

HOUSE BILL No. 2250

By Committee on Judiciary

2-1

1 AN ACT enacting the supported decision-making agreements act;
2 providing requirements for decision-making assistance for adults;
3 amending K.S.A. 2022 Supp. 21-5417 and repealing the existing
4 section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (3) nurse visitations and attendant care;

25 (4) provision of healthcare;

26 (5) physical and psychosocial assessments;

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

29 (7) legal assessments and advice;

30 (8) education and educational assessments and advice;

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

34 (10) care planning; and

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

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

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

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

1 decision-making agreement allows an adult to receive decision-making
 2 assistance with the adult's affairs from one or more other adults.

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (d) Nothing in this act shall:

37 (1) Require a person to have a written supported decision-making
 38 agreement in order to engage in formal or informal supported decision-
 39 making; or

40 (2) prevent a person from providing evidence that a supported
 41 decision-making agreement was used as an alternative to guardianship
 42 during the course of a guardianship proceeding.

43 New Sec. 5. (a) A supported decision-making agreement shall be

1 valid if:

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (e) If a portion of a supported decision-making agreement is
43 terminated under this section and the termination is consistent with this

1 section, the remainder of the agreement remains in effect.

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

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

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

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

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

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

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

26 (d) If a supporter uses financial information obtained pursuant to this
27 act, a financial institution may consider that person to have obtained
28 access authority pursuant to the electronic fund transfer act, 15 U.S.C. §
29 1693 et seq. and regulation E, 12 C.F.R. § 1005. Nothing in this section
30 shall be construed to relieve a supporter who misrepresents the access
31 authority from criminal liability.

32 (e) A supporter shall not:

33 (1) Exert undue influence on the principal;

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

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

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

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

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

3 (1) Keep the information confidential;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (e) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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