

2019 -- S 0031 SUBSTITUTE A

LC000076/SUB A/2

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

**RELATING TO PROBATE PRACTICE AND PROCEDURE -- SUPPORTED DECISION-
MAKING ACT**

Introduced By: Senators Satchell, Seveney, Lawson, Nesselbush, and Cano

Date Introduced: January 15, 2019

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 66.13

4 SUPPORTED DECISION-MAKING ACT

5 **42-66.13-1. Short title.**

6 This chapter shall be known and may be cited as the "Supported Decision-Making Act."

7 **42-66.13-2. Purpose.**

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

9 (1) Provide assistance in gathering and assessing information, making informed
10 decisions, and communicating decisions for adults who would benefit from decision-making
11 assistance;

12 (2) Give supporters legal status to be with the adult and participate in discussions with
13 others when the adult is making decisions or attempting to obtain information;

14 (3) Enable supporters to assist in making and communicating decisions for the adult but
15 not substitute as the decision maker for that adult; and

16 (4) Establish the use of supported decision-making as an alternative to guardianship.

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

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

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

5 (3) The values, beliefs, wishes, cultural norms, and traditions that adults hold, should be
6 respected in supporting adults to manage their affairs.

7 **42-66.13-3. Definitions.**

8 For the purposes of this chapter:

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

10 (2) "Affairs" means personal, health care, and matters arising in the course of activities of
11 daily living and including those health care and personal affairs in which adults make their own
12 health care decisions, including monitoring their own health; obtaining, scheduling, and
13 coordinating health and support services; understanding health care information and options; and
14 making personal decisions, including those to provide for their own care and comfort.

15 (3) "Disability" means a physical or mental impairment that substantially limits one or
16 more major life activities of a person.

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

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

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

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

27 (8) "Supported decision-making" means a process of supporting and accommodating an
28 adult to enable the adult to make life decisions, including decisions related to where the adult
29 wants to live, the services, supports, and medical care the adult wants to receive, whom the adult
30 wants to live with, where the adult wants to work, without impeding the self-determination of the
31 adult.

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

34 (10) "Supporter" means a person who is named in a supported decision-making

1 agreement and is not prohibited from acting pursuant to § 42-66.13-6(b).

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

5 (i) Homemaker-type services, including house repair, home cleaning, laundry, shopping,
6 and meal-provision;

7 (ii) Companion-type services, including transportation, escort, and facilitation of written,
8 oral, and electronic communication;

9 (iii) Visiting nurse and attendant care;

10 (iv) Health care provision;

11 (v) Physical and psychosocial assessments;

12 (vi) Legal assessments and advisement;

13 (vii) Education and educational assessment and advisement;

14 (viii) Hands-on treatment or care, including assistance with activities of daily living such
15 as bathing, dressing, eating, range of motion, toileting, transferring, and ambulation;

16 (ix) Care planning; and

17 (x) Other services needed to maintain the independence of an adult.

18 **42-66.13-4. Presumption of capacity.**

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

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

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

26 **42-66.13-5. Supported decision-making agreements.**

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

28 (1) Designation of at least one supporter;

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

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

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

32 (i) Designation of more than one supporter;

33 (ii) Provision for an alternate to act in the place of a supporter in such circumstances as
34 may be specified in the agreement; and

1 (iii) Authorization for a supporter to share information with any other supporter named in
2 the agreement, as a supporter believes is necessary.

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

4 (1) The agreement is in a writing that contains the elements of the form contained in §
5 42-66.13-10;

6 (2) The agreement is dated; and

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

9 (d) The two (2) adult witnesses required by subsection (c)(3) of this section may not be
10 any of the following:

11 (1) A supporter for the principal;

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

14 (3) A paid provider of services to the principal; and

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

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

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

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

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

23 (f) A supported decision-making agreement may authorize a supporter to assist the
24 principal to decide whether to give or refuse consent to a life sustaining procedure pursuant to the
25 provisions of chapters 4.10 and 4.11 of title 23.

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

28 **42-66.13-6. Supporters.**

29 (a) Except as otherwise provided by a supported decision-making agreement, a supporter
30 may do all of the following:

31 (1) Assist the principal in understanding information, options, responsibilities, and
32 consequences of the principal's life decisions, including those decisions relating to the principal's
33 affairs or support services;

34 (2) Help the principal access, obtain, and understand any information that is relevant to

1 any given life decision, including medical, psychological, or educational decisions, or any
2 treatment records or records necessary to manage the principal's affairs or support services;

3 (3) Assist the principal in finding, obtaining, making appointments for, and implementing
4 the principal's support services or plans for support services;

5 (4) Help the principal monitor information about the principal's affairs or support
6 services, including keeping track of future necessary or recommended services; and

7 (5) Ascertain the wishes and decisions of the principal, assist in communicating those
8 wishes and decisions to other persons, and advocate to ensure that the wishes and decisions of the
9 principal are implemented.

10 (b) Any of the following are disqualified from acting as a supporter:

11 (1) A person who is an employer or employee of the principal, unless the person is an
12 immediate family member of the principal;

13 (2) A person directly providing paid support services to the principal, unless the person is
14 an immediate family member of the principal; and

15 (3) An individual against whom the principal has obtained an order of protection from
16 abuse or an individual who is the subject of a civil or criminal order prohibiting contact with the
17 principal.

18 (c) A supporter shall act with the care, competence, and diligence ordinarily exercised by
19 individuals in similar circumstances, with due regard either to the possession of, or lack of,
20 special skills or expertise.

21 **42-66.13-7. Recognition of supporters.**

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

26 **42-66.13-8. Access to information.**

27 (a) A supporter may assist the principal with obtaining any information to which the
28 principal is entitled, including, with a signed and dated specific consent, protected health
29 information under the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-
30 191], educational records under the Family Educational Rights and Privacy Act of 1974 [20
31 U.S.C. § 1232g], or information protected by 42 U.S.C.A. § 290dd-2, 42 C.F.R Part 2.

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

1 **42-66.13 -9. Reporting of suspected abuse, neglect, or exploitation.**

2 If a person who receives a copy of a supported decision-making agreement or is aware of
3 the existence of a supported decision-making agreement has cause to believe that the principal,
4 who is an adult with a developmental disability or an elder, is being abused, neglected, or
5 exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation
6 pursuant to §§ 40.1-27-02, and 42-66-8.

7 **42-66.13-10. Form of supported decision-making agreement.**

8 A supported decision-making agreement may be in any form not inconsistent with the
9 following form and the other requirements of this chapter. Use of the following form is presumed
10 to meet statutory provisions.

11 SUPPORTED DECISION-MAKING AGREEMENT

12 Appointment of Supporter

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

14 I agree and designate that:

15 Name:.....

16 Address:

17 Phone Number:

18 E-mail Address:

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

21 Y/N Obtaining food, clothing, and shelter

22 Y/N Taking care of my health

23 Y/N Other (specify):

24 _____
25 _____

26 I agree and designate that:

27 Name:

28 Address:

29 Phone Number:.....

30 E-mail Address:

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

33 Y/N Obtaining food, clothing, and shelter

34 Y/N Taking care of my physical health

1 Y/N Other (specify):

2 _____
3 _____

4 My supporter(s) is (are) not allowed to make decisions for me. To help me with my decisions, my
5 supporter(s) may:

6 (1) Help me access, collect, or obtain information that is relevant to a decision, including
7 medical, psychological, educational, or treatment records;

8 (2) Help me gather and complete appropriate authorizations and releases;

9 (3) Help me understand my options so I can make an informed decision; and

10 (4) Help me communicate my decision to appropriate persons.

11 Effective Date of Supported Decision-Making Agreement

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

15 Signed thisday of, 20.....

16 Consent of Supporter

17 I, (name of supporter), consent to act as a supporter under this agreement,
18 and acknowledge my responsibilities under chapter 66.13 of title 42.

19 _____

20 (Signature of supporter) _____ (Printed name of supporter)

21 My relationship to the principal is:

22 I, (Name of supporter), consent to act as a supporter under this
23 agreement, and acknowledge my responsibilities under chapter 66.13 of title 42.

24 _____

25 (Signature of supporter) _____ (Printed name of supporter)

26 My relationship to the principal is:

27 Consent of the Principal

28 _____

29 (My signature) _____ (My printed name)

30 Witnesses or Notary

31 _____

32 (Witness 1 signature) _____ (Printed name of witness 1)

33 _____

34 (Witness 2 signature) _____ (Printed name of witness 2)

1 Or
2 State of
3 County of
4 This document was acknowledged before me on (date) by
5 and
6 (Name of adult with a disability) (Name of supporter)
7
8 (Signature of notarial officer)
9 (Seal, if any, of notary)
10
11 (Printed name)
12 My commission expires:

13 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PROBATE PRACTICE AND PROCEDURE -- SUPPORTED DECISION-
MAKING ACT

- 1 This act would establish the supported decision-making act as a less restrictive alternative
- 2 to guardianship.
- 3 This act would take effect upon passage.

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