

As Reported by the Senate Judiciary Committee

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Sub. S. B. No. 35

Senators Cirino, Reynolds

Cosponsors: Senators Wilkin, Manning

To enact sections 5123.68, 5123.681, 5123.682,
5123.683, 5123.684, 5123.685, and 5123.686 of
the Revised Code to establish supported
decision-making as a less restrictive
alternative to guardianship for adults with
developmental disabilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5123.68, 5123.681, 5123.682,
5123.683, 5123.684, 5123.685, and 5123.686 of the Revised Code
be enacted to read as follows:

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.

(B) "Supported decision-making" means the process of
supporting and accommodating an adult with a developmental
disability who is making, communicating, or implementing the
adult's own life decisions without impeding the adult's self-
determination.

"Supported decision-making" may include any matter 20
impacting the adult's life. 21

(C) "Supported decision-making plan" is a plan between an 22
adult with a developmental disability and one or more supporters 23
chosen by the adult that is formal and documented through a 24
written plan entered into pursuant to section 5123.683 of the 25
Revised Code. 26

(D) "Supporter" means an adult person chosen by an adult 27
with a developmental disability to support the adult with a 28
developmental disability in a supported decision-making plan. 29

Sec. 5123.681. (A) All adults with developmental 30
disabilities are presumed to be competent, unless otherwise 31
determined by a court of competent jurisdiction. 32

(B) The manner in which an adult with a developmental 33
disability communicates with others is not, by itself, grounds 34
for a finding that the adult is incapable of managing the 35
adult's affairs or of entering into a supported decision-making 36
plan. 37

(C) Execution of a supported decision-making plan by an 38
adult with a developmental disability is not evidence of 39
incapacity and shall not be used as such. 40

(D) An adult with a developmental disability who has 41
entered into a supported decision-making plan is not precluded 42
from acting independently of the plan, acting independently of 43
one or more supporters identified in the plan, or seeking 44
personal information without the assistance of a supporter. The 45
adult's choice to act independently of the plan or a supporter 46
is not evidence of incapacity and shall not be used as such. 47

(E) Evidence that an adult with a developmental disability 48

uses supported decision-making may be presented as a less 49
restrictive alternative to guardianship pursuant to division (C) 50
(5) of section 2111.02 of the Revised Code. 51

(F) No adult with a developmental disability shall be 52
required to enter into a supported decision-making plan. 53

(G) Nothing in sections 5123.68 to 5123.686 of the Revised 54
Code shall be construed as prohibiting an adult with a 55
developmental disability from receiving support and 56
accommodation in making, communicating, or implementing the 57
adult's own life decisions without a supported decision-making 58
plan. 59

Sec. 5123.682. (A) If an adult with a developmental 60
disability who is of sound mind voluntarily chooses to enter 61
into a supported decision-making plan, the plan shall be created 62
with the informed consent of the principal and in accordance 63
with section 5123.683 of the Revised Code. 64

(B) The department of developmental disabilities shall 65
develop both of the following: 66

(1) A model supported decision-making plan that may be 67
used by a principal and one or more supporters; 68

(2) Informational materials about supported decision- 69
making plans, intended for use by all of the following: 70

(a) Adults with developmental disabilities; 71

(b) Family members of adults with developmental 72
disabilities; 73

(c) Social service, medical service, and financial service 74
professionals and other professionals likely to encounter 75
supported decision-making plans; 76

(d) The general public. 77

Sec. 5123.683. (A) A supported decision-making plan shall 78
be executed in accordance with this section. 79

(B) (1) The plan shall be entered into by the adult with a 80
developmental disability as the principal and one or more 81
supporters. 82

(2) The plan shall be signed and acknowledged voluntarily, 83
without coercion or undue influence, by the principal. 84

The principal's signature shall be witnessed by either a 85
notary public or two adult witnesses who are not parties to the 86
supported decision-making plan. The witnesses must attest that 87
the plan was signed of the principal's own free will and accord. 88

Sec. 5123.684. (A) Except as otherwise limited by the 89
principal, and pursuant to the principal's authority under 90
division (D) of section 5123.681 of the Revised Code, a 91
supporter may assist the principal with all of the following: 92

(1) Understanding information, options, responsibilities, 93
and consequences associated with making decisions; 94

(2) Communicating the decisions to third parties; 95

(3) Obtaining and understanding information relevant to 96
life decisions, including medical, psychological, financial, 97
employment, medicaid, educational, or other records; 98

(4) Monitoring information about the principal's affairs 99
and services, including future services; 100

(5) Understanding the principal's personal values, 101
beliefs, and preferences, including the principal's cultural, 102
ethnic, or religious heritage, and using this information to 103

advocate for the implementation of the principal's wishes and 104
decisions; 105

(6) Accompanying the principal and participating in 106
discussions with third parties. 107

(B) (1) The supporter shall assist the principal in 108
accessing, collecting, or obtaining only information that is 109
relevant to a decision authorized by the supported decision- 110
making plan. 111

(2) If the supporter assists the principal in accessing, 112
collecting, or obtaining personal information protected under 113
the "Health Insurance Portability and Accountability Act of 114
1996," 42 U.S.C. 1320d-2, the "Family Educational Rights and 115
Privacy Act of 1974," 20 U.S.C. 1232g, or financial information 116
protected under the "Financial Services Modernization Act of 117
1999," 15 U.S.C. 6801 and 6821, the supporter shall keep the 118
information confidential. 119

(3) The existence of a supported decision-making plan does 120
not preclude the principal from seeking personal information 121
without the assistance of the supporter. 122

(C) The supporter may undertake any actions permitted by 123
the principal in the supported decision-making plan. The 124
supporter shall not act in contradiction to the expressed wishes 125
or decision-making authority of the principal. 126

(D) A supporter shall act as a fiduciary for the 127
principal. 128

(E) (1) In the event the supporter has a conflict of 129
interest or potential conflict of interest in a decision made by 130
the principal, the supporter shall do both of the following: 131

(a) Fully disclose the conflict of interest to the 132
principal and any other members of the principal's support team, 133
including a service and support administrator or a qualified 134
intellectual disability professional; 135

(b) Refrain from advising or assisting the principal on or 136
with the decision. 137

(2) A supporter who intentionally fails to disclose a 138
conflict of interest or who otherwise breaches the supporter's 139
fiduciary duty to the principal is liable to the principal for 140
all reasonable damages incurred as a result. 141

Sec. 5123.685. A principal may modify or end a supported 142
decision-making plan at any time by notifying the supporter. A 143
principal may modify or end a supported decision-making plan in 144
writing and provide a copy of the written notice to the 145
supporter. 146

Sec. 5123.686. (A) Nothing in sections 5123.68 to 5123.686 147
of the Revised Code prohibits a third party from requiring the 148
principal to execute a release of information or other document 149
to confirm the continued validity of the supported decision- 150
making plan or to confirm the principal's authorization of the 151
third party to share information with a specific supporter. 152

(B) A person, other than a supporter, who acts in good 153
faith while relying on a supported decision-making plan is not 154
liable for damages in a civil action and is not subject to 155
criminal prosecution or professional disciplinary action unless 156
they have actual knowledge that either: 157

(1) The supported decision-making plan has been modified 158
or ended pursuant to section 5123.685 of the Revised Code. 159

(2) The principal has not authorized the supporter to 160

engage in the specific action taken.

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