

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 21-0323.01 Shelby Ross x4510

SENATE BILL 21-075

SENATE SPONSORSHIP

Gardner and Ginal, Bridges, Buckner, Cooke, Danielson, Fields, Garcia, Gonzales, Hansen, Hisey, Holbert, Jaquez Lewis, Kirkmeyer, Kolker, Lee, Liston, Lundeen, Moreno, Pettersen, Priola, Rankin, Rodriguez, Simpson, Smallwood, Sonnenberg, Story, Winter, Woodward, Zenzinger

HOUSE SPONSORSHIP

Tipper and Young,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING SUPPORTED DECISION-MAKING AGREEMENTS FOR**
102 **ADULTS WITH DISABILITIES, AND, IN CONNECTION THEREWITH,**
103 **AUTHORIZING SUCH AGREEMENTS AS AN ALTERNATIVE FOR OR**
104 **SUPPLEMENT TO A GUARDIANSHIP.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill allows an adult with a disability (adult) to enter into a supported decision-making agreement (agreement) with a member of the supportive community. Under the agreement, the adult authorizes the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
March 10, 2021

SENATE
Amended 2nd Reading
March 9, 2021

member of the supportive community to do any of the following:

- Provide supported decision-making, including assistance in understanding the options, responsibilities, and consequences of the adult's life decisions, without making those decisions on behalf of the adult;
- Assist the adult in accessing, collecting, obtaining, and understanding information that is relevant to a given life decision from any person; and
- Assist the adult in communicating the adult's decisions to appropriate persons when expressly authorized by the adult.

The agreement may be in any form but is only valid if it contains certain information and is signed by the adult and the member of the supportive community in the presence of 2 or more attesting witnesses who are 18 years of age or older, or a notary public.

The bill requires any person who receives the original or a copy of the agreement to rely on the agreement. A person is not subject to criminal and civil liability and does not engage in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on an agreement.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 8 to article
3 14 of title 15 as follows:

4 PART 8

5 SUPPORTED DECISION-MAKING AGREEMENT FOR
6 ADULTS WITH A DISABILITY

7 **15-14-801. Legislative declaration.** (1) THE GENERAL ASSEMBLY
8 FINDS AND DECLARES THAT:

9 (a) GUARDIANSHIP CONSTITUTES ONE OF THE MOST RESTRICTIVE
10 OPTIONS AVAILABLE TO ADULTS WITH DISABILITIES AND THEIR FAMILIES;

11 (b) GUARDIANSHIP SHOULD BE EMPLOYED ONLY IN THE MOST
12 EXTREME OF CIRCUMSTANCES FOR AN ADULT WITH DISABILITIES;

13 (c) ADULTS WITH DISABILITIES ARE PRESUMED COMPETENT AND
14 HAVE THE CAPACITY TO FACILITATE THE EXERCISE OF DECISIONS

1 REGARDING THEIR DAY-TO-DAY HEALTH, SAFETY, WELFARE, OR FINANCIAL
2 AFFAIRS, UNLESS OTHERWISE DETERMINED THROUGH LEGAL PROCEEDINGS;

3 (d) SUPPORTED DECISION-MAKING, AS DEFINED IN SECTION
4 15-14-802 (5), OFFERS ADULTS WITH DISABILITIES A VOLUNTARY, LESS
5 RESTRICTIVE METHOD OF DECISION-MAKING THAT CAN ALSO BE USED TO
6 ENHANCE AN EXISTING GUARDIANSHIP OR POWER OF ATTORNEY;

7 (e) SUPPORTED DECISION-MAKING SUPPORTS ADULTS WITH
8 DISABILITIES IN MAINTAINING DECISION-MAKING AUTHORITY OVER THEIR
9 OWN LIVES WHILE ALSO ENCOURAGING THESE ADULTS TO CREATE
10 SUPPORTIVE COMMUNITIES, THROUGH SUPPORTED DECISION-MAKING
11 TEAMS, THAT CAN HELP THE ADULTS WITH DISABILITIES MAKE INFORMED
12 DECISIONS;

13 (f) ADULTS WITH DISABILITIES SHOULD HAVE ACCESS TO
14 OPPORTUNITIES TO EXPERIENCE AND PRACTICE DECISION-MAKING SKILLS;

15 (g) ADULTS WITH DISABILITIES WHO DO NOT HAVE A GUARDIAN
16 HAVE A RIGHT TO INDEPENDENTLY MAKE ANY DECISION WITHOUT ANY
17 MEMBER OF THE SUPPORTIVE COMMUNITY, REGARDLESS OF HAVING
18 ENTERED INTO A SUPPORTED DECISION-MAKING AGREEMENT OR PROCESS;

19 AND

20 (h) ADULTS WITH DISABILITIES SHOULD HAVE A VARIETY OF
21 FORMAL AND INFORMAL PROCESSES AVAILABLE TO MAKE DECISIONS AND
22 PREFERENCES OF CHOICES, INCLUDING BUT NOT LIMITED TO MEDICAL AND
23 FIDUCIARY POWERS OF ATTORNEY, GUARDIANSHIP, LIMITED
24 GUARDIANSHIP, RELEASE OF INFORMATION FORMS, AND REPRESENTATIVE
25 PAYEES.

26 **15-14-802. Definitions.** AS USED IN THIS PART 8, UNLESS THE
27 CONTEXT OTHERWISE REQUIRES:

1 (1) "ADULT" MEANS AN INDIVIDUAL WHO IS EIGHTEEN YEARS OF
2 AGE OR OLDER, OR AN EMANCIPATED MINOR.

3 (2) "ASSIST" MEANS HELPING AN ADULT WITH A DISABILITY WEIGH
4 THE PROS AND CONS OF A DECISION AND UNDERSTAND THE POSSIBLE
5 OUTCOMES OF MAKING SUCH A DECISION.

6 (3) "DISABILITY" MEANS A PHYSICAL OR MENTAL IMPAIRMENT
7 THAT SUBSTANTIALLY LIMITS ONE OR MORE MAJOR LIFE ACTIVITIES OR A
8 RECORD OF SUCH AN IMPAIRMENT.

9 (4) "MEMBER OF THE SUPPORTIVE COMMUNITY" MEANS A PERSON
10 WHOM THE ADULT HAS IDENTIFIED, WHOM THE ADULT TRUSTS TO ENGAGE
11 IN THE SUPPORTED DECISION-MAKING PROCESS, AND WHO UNDERSTANDS
12 THE ADULT'S DESIRES AND PERSONAL VALUES.

13 (5) "SUPPORTED DECISION-MAKING" MEANS A PROCESS IN WHICH
14 AN ADULT WITH A DISABILITY HAS MADE OR IS MAKING DECISIONS BY
15 USING FRIENDS, FAMILY MEMBERS, PROFESSIONALS, AND OTHER PEOPLE
16 THE ADULT WITH A DISABILITY TRUSTS TO:

- 17 (a) HELP UNDERSTAND THE ISSUES AND CHOICES;
- 18 (b) ANSWER QUESTIONS;
- 19 (c) PROVIDE EXPLANATIONS IN A LANGUAGE THE ADULT WITH A
20 DISABILITY UNDERSTANDS;
- 21 (d) COMMUNICATE THE ADULT WITH A DISABILITY'S DECISION TO
22 OTHERS, IF NECESSARY; OR
- 23 (e) FACILITATE THE EXERCISE OF DECISIONS REGARDING THE
24 ADULT WITH A DISABILITY'S DAY-TO-DAY HEALTH, SAFETY, WELFARE, OR
25 FINANCIAL AFFAIRS.

26 (6) "SUPPORTED DECISION-MAKING AGREEMENT" OR
27 "AGREEMENT" MEANS A VOLUNTARY AGREEMENT ENTERED INTO

1 PURSUANT TO THIS PART 8 BETWEEN AN ADULT WITH A DISABILITY AND A
2 MEMBER OF THE SUPPORTIVE COMMUNITY. ==

3 **15-14-803. Supported decision-making agreement - term.**

4 (1) AN ADULT WITH A DISABILITY MAY VOLUNTARILY, WITHOUT UNDUE
5 INFLUENCE OR COERCION, ENTER INTO A SUPPORTED DECISION-MAKING
6 AGREEMENT WITH A MEMBER OF THE SUPPORTIVE COMMUNITY. THE
7 SUPPORTED DECISION-MAKING AGREEMENT DOES NOT IMPACT THE
8 DECISION-MAKING AUTHORITY GRANTED TO A GUARDIAN PURSUANT TO A
9 COURT-ORDERED GUARDIANSHIP. UNDER THE AGREEMENT, THE ADULT
10 WITH A DISABILITY AUTHORIZES THE MEMBER OF THE SUPPORTIVE
11 COMMUNITY TO DO ANY OR ALL OF THE FOLLOWING:

12 (a) PROVIDE SUPPORTED DECISION-MAKING, INCLUDING
13 ASSISTANCE IN UNDERSTANDING THE OPTIONS, RESPONSIBILITIES, AND
14 CONSEQUENCES OF THE ADULT'S LIFE DECISIONS, WITHOUT MAKING THOSE
15 DECISIONS ON BEHALF OF THE ADULT WITH A DISABILITY;

16 (b) PURSUANT TO SECTION 15-14-804, ASSIST THE ADULT WITH A
17 DISABILITY IN ACCESSING, COLLECTING, OBTAINING, AND UNDERSTANDING
18 INFORMATION THAT IS RELEVANT TO A GIVEN LIFE DECISION FROM ANY
19 PERSON, INCLUDING BUT NOT LIMITED TO MEDICAL, PSYCHOLOGICAL,
20 FINANCIAL, EDUCATIONAL, OCCUPATIONAL, AND SOCIAL DECISIONS;
21 TREATMENT RECORDS; HOW AND IN WHAT RELATIONSHIPS THE ADULT
22 WITH A DISABILITY CHOOSES TO ENGAGE; AND INFORMATION ABOUT HOW
23 A SUPPORTIVE COMMUNITY IS CHOSEN; OR

24 (c) ASSIST THE ADULT WITH A DISABILITY IN COMMUNICATING THE
25 ADULT'S DECISIONS TO APPROPRIATE PERSONS WHEN EXPRESSLY
26 AUTHORIZED BY THE ADULT WITH A DISABILITY.

27 (2) (a) THE SUPPORTED DECISION-MAKING AGREEMENT IS

1 EFFECTIVE UNTIL TERMINATED BY EITHER THE ADULT WITH A DISABILITY
2 OR THE MEMBER OF THE SUPPORTIVE COMMUNITY, OR BY THE TERMS OF
3 THE AGREEMENT. ANY PARTY MAY CHOOSE TO TERMINATE THE
4 AGREEMENT AT ANY POINT BY PROVIDING WRITTEN OR VERBAL NOTICE OF
5 THE TERMINATION.

6 (b) THE SUPPORTED DECISION-MAKING AGREEMENT IS
7 TERMINATED IF:

8 (I) ADULT PROTECTIVE SERVICES FINDS THAT THE ADULT WITH A
9 DISABILITY HAS BEEN MISTREATED, AS DEFINED IN SECTION 18-6.5-102
10 (10.5), BY THE MEMBER OF THE SUPPORTIVE COMMUNITY;

11 (II) THE MEMBER OF THE SUPPORTIVE COMMUNITY IS:

12 (A) SUBSTANTIATED IN A CASE OF MISTREATMENT OF THE ADULT
13 WITH A DISABILITY, ANY OTHER PERSON WITH A DISABILITY, OR ANY
14 AT-RISK PERSON, AS DEFINED IN SECTION 18-6.5-102 (4.5);

15 (B) CONVICTED OF A CRIME AGAINST AN AT-RISK PERSON
16 PURSUANT TO SECTION 18-6.5-103, OR OTHERWISE INTENTIONALLY
17 CAUSED PHYSICAL HARM TO ANOTHER; OR

18 (C) CONVICTED OF A FINANCIAL CRIME.

19 (3) A SUPPORTED DECISION-MAKING AGREEMENT CANNOT BE USED
20 AS EVIDENCE OF INCAPACITY OF THE ADULT WITH A DISABILITY.

21 **15-14-804. Access to personal information.** (1) THE MEMBER OF
22 THE SUPPORTIVE COMMUNITY IS ONLY AUTHORIZED TO ASSIST THE ADULT
23 WITH A DISABILITY IN ACCESSING, COLLECTING, OR OBTAINING
24 INFORMATION THAT IS RELEVANT TO A DECISION AUTHORIZED PURSUANT
25 TO THE SUPPORTED DECISION-MAKING AGREEMENT.

26 (2) IF THE MEMBER OF THE SUPPORTIVE COMMUNITY ASSISTS THE
27 ADULT WITH A DISABILITY IN ACCESSING, COLLECTING, OR OBTAINING

1 FINANCIAL OR PERSONAL INFORMATION, INCLUDING PROTECTED HEALTH
2 INFORMATION PURSUANT TO THE FEDERAL "HEALTH INSURANCE
3 PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L. 104-191, AS
4 AMENDED, OR EDUCATIONAL RECORDS PURSUANT TO THE FEDERAL
5 "FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974", 20 U.S.C.
6 SEC. 1232g, AS AMENDED, THE MEMBER OF THE SUPPORTIVE COMMUNITY
7 SHALL ENSURE THE INFORMATION IS KEPT PRIVILEGED AND CONFIDENTIAL,
8 AS APPLICABLE, AND IS NOT SUBJECT TO UNAUTHORIZED ACCESS, USE, OR
9 DISCLOSURE.

10 (3) THE EXISTENCE OF A SUPPORTED DECISION-MAKING
11 AGREEMENT DOES NOT PRECLUDE AN ADULT WITH A DISABILITY FROM
12 SEEKING PERSONAL INFORMATION WITHOUT THE ASSISTANCE OF THE
13 MEMBER OF THE SUPPORTIVE COMMUNITY.

14 **15-14-805. Agreement requirements - signature - witnesses or**
15 **notary public.** (1) A SUPPORTED DECISION-MAKING AGREEMENT MAY BE
16 IN ANY FORM BUT IS VALID ONLY IF IT CONTAINS, AT A MINIMUM, THE
17 FOLLOWING:

- 18 (a) THE NAME OF THE ADULT WITH A DISABILITY;
- 19 (b) THE NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS
20 OF THE MEMBER OF THE SUPPORTIVE COMMUNITY, IF APPLICABLE;
- 21 (c) A LIST OF DECISIONS THE MEMBER OF THE SUPPORTIVE
22 COMMUNITY MAY ADVISE THE ADULT WITH A DISABILITY ON;
- 23 (d) A DESCRIPTION OF THE MEMBER OF THE SUPPORTIVE
24 COMMUNITY'S DUTIES, INCLUDING, AT A MINIMUM, THE DUTY TO:
- 25 (I) PROVIDE UNBIASED INFORMATION THAT IS IN THE BEST
26 INTEREST OF THE ADULT WITH A DISABILITY;
- 27 (II) RESPECT THAT THE FINAL AND ULTIMATE DECISION IS THE

1 ADULT WITH THE DISABILITY'S AND NOT THE MEMBER OF THE SUPPORTIVE
2 COMMUNITY'S;

3 (III) NOT COERCE OR MANIPULATE THE ADULT WITH THE
4 DISABILITY INTO MAKING ANY DECISION;

5 (IV) DISCLOSE ANY ACTUAL OR PERCEIVED CONFLICT OF INTEREST;
6 AND

7 (V) PROVIDE THE MOST UP-TO-DATE AND RELEVANT INFORMATION
8 TO THE ADULT WITH THE DISABILITY BASED ON ALL THE AVAILABLE AND
9 KNOWN INFORMATION THE MEMBER OF THE SUPPORTIVE COMMUNITY HAS.

10 (e) A NOTICE THAT ANY MANDATORY REPORTER, AS DESCRIBED IN
11 SECTION 18-6.5-108, WHO IS RELYING ON THE SUPPORTED
12 DECISION-MAKING AGREEMENT AND HAS CAUSE TO BELIEVE THAT THE
13 ADULT WITH A DISABILITY IS BEING MISTREATED, AS DEFINED IN SECTION
14 18-6.5-102 (10.5), BY THE MEMBER OF THE SUPPORTIVE COMMUNITY,
15 SHALL REPORT THE ALLEGED MISTREATMENT TO ADULT PROTECTIVE
16 SERVICES; AND

17 (f) THE DAY, MONTH, AND YEAR THE AGREEMENT WAS ENTERED
18 INTO.

19 (2) A SUPPORTED DECISION-MAKING AGREEMENT MUST BE SIGNED
20 VOLUNTARILY, WITHOUT COERCION OR UNDUE INFLUENCE, BY THE ADULT
21 WITH A DISABILITY AND THE MEMBER OF THE SUPPORTIVE COMMUNITY IN
22 THE PRESENCE OF TWO OR MORE ATTESTING AND DISINTERESTED
23 WITNESSES WHO ARE EIGHTEEN YEARS OF AGE OR OLDER, OR A NOTARY
24 PUBLIC.

25 **15-14-806. Reliance on agreement - limitation of liability.**

26 (1) A PERSON WHO RECEIVES THE ORIGINAL OR A COPY OF THE SUPPORTED
27 DECISION-MAKING AGREEMENT SHALL RELY ON THE AGREEMENT AND ITS

1 AUTHORITY TO ASSIST AS PRESENTED.

2 (2) A PERSON IS NOT SUBJECT TO CRIMINAL OR CIVIL LIABILITY
3 AND DOES NOT ENGAGE IN PROFESSIONAL MISCONDUCT FOR AN ACT OR
4 OMISSION IF THE ACT OR OMISSION IS DONE IN GOOD FAITH AND IN
5 RELIANCE ON A SUPPORTED DECISION-MAKING AGREEMENT AND ITS
6 AUTHORITY TO ASSIST AS PRESENTED.

7 **SECTION 2. Act subject to petition - effective date.** This act
8 takes effect at 12:01 a.m. on the day following the expiration of the
9 ninety-day period after final adjournment of the general assembly; except
10 that, if a referendum petition is filed pursuant to section 1 (3) of article V
11 of the state constitution against this act or an item, section, or part of this
12 act within such period, then the act, item, section, or part will not take
13 effect unless approved by the people at the general election to be held in
14 November 2022 and, in such case, will take effect on the date of the
15 official declaration of the vote thereon by the governor.