



LAURA KELLY, Governor • KATHY KECK, Chairperson • STEVE GIEBER, Executive Director

*"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"*

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## Please Join the Council in Supporting HB 2034 *Supported Decision-Making*

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### *What is Supported Decision-Making?*

- This bill provides equal access to decision-making for adults with disabilities, and the aging, by authorizing written agreements between an adult and supporters which describe a process for making life decisions; including decisions related to a person's finances, where and with whom the person wants to live, the services, supports, and medical care the person wants to receive, and where the person wants to work. Supported Decision-Making Agreements would be a legal alternative to full or partial guardianship. This alternative actively engages people who need supports in creating the decision-making structures and tools that serve their lives and autonomy. This bill formalizes a support process, describes eligible supporters, creates a blueprint for valid written agreements, and provides safeguards to protect the well-being and independence of adults with disabilities and the aging.
- Supported Decision-Making (SDM) is a constitutional and civil rights idea which recognizes that full guardianship is often not the least-restrictive alternative for adults who experience intellectual or developmental disabilities, communication impairment, or dementia. All people use support for making the important decisions of life; needing more, different, or structured help with getting information, setting goals, weighing options, exploring outcomes does not justify unequal treatment and removal of all rights to make a decision.
- Supported Decision-Making is a means to enable people with disabilities and the aging to remain at the center of decision-making processes in their lives.

### *Why is Supported Decision-making important?*

- People with disabilities face long-standing biases about perceived abilities, including decision-making. Most people can make at least some decisions about their lives, and it is their right to do so.
- Decision-making is a learned skill that requires encouragement and practice. However, in supporting people with disabilities, and the aging, professionals and loved ones often use substitute decision-making rather than supporting the person to make their own decisions. With the best intentions, we think and speak for the person rather than thinking with the person and encouraging them to speak for themselves.
- Research shows us that maximizing choice and control (self-determination) in a person's life increases positive outcomes in health, happiness, and safety through stronger relationships and better ability to recognize and resist abuse.
- Without Supported Decision-making, many individuals and their families face a false choice between no assistance in making decisions or seeking conservatorship. Conservatorship is not appropriate for everyone; individuals and families need more options. For people who are not appropriate for conservatorship because they CAN make at least some of their own decisions, Supported Decision-Making can help meet their needs

### ***How will it work?***

- Supported decision-making empowers people with disabilities and the aging to use available support to make their own choices so they can live more independent and self-directed lives. So, how does this work? People who want to use supported decision-making will:
  1. Think about the type of decisions they need help making.
  2. Choose people they trust to help them make decisions.
  3. Ask these individuals to be their supporters.
  4. Complete a written plan called a supported decision-making agreement
  5. Provide the agreement to people like doctors and service providers
- Then, when people need to make a decision and want some extra support, they can call upon their supporters to help them through the process. Supported decision-making agreements are an excellent self-advocacy tool that people with disabilities and the aging can use to advocate for the right to make their own decisions, and to have the support they need to make those decisions. This process can be used to help plan for future decision-making and avoid the need for a restrictive guardianship.

### ***Starting places and shared understanding:***

- People exercise their legal capacity in different ways and may need a variety of supports to do so. These supports can take different forms including communication aids and devices, or personal supports like a supporter or support network to assist in making decisions.
- Most people use informal support in making personal decisions. We draw on the support of family and friends in managing decision-making with financial institutions or doctors, for example. All people make decisions, as adults, interdependently and we have a right to make decisions and enter agreements by ourselves, as long as we appreciate and understand the nature and consequences of these decisions.
- However, some people are not recognized as fully capable to make decisions by those with whom they are seeking to establish formal contracts or agreements, precisely because they need others to assist them. In order to prevent substitute decision-making from being imposed, their supporters need recognition as fully appointed to participate in the decision-making process, not as substitute decision-makers, but as supporters. Legislation is needed that guides how such appointments are to be made and how the role of supporters is to be safeguarded and regulated.
- For some people who cannot communicate in ways that most others understand, decision-making supporters may be required to interpret personal preferences as the basis for direction in decision-making. Their preferences and will, as understood by those closest to them, is the basis on which they will exercise their full legal capacity.