

HOUSE BILL No. 2609

By Committee on Judiciary

Requested by Morgan Shipman on behalf of the Self Advocate Coalition of Kansas

2-2

AN ACT enacting the supported decision-making agreements act; relating to decision-making assistance for adults; allowing an adult to receive decision-making assistance with the adult's affairs from one or more other adults; providing requirements for decision-making agreements and duties related thereto; including violations of this act in the crime of mistreatment of a dependent adult or an elder person; amending K.S.A. 2025 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

1 communicate an informed decision.

2 (d) "Conservator" means a person appointed as a conservator under
3 the Kansas uniform guardianship, conservatorship and other protective
4 arrangements act, K.S.A. 59-30,101 et seq., and amendments thereto, or a
5 similar law of another state.

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

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

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

11 (h) "Guardian" means a person appointed as a guardian under the
12 Kansas uniform guardianship, conservatorship and other protective
13 arrangements act, K.S.A. 59-30,101 et seq., and amendments thereto, or a
14 similar law of another state.

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

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

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

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

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

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

30 (3) nurse visitations and attendant care;

31 (4) provision of healthcare;

32 (5) physical and psychosocial assessments;

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

35 (7) legal assessments and advice;

36 (8) education and educational assessments and advice;

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

40 (10) care planning; and

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

43 (m) "Supported decision-making agreement" means an agreement

1 authorized under section 3, and amendments thereto.

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

5 New Sec. 3. (a) Except as provided in subsections (b) and (c), an
6 adult may enter into a supported decision-making agreement. A supported
7 decision-making agreement allows an adult to receive decision-making
8 assistance with the adult's affairs from one or more other adults.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (1) The agreement is dated and in writing;
- 2 (2) the agreement satisfies the requirements of sections 3 and 4, and
- 3 amendments thereto;
- 4 (3) the agreement has been signed by the principal and each named
- 5 supporter, including any alternate supporter, under penalty of perjury; and
- 6 (4) when the principal has a guardian or conservator, the principal has
- 7 notified the guardian or conservator of the agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (e) A supporter shall not:

26 (1) Exert undue influence on the principal;

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

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

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

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

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

39 (1) Keep the information confidential;

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

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

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

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

7 New Sec. 8. (a) A person shall recognize a decision or request made
8 or communicated with the decision-making assistance of a supporter under
9 the supported decision-making agreements act as the decision or request of
10 the principal for the purposes of a provision of law.

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

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

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

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

25 (B) the person makes or has actual knowledge that another person has
26 made a report under K.S.A. 9-1431 or 39-1402, and amendments thereto,
27 stating a good faith belief that the principal may be subject to physical or
28 financial abuse, neglect, exploitation or abandonment by the supporter; or

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

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

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

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

42 (1) All adults are assumed to have capacity to manage their affairs as
43 defined in section 2(b) and (c), and amendments thereto;

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

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

6 (4) execution of a supported decision-making agreement may not be
7 used as evidence for the petition or appointment of a guardianship or
8 conservatorship.

9 Sec. 10. K.S.A. 2025 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 Kansas uniform guardianship, conservatorship
26 and other protective arrangements act, K.S.A. 59-30,101 through 59-
27 30,212, and amendments thereto; or

28 *(E) a violation of the supported decision-making agreements act,*
29 *sections 1 through 9, and amendments thereto; or*

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

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

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

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

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

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

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

1 person felony;

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (e) As used in this section:

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

1 dependent adult or elder person resided in at the time of the transaction.

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

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

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

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

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

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

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

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

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

25 Sec. 11. K.S.A. 2025 Supp. 21-5417 is hereby repealed.

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