) declining to comply with an authorization in a supported decision-
16 making agreement if the person is declining based on actual knowledge
17 that the supported decision-making agreement is invalid or has been
18 terminated; or

19 (3) declining to comply with an authorization related to healthcare in
20 a supported decision-making agreement, if the person is declining because
21 the action proposed to be taken under the supported decision-making
22 agreement is contrary to the good faith medical judgment of the person or
23 to a written policy of a healthcare institution that is based on reasons of
24 conscience.

25 New Sec. 9. (a) An adult who enters into a supported decision-
26 making agreement may act without the decision-making assistance of the
27 supporter.

28 (b) The execution of a supported decision-making agreement shall
29 not constitute evidence that the principal does not have capacity.

30 (c) In the application of the supported decision-making agreements
31 act:

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

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

38 Sec. 10. K.S.A. 2020 Supp. 21-5417 is hereby amended to read as
39 follows: 21-5417. (a) Mistreatment of a dependent adult or an elder person
40 is knowingly committing one or more of the following acts:

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

43 (2) taking the personal property or financial resources of a dependent

1 adult or an elder person for the benefit of the defendant or another person
2 by taking control, title, use or management of the personal property or
3 financial resources of a dependent adult or an elder person through:

4 (A) Undue influence, coercion, harassment, duress, deception, false
5 representation, false pretense or without adequate consideration to such
6 dependent adult or elder person;

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

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

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

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

15 (3) omission or deprivation of treatment, goods or services that are
16 necessary to maintain physical or mental health of such dependent adult or
17 elder person.

18 (b) Mistreatment of a dependent adult or an elder person as defined
19 in:

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

21 (2) subsection (a)(2) if the aggregate amount of the value of the
22 personal property or financial resources is:

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

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

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

28 (D) at least \$25,000 but less than \$100,000 is a severity level 5,
29 person felony;

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

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

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

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

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

42 (1) The personal property or financial resources were given as a gift
43 consistent with a pattern of gift giving to the person that existed before the

1 dependent adult or elder person became vulnerable;

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

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

8 (4) a court approved the transaction before the transaction occurred.

9 (d) No dependent adult or elder person is considered to be mistreated
10 under subsection (a)(1) or (a)(3) for the sole reason that such dependent
11 adult or elder person relies upon or is being furnished treatment by
12 spiritual means through prayer in lieu of medical treatment in accordance
13 with the tenets and practices of a recognized church or religious
14 denomination of which such dependent adult or elder person is a member
15 or adherent.

16 (e) As used in this section:

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

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

25 (A) Resident of an adult care home including, but not limited to,
26 those facilities defined by K.S.A. 39-923, and amendments thereto;

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

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

30 (D) individual with intellectual disability or a developmental
31 disability receiving services through a community facility for people with
32 intellectual disability or residential facility licensed under K.S.A. 2020
33 Supp. 39-2001 et seq., and amendments thereto;

34 (E) individual with a developmental disability receiving services
35 provided by a community service provider as provided in the
36 developmental disability reform act; or

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

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

41 (f) An offender who violates the provisions of this section may also
42 be prosecuted for, convicted of, and punished for any other offense in
43 article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes Annotated, or

1 K.S.A. 2020 Supp. 21-6418, and amendments thereto.

2 Sec. 11. K.S.A. 2020 Supp. 21-5417 is hereby repealed.

3 Sec. 12. This act shall take effect and be in force from and after its

4 publication in the statute book.