Honorable Nathan H. Manning, Chair, and Judiciary Committee, Oct 13, 2025

Thank You for this opportunity to address *SUBSTITUTE* S. B. 35. To be clear, I strongly **Oppose** this *previously failed Bill.*

Preamble: My name is Harris Capps. I am the father and guardian for my 49-year-old son, Matt who has **severe** intellectual and developmental disabilities including an inability to talk, behavioral meltdowns leading to physical aggression, and other issues. Matt requires 24x7 care, and resides in an Intermediate Care Facility (ICF). I am a past president of a national disability organization, author of a Lexicon on IDD, and I am very conversant with the DD Program in Ohio. I have undergone extensive required training to be a guardian. Moreover, I am very conversant on numerous DODD programs and services, and I am an active advocate within Ohio and at the national/federal levels.

Overview: In this document, I will provide you with

1) a short (**1 page**) opposition narrative to the new "*substitute*" bill. and,
2) I will provide my original testimony that remains relevant.

Testimony:

1) Enough is enough! What part of "Lacks Capacity" do the sponsors not understand? This substitute Senate Bill is the last straw! For years now, organizations like ASPI and Disability Rights Ohio have repeatedly attempted to reduce the important role of the guardians and family of our loved ones with severe-to profound Intellectual and Developmental Disabilities (IDD). Their motive go unspoken, but are clear: They want to eliminate Intermediate Care Facilities (ICFs) that provide 24x7 care for Ohio's most vulnerable. They want to impose their judgement, surreptitiously, on or loved ones.

   Parents and Guardians are weary. Over our life, we have become exhausted in having to continually fend off hostile takeovers of critical safeguards. Even basic contract law or the execution of a will starts with the assumption that both parties entering an agreement are of sound mind. Often times these bills are initiated by persons who are actually being paid by us taxpayers! And, the majority of parents (with or without guardianship) are so busy attending to the needs of their loved one who has severe-to-profound IDD, that they have no knowledge of current legislative attempts and processes, or are too exhausted to fight policy that would be hurtful.

   One of the most troubling implications of this bill is the possibility of using an informal planning process and then securing the individual's legal signature to indicate agreement—even in cases where the person clearly lacks the capacity to make informed decisions in their own best interest but has not been formally declared incompetent by a court of law. This creates a dangerous legal gray zone: it appears to secure "consent" from someone who may not fully understand what they are signing, effectively bypassing the very safeguards guardianship was designed to provide. Such a practice would expose vulnerable individuals to undue influence, exploitation, or harm, all while giving the appearance of legal validity. The next pages are my original testimony that largely remains relevant.

   Thank You,

   Harris T. Capps, Father and Guardian for my son, Matthew
   Advocate for our most vulnerable Ohioans
   Major, USAF, Retired

(Still largely relevant statement provided for the 4th Committee Hearing...)

Honorable Nathan H. Manning, Chair, and Judiciary Committee,

Thank You for this opportunity to address S. B. 35. To be clear, I strongly **Oppose** this *previously failed Bill.*

My name is Harris Capps. I am the father and guardian for my 49-year-old son, Matt who has **severe** intellectual and developmental disabilities including an inability to talk, behavioral meltdowns leading to physical aggression, and other issues. Matt requires 24x7 care, and resides in an Intermediate Care Facility (ICF). I am a past president of a national disability organization, author of a Lexicon on IDD, and I am very conversant with the DD Program in Ohio. I have undergone extensive required training to be a guardian. Moreover, I am very conversant on numerous DODD programs and services, and I am an active advocate within Ohio and at the national/federal levels.

Background/Context/Concern: I am deeply concerned about any effort to weaken the protections of Guardianship. We believe that guardians for individuals with severe intellectual disabilities *already* include a network of informed persons when making decisions for their wards. This usually includes the guardian, other family members, direct care staff, and medical personnel. The more an individual is able to express his or her wishes and play an informed, responsible role in their own decision-making process, the more their participation should be included. But codifying a process that is redundant has its own significant pitfalls. While all individuals with IDD change over time, their cognitive abilities typically remain relatively unchanged. As is **currently** required, their ability to make their own decisions is examined at regular intervals, to make sure that they are receiving appropriate care and that all of their needs and preferences are being properly addressed.
Relatively new guardianship rules in Ohio (Section 2111.121 | Nomination of guardian. - Ohio Laws) adopted by the Supreme Court of Ohio in 2015 and updated since, **require guardians to undergo mandatory education**, conduct regular in-person visits with the ward, and prioritize **person-centered planning** with the least restrictive settings. Additionally, the most common **standard** for substituted judgment ***already*** *exists* under Section 314(a) of the Uniform Guardianship and Protective Proceedings Act (Uniform Act): **Except as otherwise limited by the court, *A guardian at all times shall act in the ward's best interest*** *and exercise reasonable care, diligence, and prudence. Ref: The archives of the American Law Institute, http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/ugppa97.pdf.*

Following are:

I. **Three main points** for your consideration,
II. **Required or Recommended Changes** to specific wording in S.B. 35.

I. **Three main points** for your consideration,

1. S.B. 35 is **redundant** to existing, more effective policy. We currently have a provision in the Ohio Revised Code (5123-3-03 (3/20/2023) that satisfies the need by requiring **Person-Centered Planning** (also required at the federal level called Individual Program Plan (IPP); This applies to all

licensed residential facilities providing Long Term Services and Supports. The **Federal Rule**, issued by the Centers for Medicare & Medicaid Services (HHS/CMS) in 2014) requires an Individual Program Plan (IPP) for persons residing in **both** 1) Home and Community-Based Services settings and in 2) Intermediate Care Facilities. Additionally, for persons in "institutional care"/Intermediate Care Facilities (ICF) - All services including health care services and nutrition are part of the Active Treatment (AT), which is based on an evaluation and individualized program plan (IPP) by an ***interdisciplinary team***.

2. A major problem is that of decision-making capacity (i.e., legal competency) **must** be included in S.B. 35 to recognize those whose disabilities render them unable to make informed, reasonable decisions **in their best interest** due to major deficits in cognition related to developmental disability, intellectual disability, or a mental health condition which impairs sound judgement. **The legal competency issue is obvious and a blatant oversight by proponents who wish to eliminate guardianship.** The bill's proponents can't have failed to formally recognize that there are some people for whom the SDM process would be entirely inappropriate; Those individuals need guardians.

   Other *related* **potential pitfalls**:
   a) Supported Decision-making (SDM) can lead to persons with developmental disabilities being steered away from a guardianship adjudication of "lacking capacity" and therefore eligible for guardianship.
   b) Would this bill unnecessarily complicate the roles and responsibilities of Guardians ad litem?
   c) Would the risk of fraud by the person supporting the disabled principal increase?
   d) There appears to be no accountability for the "Supporter" and no pathway for a grievance by the "Principal."
   e) **The American Bar Association** has noted possible **challenges** to SDM as: 1) Risk of undue influence 2) Risk of abuse, neglect, exploitation. 3) Lack of understanding of person's medical/mental health needs 4) Lack of stability, or cognitive limitations of supporters, and 5) Disputes with family members.

3. Could I agree with the use of SDM as just another helpful planning uncodified process? Yes, **IF** it:
   a. did not apply to persons who lack capacity,
   b. did not require a signature/contract, and
   c. was not codified into law. It should remain an informal process.

Section II follows...

II. Sections of S.B 35 Requiring Change (if enacted)

1) **Reference**: Sec. 5123.68. As used in sections 5123.68 to 5123.686 of the Revised Code:

(A) "Principal" means an adult with a developmental disability who seeks to enter, or has entered, into a supported decision-making plan."

Why Change is necessary:

a) This statement is ripe for misinterpretation in that a "Supporter" may deem that any person with an **i**ntellectual and **d**evelopmental **d**isability (***IDD***) can be considered a "Principal." It is not until the

reader *leaves* the definitions section that Sec. 5123.681.says... "unless otherwise determined by a court of competent jurisdiction."

Of course, no Supported Decision-Making (SDM) "*Supporter*" holds the authority as conferred by a Probate Court to act for an individual who has been deemed incapable of making decisions in their own best interests. Such individuals MUST NOT be eligible to participate in the SDM process *unless* there is an unexpected and significant improvement in their cognitive condition. It is possible, yet rare, that persons with severe IDD may improve to the point that a judge determines that full guardianship or limited guardianship may no longer be necessary. Should this happen, the individual may be a candidate for SDM. My reasoning will become even more clear in my remaining points.

2) **Reference**: "**Sec. 5123.681. (A**) Based on the principle that all adults with developmental disabilities should be afforded all of the rights set forth in section 5123.62 of the Revised Code, **all** adults with developmental disabilities are ***presumed to be capable of making decisions*** regarding their lives and activities of daily living and are presumed to be competent to handle their own affairs, unless otherwise determined by a court of competent jurisdiction".

Why Change is Necessary: This statement is insensitive and imprudent. No one (except a Probate Judge) can "**presume** a person capable. Caveats/stipulations found later in the Bill are insufficient and can be made unnecessary. As stated above, many individuals with severe-to-profound *IDD* have been judged by a Probate Court as lacking the capacity to make decisions on his/her best interests. There are numerous other pitfalls to this statement, all of which can be addressed:

A) Eliminate the words, "All persons all adults with developmental disabilities are presumed to be capable of making decisions regarding their lives and activities of daily living and are presumed to be competent to handle their own affairs...

B) " the remainder of the sentence *("unless otherwise determined by a court of competent jurisdiction.")* would be *unnecessary* by doing the following...
Adding a definition or amending current definitions. One alternative is to Create an additional term:
"Persons Deemed Ineligible for SDM." Persons who have been judged by a Probate Court as lacking capacity to make decisions on their own behalf.

Continued...

3) **Reference Sec. 5123.681. "(B)** The fact that an adult has a developmental disability does not, by itself, void the presumption of capacity and competency described in division (A) of this section."

Why Change is Necessary: This paragraph (B) would be unnecessary if the preceding changes were incorporated. As is... it is an aggressive/"In your face" statement that has no place in this Bill.

4) **Reference** "**Sec. 5123.681. (C)** The manner in which an adult with a developmental disability communicates with others is not grounds for a finding that the adult is incapable of managing the adult's affairs or of entering into a supported decision-making plan."

Why Change is Preferable: This legalese is not necessary if the above suggested NEW definition (**"Persons deemed ineligible for SDM**") were added. Bottom line: If a person has been judged as lacking capacity, this type of appeal is unnecessary, patronizing, and suspect as to motive.

5) **Reference** "**Sec. 5123.681. (D)** Execution of a supported decision-making plan by an adult with a developmental disability is not evidence of incapacity and shall not be used as such."

Why Change is Preferable: *Again*... as stated above: This legalese is not necessary if the above suggested **NEW** definition (**"Persons deemed ineligible for SDM**") were added. Bottom line: If a person has been judged as lacking capacity, this type of appeal is unnecessary and patronizing and suspect as to motive. ***To be clear***: The legal competency issue is obvious and a blatant oversight. **The bills' proponents can't have failed to recognize that there are some people for whom the SDM process would be entirely inappropriate**. Those individuals need guardians.

Thank You,
Harris T. Capps, Father and Guardian for my son, Matthew
Advocate for our most vulnerable Ohioans
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