

In essence, we all seek our own circles of support and engage in supported decision-making. Depending on the issue, we reach out to families or friends, colleagues or classmates, mechanics or mentors before we decide to go on a blind date, buy a used car, change jobs, renew a lease, sign up for a hot yoga class or undergo cataract surgery. We confer and consult with others, and then we decide on our own. Likewise, people with disabilities may need assistance making decisions about living arrangements, health care, lifestyles and financial matters, but they don't necessarily need a guardian to make those decisions for them. What they might need instead is a trusted network of supporters to field their questions and review their options so they too can confer and consult, and then reach their own decisions. Supporters can be family members, co-workers, friends, and past or present providers (though many SDM models discourage paid staff on support networks). It is critically important that the individual select supporters who know and respect his or her will and preferences, and will honor the choices and decisions the individual makes.

Source: <http://supporteddecisions.org/about-sdm/>

DRAFT SUPPORTED DECISION-MAKING ACT
2018 – H/S -----

LC

**STATE OF RHODE ISLAND
IN GENERAL ASSEMBLY
JANUARY SESSION, A.D. 2018**

A N A C T
RELATING TO SUPPORTED DECISION-MAKING

Introduced By:

Date Introduced:

Referred To:

It is enacted by the General Assembly as follows:

Section 1. Title _ of the General Laws entitled "___" is hereby amended by adding the following chapter
(add>Chapter T.C.¹

T.C.1: Title

This Act may be cited as the Supported Decision-Making Act.

T.C. 2: Purpose/Interpretation

(a) The purpose of this chapter is to do all of the following:

- (1) Provide assistance in gathering and assessing information, making informed decisions, and communicating decisions for adults who would benefit from decision-making assistance;**
- (2) Give supporters legal status to be with the adult and participate in discussions with others when the adult is making decisions or attempting to obtain information;**
- (3) Enable supporters to assist in making and communicating decisions for the adult but not substitute as the decision maker for that adult; and**
- (4) Establish the use of Supported Decision-Making as an alternative to guardianship.**

(b) This chapter is to be administered and interpreted in accordance with all of the following principles:

- (1) All adults should be able to choose to live in the manner they wish and to accept or refuse support, assistance, or protection;**

¹ T.C. will be replaced by the Title # and Chapter #

(2) All adults should be able to be informed about and participate in the management of their affairs; and

(4) The values, beliefs, wishes, cultural norms, and traditions that an adult holds should be respected in supporting an adult to manage his or her affairs.

T.C. 3: Definitions

For the purposes of this chapter:

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

(2) "Affairs" means personal, health care, and financial matters arising in the course of activities of daily living and includes all of the following:

a. Those health-care and personal affairs in which an adult makes his or her own health-care decisions, including monitoring his or her own health; obtaining, scheduling, and coordinating health and support services; understanding health-care information and options; and making personal decisions, including those to provide for his or her own care and comfort; and

b. Those financial affairs in which an adult manages his or her income and assets and its use for clothing, support, care, comfort, education, shelter, and payment of other liabilities of the individual.

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

(4) "Health-care institution" means "health-care institution" as defined in § _____ of this title.

(5) "Health-care provider" means "health-care provider" as defined in § _____ of this title.

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

(7) "Person" means an adult; health-care institution; health-care provider; corporation; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(8) "Principal" means an adult who seeks to enter, or has entered, into a supported decision-making agreement with a supporter under this chapter.

(9) "Supported decision-making" means a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, where the adult wants to work, how the adult wants to manage finances, without impeding the self-determination of the adult.

(10) "Supported decision-making agreement" or "the agreement" means an agreement between a principal and a supporter entered into under this chapter.

(11) "Supporter" means a person who is named in a supported decision-making agreement and is not prohibited from acting under § _____ of this title.

(12) "Support services" means a coordinated system of social and other services supplied by private, state, institutional, or community providers designed to help maintain the independence of an adult, including any of the following:

a. Homemaker-type services, including house repair, home cleaning, laundry, shopping, and meal-provision;

b. Companion-type services, including transportation, escort, and facilitation of written, oral, and electronic communication;

c. Visiting nurse and attendant care;

d. Health-care provider;

e. Physical and psychosocial assessments;

f. Financial assessments and advisement on banking, taxes, loans, investments, and management of real property;

64 g. Legal assessments and advisement;

65 h. Education and educational assessment and advisement;

66 i. Hands-on treatment or care, including assistance with activities of daily living such as bathing,
67 dressing, eating, range of motion, toileting, transferring, and ambulation;

68 j. Care planning; and

69 k. Other services needed to maintain the independence of an adult.

70 **T.C. 4: Presumption of Capacity**

71 (a) All adults are presumed to be capable of managing their affairs and to have legal capacity.

72 (b) The manner in which an adult communicates with others is not grounds for deciding that the adult is
73 incapable of managing the adult's affairs.

74 (c) Execution of a supported decision-making agreement may not be used as evidence of incapacity and
75 does not preclude the ability of the adult who has entered into such an agreement to act independently
76 of the agreement.

77 **T.C. 5: Supported Decision-Making Agreements**

78 (a) A supported decision-making agreement must include all of the following:

79 (1) Designation of at least 1 supporter;

80 (2) The types of decisions for which the supporter is authorized to assist; and

81 (3) The types of decisions, if any, for which the supporter may not assist.

82 (b) A supported decision-making agreement may include any of the following:

83 (1) Designation of more than 1 supporter;

84 (2) Provision for an alternate to act in the place of a supporter in such circumstances as may be
85 specified in the agreement; and

86 (3) Authorization for a supporter to share information with any other supporter named in the
87 agreement, as a supporter believes is necessary.

88 (c) A supported decision-making agreement is valid only if all of the following occur:

89 (1) The agreement is in a writing that contains the elements of the form at § _____;

90 (2) The agreement is dated; and

91 (3) Each party to the agreement signed the agreement in the presence of 2 adult witnesses, or
92 before a notary public.

93 (d) The 2 adult witnesses required by paragraph (d)(3) of this section may not be any of the following:

94 (1) A supporter for the principal;

95 (2) An employee or agent of a supporter named in the supported decision-making agreement;

96 (3) a paid provider of services to the principal; and

97 (4) Any person who does not understand the type of communication the principal uses, unless
98 an individual who understands the principal's means of communication is present to assist
99 during the execution of the supported decision-making agreement.

100 (e) A supported decision-making agreement must contain a separate declaration signed by each
101 supporter named in the agreement indicating all of the following:

102 (1) The supporter's relationship to the principal;

103 (2) The supporter's willingness to act as a supporter; and

104 (3) The supporter's acknowledgement of the role of a supporter under this chapter.

105 (f) A supported decision-making agreement may authorize a supporter to assist the principal to decide
106 whether to give or refuse consent to a life sustaining procedure *within the meaning of Chapter 4.11 of*
107 *Title 23.*

108 (g) A principal or a supporter may revoke a supported decision-making agreement at any time in writing
109 and with notice to the other parties to the agreement

110 **T.C. 6: Supporters**

- 111 a) Except as otherwise provided by a supported decision-making agreement, a supporter may do all of
112 the following:
- 113 (1) Assist the principal in understanding information, options, responsibilities, and consequences
114 of the principal's life decisions, including those decisions relating to the principal's affairs or
115 support services;
 - 116 (2) Help the principal access, obtain, and understand any information that is relevant to any
117 given life decision, including medical, psychological, financial, or educational decisions, or any
118 treatment records or records necessary to manage the principal's affairs or support services;
 - 119 (3) Assist the principal in finding, obtaining, making appointments for, and implementing the
120 principal's support services or plans for support services;
 - 121 (4) Help the principal monitor information about the principal's affairs or support services,
122 including keeping track of future necessary or recommended services; and
 - 123 (5) Ascertain the wishes and decisions of the principal, assist in communicating those wishes and
124 decisions to other persons, and advocate to ensure that the wishes and decisions of the principal
125 are implemented.
- 126 (b) Any of the following are disqualified from acting as a supporter:
- 127 (1) A person who is an employer or employee of the principal, unless the person is an immediate
128 family member of the principal;
 - 129 (2) A person directly providing paid support or health services to the principal, with the
130 exception of supported decision-making services, unless the person is an immediate family
131 member of the principal; and
 - 132 (3) An individual against whom the principal has obtained an order of protection from abuse or
133 an individual who is the subject of a civil or criminal order prohibiting contact with the principal
- 134 (d) A supporter shall act with the care, competence, and diligence ordinarily exercised by individuals in
135 similar circumstances, with due regard either to the possession of, or lack of, special skills or expertise.

136 **T.C. 7: Recognition of Supporters**

137 A decision or request made or communicated with the assistance of a supporter in conformity with this
138 chapter shall be recognized for the purposes of any provision of law as the decision or request of the
139 principal and may be enforced by the principal or supporter in law or equity on the same basis as a
140 decision or request of the principal.

141 **T.C. 8: Limitation of Liability**

142 A person, who in good faith acts in reliance on an authorization in a supported decision-making
143 agreement, or who in good faith declines to honor an authorization in a supported decision-making
144 agreement, is not subject to civil or criminal liability or to discipline for unprofessional conduct for any
145 of the following:

- 146 (1) Complying with an authorization in a supported decision-making agreement based on an
147 assumption that the underlying supported decision-making agreement was valid when made and
148 has not been revoked;
- 149 (2) Declining to comply with an authorization in a supported decision-making agreement based
150 on actual knowledge that the agreement is invalid.

151 **T.C. 9: Access to Information**

152 (a) A supporter may assist the principal with obtaining any information to which the principal is entitled,
153 including, with a signed and dated specific consent, protected health information under the Health
154 Insurance Portability and Accountability Act of 1996 [P. L. 104-191], educational records under the
155 Family Educational Rights and Privacy Act of 1974 [20 U.S.C. § 1232g], or information protected by 42
156 C.F.R Part 2.

157 (b) The supporter shall ensure all information collected on behalf of the principal under this section is
158 kept privileged and confidential, as applicable; is not subject to unauthorized access, use, or disclosure;
159 and is properly disposed of when appropriate.

160 **T.C. 9: Reporting of Suspected Abuse, Neglect, or Exploitation**

161 If a person who receives a copy of a supported decision-making agreement or is aware of the existence
162 of a supported decision-making agreement has cause to believe that the principal, who is adult with a
163 developmental disability or an elder, is being abused, neglected, or exploited by the supporter, the
164 person shall report the alleged abuse, neglect, or exploitation pursuant to RI Gen. Laws §40.1-27-02,
165 and §42-66-8 [add others that are facility-based?].

166 **T.C. 10: Form of Supported Decision-Making Agreement**

167 (a) Subject to Subsection (b), a supported decision-making agreement is valid only if it is in substantially
168 the following form:

169 SUPPORTED DECISION-MAKING AGREEMENT

170 Appointment of Supporter

171 I, _____(insert your name), make this agreement of my own free will.

172 I agree and designate that: _____

173 Name: _____

174 Address: _____

175 Phone Number: _____

176 E-mail Address: _____

177 is my supporter. My supporter may help me with making everyday life decisions relating to the
178 following:

179 Y/N obtaining food, clothing, and shelter

180 Y/N taking care of my physical health

181 Y/N managing my financial affairs.

182 My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter
183 may:

184 1. Help me access, collect, or obtain information that is relevant to a decision, including medical,
185 psychological, financial, educational, or treatment records;

186 2. Help me understand my options so I can make an informed decision; or

187 3. Help me communicate my decision to appropriate persons.

188 Y/N A release allowing my supporter to see protected health information under the Health
189 Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

190 Y/N A release allowing my supporter to see educational records under the Family Educational
191 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) is attached.

192 [Y/N A declaration pursuant to § 23-4.11-3 or 3.1 – does this really belong here?]

193 Effective Date of Supported Decision-Making Agreement

194 This supported decision-making agreement is effective immediately and will continue until _____
195 (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

196 Signed this _____ day of _____, 20 _____

197 Consent of Supporter

198 I, _____ (name of supporter), consent to act as a supporter under this agreement, and
199 acknowledge my responsibilities under [this chapter].

200 _____

201 (signature of supporter) _____ (printed name of supporter)

202 My relationship to the principal is: _____

203 I (name of supporter), consent to act as a supporter under this agreement,
 204 and acknowledge my responsibilities under [this chapter].
 205
 206 (signature of supporter) (printed name of supporter)
 207 My relationship to the principal is:
 208 Consent of the Principal
 209
 210 (my signature) (my printed name)
 211 Witnesses or Notary
 212
 213 (witness 1 signature) (printed name of witness1)
 214
 215 (witness 2 signature) (printed name of witness 2)
 216 Or
 217 State of
 218 County of
 219 This document was acknowledged before me on (date)
 220 byand.....
 221 (name of adult with a disability) (name of supporter)
 222
 223 (signature of notarial officer)
 224 (Seal, if any, of notary)
 225
 226 (printed name)
 227 My commission expires:
 228
 229 (b) A supported decision-making agreement may be in any form not inconsistent with Subsection (a)
 230 and the other requirements of this chapter.
 231 Part B Amend Chapter 15 of Title 33, Section 47 as follows
 232 STATE OF RHODE ISLAND PROBATE COURT OF THE
 233 COUNTY OF
 234 No.
 235 ESTATE OF
 236 PERSONAL ESTATE ESTIMATED AT \$..... CITY/TOWN OF
 237 PETITION FOR LIMITED GUARDIANSHIP OR GUARDIANSHIP
 238 hereby petitions the Probate Court of the
 239 Petitioner
 240 city/town of to appoint a limited guardian/guardian for who currently resides at
 241
 242 Address
 243, in the city/town of, and whose date of birth is
 244 Based upon an assessment conducted by on, which Date
 245 functional assessment reflects the current level of functioning of, it has been determined
 246 that Respondent lacks decision-making ability in one or more of the following areas as indicated:
 247 health care
 248 financial matters
 249 residence

250 association
 251 other
 252 Regarding each area indicated, please describe the specific assistance needed:
 253 Indicate which of the following less restrictive alternatives to guardianship have been explored and
 254 deemed inappropriate as indicated:
 255 Durable Power of Attorney for Health Care
 256 Living Will
 257 Power of Attorney
 258 Durable Power of Attorney
 259 Trusts
 260 Joint Property Arrangements
 261 Representative Payee
 262 Money Management
 263 Single Court Transactions
 264 Government Benefit and Social Service Programs
 265 Housing Options
 266 ... Supported Decision-Making Agreement
 267 Other^{<add>}
 268 Section 2. This act shall take effect on _____

	4:25 Agenda for the Next Meeting, Linda Ward, Chair Purpose/Goal: To set the agenda for the next meeting. Discussion: The next meeting of the Legislation Committee is on Tuesday November 7th. • Reviewing the 2017 Legislative Package and deciding which items to recommend working on in 2018 • Supported Decision Making • Adding new items to the 2018 Legislative Package from the concerns raised at the public forums. • Recommending the 2018 scope of review (categories of bills to be reviewed and commented on during the 2018 General Assembly session.
	4:30 Adjournment, Linda Ward, Chair Potential MOTION: To adjourn at 4:39 PM Motion moved by KH, seconded by RCo, <i>passed unanimously</i>

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