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TO: **House Judiciary Committee**

FROM: **Kansas Judicial Council – Jessica Parks, Staff Attorney**

DATE: **February 11, 2026**

RE: **Neutral Written Only Testimony on 2026 H.B. 2609, enacting the supported decision-making agreements act**

2026 H.B. 2609 incorporates language recommended by the Judicial Council's Guardianship and Conservatorship Advisory Committee (Committee) during an assigned study on supported decision-making and 2023 H.B. 2345. During the study, the Committee reviewed 2023 H.B. 2345 and 2025 H.B. 2144. The Committee's report is attached and can be downloaded from the Judicial Council's website under the Studies and Reports tab at www.kjc.ks.gov/studies-and-reports. The Committee's recommendations start on page 10 of the report.

The Committee did not make a recommendation regarding whether supported decision-making legislation is needed in Kansas at this time and instead chose to defer to the legislature. The Committee's recommended changes to the text of the bills starts on page 11 of the report. Additionally, the Committee requested that in the event supported decision-making legislation passes, that the effective date of the legislation be delayed to allow the appropriate Judicial Council committee sufficient time to develop any statutorily required supported decision-making form.

KANSAS JUDICIAL COUNCIL

Guardianship & Conservatorship Advisory Committee

Report on Supported Decision-Making and 2023 H.B. 2345

DECEMBER 5, 2025

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Kansas
Judicial Council

Introduction

In May 2024, Representatives Susan Humphries and Bob Lewis requested that the Judicial Council study the topic of supported decision-making agreements, specifically within the context of 2023 H.B. 2345. Representative Humphries requested that the Council:

- study the proposed text of 2023 H.B. 2345 and the testimony submitted for that bill;
- provide specific recommendations on how the text of 2023 H.B. 2345 could be updated to address the standard of care, incapacitation, and whether provisions should be added to address third-party liability; and
- determine whether supported decision-making agreements could be executed or recognized under Kansas law or court rules.

At its June 5, 2024 meeting, the Judicial Council assigned the study to the Guardianship and Conservatorship Advisory Committee.

Committee Membership

The members of the Guardianship and Conservatorship Advisory Committee are:

Hon. Marilyn Wilder, Chair, District Court Judge in the 9th Judicial District; Newton

Hon. Keith Collett, District Court Judge in the 8th Judicial District; Junction City

Kip Elliot, Disability Rights Center of Kansas attorney ; Topeka

Anne Hendrickson, Complete Law KC practicing attorney; Kansas City

Barbara Hickert, Long-Term Care Ombudsman; Topeka

Hon. Michael Joyce, District Court Judge in the 10th Judicial District; Olathe

Jean Krahn, retired Executive Director of Kansas Guardianship Program; Manhattan

Rachael Pirner, Triplett Woolf Garretson practicing attorney; Wichita

Kerry Wasinger, Department for Children and Families attorney; Hays

Background

House Bill 2345 was introduced on February 7, 2023, and it would have enacted the Supported Decision-Making Agreements Act to provide a statutory framework for adults who want supported decision-making assistance. H.B. 2345 was referred to the House Judiciary Committee, where a hearing was held on January 17, 2024.

Proponents of the bill included but were not limited to: Kansas Commission on Disability Concerns (KCDC), NAMI Kansas, Kansas Advocates for Better Care (KABC), Arcare Inc., the Self-Advocate Coalition of Kansas, the Disability Rights Center, and others, including advocates for people who could and do use supported decision-making in their daily lives. Opponents of the bill included the Kansas Bar Association and the Kansas Bankers Association.

The bill died in committee, but Representative Humphries and Lewis, Chair and Vice Chair of the House Judiciary Committee, later requested the Judicial Council study the bill, study this topic, and help find a solution that balances the needs of principals to retain decision-making authority, while also addressing principal incapacitation and the liability of third parties.

Method of Study

The Guardianship and Conservatorship Advisory Committee (Committee) met four times during 2025 to conduct this study. The Committee reviewed background materials, including: 2023 H.B. 2345, and the written testimony offered by conferees when 2023 H.B. 2345 was heard in the House Judiciary; 2025 H.B. 2144; other states' supported decision-making statutes and summaries by the American Bar Association of other states' statutes relating to supported decision-making; and the Uniform Guardianship, Conservatorship, and Other Protective Proceedings Act and the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act within the context of 2025 H.B. 2359.

The Committee also heard a presentation from invited speakers Dr. Evan Dean and Brad Linnenkamp. Dr. Dean is the Associate Director of Community Services with the University of Kansas (KU) Center on Disabilities and served as the Principal Investigator for a supported

decision-making project from 2019-2021 with KU. Mr. Linnenkamp is a Community Liaison with the KU Center on Disabilities and a self-advocate who uses supported decision-making in his daily life. The Committee also heard comments from Lori Barnes, a parent of a child with mental health issues and Chair of National Alliance on Mental Illness (NAMI) South Central Kansas; Kelly Van Zwoll with the Kansas Bankers Association; and Mike Burgess with the Disability Rights Center.

Discussion

New Guardianship, Conservatorship, and Other Protective Arrangement Statutes (2025 H.B. 2359)

Kansas does not have supported decision-making statutes, although the new guardianship and conservatorship laws contained in 2025 H.B. 2359 (effective January 1, 2026) address supported decision-making. 2025 H.B. 2359 as it was introduced was the product of a four-year study by the Judicial Council Guardianship and Conservatorship Advisory Committee. It enacted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA") and the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act ('UGCOPAA"). 2025 H.B. 2359 was introduced in the House Judiciary Committee on February 7, 2025, and was approved by the Governor on April 10, 2025.

2025 H.B. 2359 was a major update to Kansas guardianship and conservatorship statutes. The legislation contained new concepts the Guardianship and Conservatorship Advisory Committee agreed would improve Kansas guardianship and conservatorship laws. The new concepts included:

- a person-centered philosophy, which requires an individual plan for each person subject to guardianship or conservatorship and using person-centered terminology such as "individual subject to guardianship" rather than "ward" or "incapacitated person";
- a shift of the standard of decision-making to a substituted decision-making standard which requires the guardian or conservator to consider the preferences of the individual; and
- alternatives to guardianship and conservatorship, which encourages the use of less restrictive alternatives as much as possible.

2025 H.B. 2359 first addressed supported decision-making in the definition section when it defined "less restrictive alternative" and "supported decision-making".

"Less restrictive alternative" means:

> "an approach to meeting an individual's needs which restricts fewer rights of the individual than would the appointment of a guardian or conservator. 'Less restrictive alternative' includes supported decision-making, appropriate technological assistance, appointment of a representative payee and appointment of an agent by the individual, including appointment under a power of attorney for healthcare or power of attorney for finances."[1]

The bill also defines "supported decision-making". which means:

> "assistance for one or more persons of an individual's choosing in understanding the nature and consequences of potential personal and financial decisions, which enables the individual to make the decisions, and in communicating a decision once made if consistent with the individual's wishes."[2]

The bill references "supported decision-making" eleven more times in the legislation, referencing the term when discussing what supports or services one can use to help an individual that are lesser than a full guardianship and/or conservatorship.

Auxiliary Aid and Service – K.S.A. 65-3276(h)

Kansas law also recognizes supported decision-making as an "auxiliary aid and service" in K.S.A. 65-3276(h), last updated in 2022. The statute says auxiliary aids and services includes "supported decision-making services, including: the use of a support individual to assist in making medical decisions, communicating information to the individual or ascertaining an individual's wishes; the provision of information to a person designated by the individual consistent with the federal health insurance portability and accountability act and other applicable laws and

[1] H.B. 2359, (2025).
[2] *Id*.

regulations governing the disclosure of health information; if an individual has a court-appointed guardian or other individual responsible for making medical decisions on behalf of the individual, any measures used to ensure that the individual is included in decisions involving the individual's healthcare and that medical decisions are in accordance with the individual's own expressed interests; and any other aid or service that is used to provide information in a format that is easily understandable and accessible to individuals with cognitive, neurological, developmental or intellectual disabilities."[3] The Committee did not discuss whether supported decision-making agreements could be recognized under this law.

2025 Proposed Supported Decision-Making Bill (2025 H.B. 2144)

The Guardianship and Conservatorship Advisory Committee also studied 2025 H.B. 2144, an act enacting the supported decision-making agreements act, introduced in the House Judiciary Committee on January 29, 2025. 2025 H.B. 2144 was very similar to 2023 H.B. 2345. H.B. 2144 included some new provisions and removed a few of the provisions originally in H.B. 2345. In the 2025 legislative session, H.B. 2144 did not have a hearing. The bill is still alive in committee as of publication of this report.

This report limits its discussion of H.B. 2144 to the provisions that were added, removed, or modified from the provisions contained in H.B. 2345.

- In new section 6, H.B. 2144 added a subsection (d) that said, "If the adult who entered the supported decision-making agreement becomes incapacitated such agreement remains valid unless a third party has actual knowledge that the principal is incapacitated."[4]
- In new section 7, subsection (a) was changed to, "A supporter owes the adult a fiduciary duty to act in accordance with the supported decision-making agreement." The language in H.B. 2345 said, "A supporter shall act with the care,

[3] K.S.A. 65-3276(h)(2)(C).
[4] H.B. 2144, (2025).

competence and diligence ordinarily exercised by individuals in similar circumstances."[5]

- In new section 8, subsection (b)(2) was changed to, "declining to comply with an authorization in a supported decision-making agreement if the person is declining based on actual knowledge that the supported decision-making agreement is unauthorized".[6] After subsection 8(b)(2), subsections (A) and (B) were added. Subsection 8(b)(2)(A) & (B) said, "(A) If the financial institution cannot in good faith comply with the limitations set forth in the agreement; and (B) if the person makes, or has actual knowledge that another person has made a report under K.S.A. 39-1402 or 9-1431, and amendments thereto, stating a good faith belief that the adult may be subject to physical or financial abuse, neglect, exploitation or abandonment by the supporter[.]"[7]The language in H.B. 2345 subsection 8(b)(2) said, "declining to comply with an authorization in a supported decision-making agreement if the person is declining based on actual knowledge that the supported decision-making agreement is invalid or has been terminated[.]"[8]

The Guardianship and Conservatorship Advisory Committee reviewed these changes when studying 2023 H.B. 2345 and considered whether to adopt the modified language when they recommended changes to the text of H.B. 2345.

2023 Proposed Supported Decision-Making Bill (2023 H.B. 2345)

When the Committee first met to study this topic, the new guardianship and conservatorship act (H.B. 2359) was still being considered by the Kansas legislature, but the Committee questioned whether the concept of supported decision-making could fall under the "other protective arrangements" umbrella from UGCOPAA. The Committee also questioned whether execution of a power of attorney or a release of information would be sufficient for individuals instead of using a supported decision-making agreement. Similarly, opponents of H.B.

[5] H.B. 2345, (2023).
[6] H.B. 2144, (2025).
[7] *Id*.
[8] H.B. 2345, (2023).

2345 stated that supported decision-making agreements may already be allowed under current Kansas law.

Some Committee members believed that despite the passage of the new guardianship and conservatorship act (H.B. 2359), having supported decision-making legislation would help explain what supported decision-making is, allow for protection against bad actors, and could help protect people who use supported decision-making and institutions like banks. Similarly, proponents of H.B. 2345 believed the bill would allow people needing assistance in making certain decisions to do so within the confines of a supported decision-making agreement. They further thought that such agreements could be drafted narrowly with the principal retaining decision-making authority, unlike other assistance arrangements that Kansas law offers, such as guardianship or powers of attorney. Guests that attended the meetings when the Committee was discussing supported decision-making told the Committee they believed supported decision-making legislation outlined a process for families, and provided a safety mechanism for people who may not be legally competent, but do not otherwise require a full guardianship.

The Committee heard from Kelly Van Zwoll with the Kansas Bankers Association at several meetings. Ms. Van Zwoll told the Committee bankers have been concerned with the bill's allowance of a supporter to access a principal's financial records. She said she would like clarification on what that access means, how online banking would be addressed, who bankers should talk with in the event someone becomes incapacitated, and who within the bank would receive an executed supported decision-making agreement. Ms. Van Zwoll testified as an opponent of H.B. 2345, and she provided feedback to the Guardianship and Conservatorship Committee with proposed changes to the legislation that would address her concerns with the legislation.

The Committee discussed whether additional definitions should be added to H.B. 2345. It explored adding definitions of "access", "financial institution," "obtaining information from a financial institution," "capacity," "fiduciary," and "fiduciary responsibility". The Committee did not want to unintentionally limit the scope of any of these terms, so they decided not to add any of these definitions to the definition section of the legislation.

The Committee did not make any changes to sections 3(a) or 3(b). Section 3(c) prohibits an adult from entering into a supported decision-making agreement if the agreement encroaches on the authority of a guardian or conservator of that adult. The Committee discussed striking or amending that language. A couple members thought that if a guardian was already appointed, the person subject to the guardianship normally would have already been adjudicated as incapacitated, so that person would not have the capacity to execute a supported decision-making agreement. The Committee discussed adding on to the last part of section 3(c) the following language, "…unless the adult has been adjudicated to still have capacity." The Committee also discussed replacing 3(c) with the following language, "An adult shall not enter into a supported decision-making agreement if a guardian or conservator has been appointed." Ultimately, the Committee did not reach a consensus on changes to this section.

In Section 3(d), the Committee questioned how this section would work. One Committee member questioned whether this provision would apply to someone who had a protective or restraining order against them, for example, 25 years ago, or even longer ago. Another Committee member asked who would verify whether a proposed supporter was someone against whom a protective or restraining order had been issued. Other potential changes the Committee discussed were changing the "shall" language to "may," and adding in "substantiated." There was no consensus reached regarding changes to this section.

The Committee thought that sections 4(a)(1), 4(a)(2), and 4(a)(3) did not need any changes. The Committee also thought that section 4(c) did not need any changes.

The Committee did not have changes to sections 4(b)(1) or 4(b)(2) but had a couple comments. The Committee thought that naming an alternate supporter as suggested in 4(b)(1) could be beneficial in the event a supporter is gone for an extended period but questioned how this would be noted in the agreement. The Committee was unsure if naming an alternate supporter would be an addendum to the original agreement or included in the original agreement. Regarding section 4(b)(2), the Committee questioned whether it was a wise idea to allow multiple people to get access to certain types of information, like medical information, and whether it would cause issues with the Health Insurance Portability and Accountability Act

(HIPAA). One Committee member mentioned that only medical entities are subject to HIPAA and if a supporter is not a medical entity, then sharing information would not be not subject to HIPAA.

The Committee recommended several changes to sections five through nine, discussed in the next section.

Recommendation

After reviewing and considering all information presented regarding supported decision-making, the Committee did not reach a consensus as to whether this supported decision-making legislation was needed in Kansas at this time. Some Committee members believed that supported decision-making legislation is needed in Kansas, and others believed that it is not needed for various reasons. Several Committee members thought that before any supported decision-making legislation was enacted by the legislature, the new guardianship/conservatorship act should be given some time to be implemented in Kansas. They thought the least restrictive arrangement standard in the new acts would encompass supported decision-making so more legislation about that topic was unnecessary at this time. Therefore, the Committee agreed to not take a position as to whether supported decision-making legislation should be adopted in Kansas, and chose to defer to the legislature. The Committee believed that if supported decision-making legislation is passed, educating the public about what supported decision-making is and what it does and does not do will be crucial.

Additionally, in the event this supported decision-making legislation passes, the Committee requests the effective date of the legislation be delayed to allow the appropriate Judicial Council committee sufficient time to develop a supported decision-making form.

The Committee was also tasked with providing specific recommendations on how the text of 2023 H.B. 2345 could be updated to address the standard of care, incapacitation, and whether provisions should be added to address third-party liability. The Committee recommends several amendments to the language proposed in H.B. 2345 as shown below.

The Committee does not have any recommended changes to sections 1 through 4 and sections 10 through 12 of the legislation.

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

(1) The agreement is dated and in writing;

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

(3) the agreement has been signed by the principal and each named supporter, including any alternate supporter, **under penalty of perjury;** and ~~the: (A) Signing takes place in the presence of two witnesses who also sign the agreement; or (B) signatures of the principal and each named supporter, including any alternate supporter, are notarized; and~~

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

~~(b) (1) Each witness under subsection (a) shall be an adult who understands the means of communication used by the principal, except, if there is an individual who understands the principal's means of communication present to assist during the execution of the supported decision-making agreement, the witnesses are not required to understand the means of communication used by the principal. (2) A witness under subsection (a) shall not be a supporter named in the supported decision making agreement or an employee or agent of a supporter named in the supported decision-making agreement.~~

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

New Section 6. (a) A supported decision-making agreement may indicate the date it becomes effective and its duration. If the agreement does not

indicate the date it becomes effective, the agreement becomes effective immediately. If the agreement does not indicate its duration, the agreement remains effective until terminated under this section.

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

(c) A termination under this section shall be dated and in writing**, and a termination becomes effective immediately upon execution**. The termination shall be signed by the terminating party.

(d) If the principal who entered the supported decision-making agreement becomes incapacitated, the agreement shall be terminated. A third party is not liable or not subject to a penalty for providing information to a supporter after incapacity unless or until they have actual knowledge that the principal is incapacitated or the agreement has been terminated.

~~(d)~~ **(e)** A principal or supporter terminating all or a portion of a supported decision-making agreement shall notify the other party to the agreement that the agreement has been terminated. Notice shall be given in person, by certified mail or by electronic means. **Lack of notice does not invalidate termination.**

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

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

principal a fiduciary duty to act in accordance with the supported decision-making agreement.

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

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

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

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

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

(c) Accessing or obtaining of financial information is defined as the ability to view, retrieve, or obtain copies of account-related documents, including transaction histories, balance statements, and other financial records associated with an account. Accessing or obtaining financial information does not include access to online banking accounts.

(d) Under subsection (b), a supporter may use the principal's dated consent to assist the principal in obtaining protected health information under the health insurance portability and accountability act of 1996 (public law 104-

191) or educational records under the family educational rights and privacy act of 1974, 20 U.S.C. § 1232g.

(e) A supporter shall not:

(1) Exert undue influence on the principal;

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

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

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

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

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

(1) Keep the information confidential;

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

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

(4) dispose of the information properly when appropriate.

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

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

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

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

(2) declining to comply with an authorization in a supported decision-making agreement if the person is declining based on actual knowledge that the supported decision-making agreement is ~~invalid or has been terminated;~~ **unauthorized:**

(A) If the financial institution cannot in good faith comply with the limitations set forth in the agreement; or

(B) if the person makes, or has actual knowledge that another person has made a report under K.S.A. 39-1402 or 39-1431, and amendments thereto, stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation or abandonment by the supporter; or

(3) declining to comply with an authorization related to healthcare in a supported decision-making agreement, if the person is declining because the

action proposed to be taken under the supported decision-making agreement is contrary to the good faith medical judgment of the person or to a written policy of a healthcare institution that is based on reasons of conscience.

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

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

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

(1) **all adults are assumed to have capacity to manage their affairs as defined in section 2(b) and 2(c);** ~~A decision that a principal is incapable of managing the principal's affairs may not be based on the manner in which the principal communicates with others; and~~

(2) **the act does not preclude the ability of the adult who has entered into such an agreement to act independently of the agreement;**

(3) the manner in which the principal communicates with others is not grounds for deciding that the principal is incapable of managing the principal's affairs; and

(4) execution of a supported decision-making agreement may not be used as evidence for the petition or appointment of a guardianship or conservatorship. ~~a principal is considered to have capacity even if the capacity is achieved by the principal receiving decision-making assistance, unless a court has determined that the principal does not have capacity.~~

Explanation of amendments:

Section 5: The Committee does not think sections 5(a)(1), 5(a)(2), 5(a)(4), and 5(c) need any changes. The Committee recommends changing section 5(a)(3) to make all signatures under penalty of perjury and to eliminate the requirement of two witnesses present for the signing of the supported decision-making agreement. The Committee also recommends sections 5(b)(1) and 5(b)(2) be eliminated since the Committee modified section 5(a)(3) to remove the witness requirement.

Section 6: The Committee does not think sections 6(a), 6(b), and 6(f) need any changes. The Committee recommends changing section 6(c) to address when the termination of an agreement becomes effective. They liked the addition from the new section 6(d) in H.B. 2144, but decided to change that language to address the validity of the agreement if the adult who entered into the agreement becomes incapacitated. They also recommend adding a subsection (1) to new subsection (d) to address the liability of a third party for providing information to a supporter after incapacity. The Committee recommends adding one sentence at the end of the new subsection (e) (which was section 6(d) of H.B. 2345) to provide that lack of notice does not invalidate termination of the supported decision-making agreement.

Section 7: The Committee recommends adopting the proposed language from H.B. 2144 in subsection 7(a). In Committee meetings, Ms. Van Zwoll requested that a definition of access be added to supported decision-making legislation and proposed a definition to the Committee. The language proposed as subsection 7(c) was taken from Ms. Van Zwoll's suggested language.

Section 8: For section 8(a), the Committee recommends the sentence end after "provision of law" as they felt the remainder of the sentence in H.B. 2345 was unnecessary. In section 8(b)(2), the Committee agreed to adopt the additional third-party protection language in subsections 8(b)(2)(A) and (B) from H.B. 2144 with a few modifications. Ms. Van Zwoll suggested that the "and" between subsections 8(b)(2)(A) and 8(b)(2)(B) be modified to an "or" to allow a third party to decline to accept the agreement for any of the reasons listed in the section 8(b).

Section 9: The Committee reviewed Washington's supported decision-making statutes, specifically R.C.W. 11.130.710: Presumption of Capacity, which states:

> "(1) All adults are presumed to be capable of managing their affairs.
>
> "(2) The manner in which an adult communicates with others is not grounds for deciding that the adult is incapable of managing the adult's affairs.
>
> "(3) Execution of a supported decision-making agreement may not be used as evidence for the petition or appointment of guardianship or conservatorship under this chapter, and does not preclude the ability of the adult who has entered into such an agreement to act independently of the agreement."[9]

The Committee recommends replacing section 9(c) of H.B. 2345 with slightly modified language from the Washington statute to address capacity and communication concerns.

[9] R.C.W. 11.130.710

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

SUSAN HUMPHRIES
99TH DISTRICT

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May 31, 2024

Nancy Strouse, Executive Director
Kansas Judicial Council
301 SW 10th Avenue
Suite 140
Topeka, Kansas 66612

Dear Executive Director Strouse:

We respectfully request the Judicial Council study the topic of supported decision-making agreements, which has recently been considered multiple times by the Legislature. We believe the Judicial Council's in-depth consideration of the topic would be appropriate and helpful before the Legislature undertakes additional consideration of the topic.

During the 2024 Legislative Session, the House Committee on Judiciary heard 2023 HB 2345, that would have enacted the Supported Decision-making Agreements Act to provide a statutory framework for adults who want decision-making assistance.

The bill's proponents stated the bill would allow people who need assistance in making certain decisions to do so within the confines of a supported decision-making agreement. Proponents further stated that such agreements could be scoped more narrowly and with the principal retaining decision-making authority, unlike other assistance arrangements available under Kansas law, such as guardianship or power of attorney.

Opponents of the bill stated a supported decision-making agreement may already be allowed under current Kansas law and the differences between such agreements and a guardianship plan may create confusion due to different parties having the decision-making authority under each. Opponents also expressed concern with addressing incapacitation of the principal and with third-party liability.

Due to the number of concerns raised in the hearing, we ask the Judicial Council to study the proposed text of HB 2345 and the testimony submitted for the bill. If the Judicial Council agrees to this study, we request it consider whether these agreements could be executed or recognized under Kansas law or court rules. We further request the Judicial Council provide specific recommendations on how the text could be updated to address the standard of care, incapacitation, and whether provisions should be added to address third-party liability.

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We want to find a solution that balances the needs of principals to retain decision-making authority of their own choosing, while also addressing principal incapacitation and the liability of third parties, such as banks or other fiduciaries.

Please let us know if we can provide further information or answer any questions regarding this request.

Sincerely,

Susan Humphries

Representative Susan Humphries
Chairperson, House Committee on Judiciary

Bob Lewis

Representative Bob Lewis
Vice-chairperson, House Committee
on Judiciary

Session of 2023

HOUSE BILL No. 2345

By Committee on Federal and State Affairs

2-7

AN ACT enacting the supported decision-making agreements act; relating to decision-making assistance for adults; amending K.S.A. 2022 Supp. 21-5417 and repealing the existing section.

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

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

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

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

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

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

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

(3) handling personal, healthcare and financial matters that arise in the course of daily living;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) nurse visitations and attendant care;

(4) provision of healthcare;

(5) physical and psychosocial assessments;

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

(7) legal assessments and advice;

(8) education and educational assessments and advice;

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

(10) care planning; and

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

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

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

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

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

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

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

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

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

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

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

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

(2) describe the decision-making assistance that each person acting as a supporter may provide the principal; and

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

(b) A supported decision-making agreement may:

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

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

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

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

(1) The agreement is dated and in writing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the consequences of decisions;

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

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

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

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

(d) A supporter shall not:

(1) Exert undue influence on the principal;

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

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

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

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

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

(1) Keep the information confidential;

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

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

(4) dispose of the information properly when appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 10. K.S.A. 2022 Supp. 21-5417 is hereby amended to read as follows: 21-5417. (a) Mistreatment of a dependent adult or an elder person is knowingly committing one or more of the following acts:

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

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

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

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

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

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

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

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

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

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

(1) (A) Subsection (a)(1) is a severity level 5, person felony, except as provided in subsection (b)(1)(B);

(B) subsection (a)(1) is a severity level 2, person felony, when the victim is a dependent adult who is a resident of an adult care home, as described in subsection (e)(2)(A), during the commission of the offense;

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

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

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

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

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

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

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

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

(3) (A) subsection (a)(3) is a severity level 8, person felony, except as provided in subsection (b)(3)(B); and

(B) subsection (a)(3) is a severity level 5, person felony, when the victim is a dependent adult who is a resident of an adult care home, as described in subsection (e)(2)(A), during the commission of the offense.

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

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

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

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

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

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

(e) As used in this section:

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

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

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

(B) adult cared for in a private residence;

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

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

(E) individual with a developmental disability receiving services provided by a community service provider as provided in the

developmental disability reform act; or

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

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

(f) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2022 Supp. 21-6418, and amendments thereto.

Sec. 11. K.S.A. 2022 Supp. 21-5417 is hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

Session of 2025

HOUSE BILL No. 2144

By Representative Rhiley

1-29

AN ACT enacting the supported decision-making agreements act; relating to decision-making assistance for adults; amending K.S.A. 21-5417 and repealing the existing section.

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

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

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

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

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

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

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

(3) handling personal, healthcare and financial matters that arise in the course of daily living;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) nurse visitations and attendant care;

(4) provision of healthcare;

(5) physical and psychosocial assessments;

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

(7) legal assessments and advice;

(8) education and educational assessments and advice;

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

(10) care planning; and

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

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

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

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

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

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

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

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

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

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

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

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

(2) describe the decision-making assistance that each person acting as a supporter may provide the principal; and

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

(b) A supported decision-making agreement may:

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

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

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

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

(1) The agreement is dated and in writing;

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

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

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

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

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

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

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

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

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

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

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

(d) If the adult who entered the supported decision-making agreement becomes incapacitated such agreement remains valid unless a third party has actual knowledge that the principal is incapacitated.

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

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

New Sec. 7. (a) A supporter owes the adult a fiduciary duty to act in accordance with the supported decision-making agreement.

(b) Except as limited by a supported decision-making agreement, a supporter may provide to a principal the following decision-making

assistance about the principal's affairs:

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

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

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

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

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

(d) A supporter shall not:

(1) Exert undue influence on the principal;

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

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

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

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

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

(1) Keep the information confidential;

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

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

(4) dispose of the information properly when appropriate.

(f) A supporter acting in good faith in accordance with the provisions of this act shall not be liable to either the principal or any third party for any injuries, damages or other losses arising from a decision made by a

principal in which the supporter assisted the principal or was otherwise involved.

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

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

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

(2) declining to comply with an authorization in a supported decision-making agreement if the person is declining based on actual knowledge that the supported decision-making agreement is unauthorized:

(A) If the financial institution cannot in good faith comply with the limitations set forth in the agreement; and

(B) if the person makes, or has actual knowledge that another person has made a report under K.S.A. 39-1402 or 39-1431, and amendments thereto, stating a good faith belief that the adult may be subject to physical or financial abuse, neglect, exploitation or abandonment by the supporter; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) (A) Subsection (a)(1) is a severity level 5, person felony, except as provided in subsection (b)(1)(B);

(B) subsection (a)(1) is a severity level 2, person felony, when the victim is a dependent adult who is a resident of an adult care home, as described in subsection (e)(2)(A), during the commission of the offense;

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

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

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

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

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

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

felony;

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

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

(3) (A) subsection (a)(3) is a severity level 8, person felony, except as provided in subsection (b)(3)(B); and

(B) subsection (a)(3) is a severity level 5, person felony, when the victim is a dependent adult who is a resident of an adult care home, as described in subsection (e)(2)(A), during the commission of the offense.

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

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

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

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

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

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

(e) As used in this section:

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

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

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

(B) adult cared for in a private residence;

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

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

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

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

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

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

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

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.