

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

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 21-0323.01 Shelby Ross x4510

SENATE BILL 21-075

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Senate Committees
Judiciary

House Committees
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HOUSE
3rd Reading Unamended
April 13, 2021

HOUSE
Amended 2nd Reading
April 12, 2021

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.**

SENATE
3rd Reading Unamended
March 10, 2021

SENATE
Amended 2nd Reading
March 9, 2021

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.

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 WHEN A LESS
12 RESTRICTIVE ALTERNATIVE WOULD FAIL TO MEET THE NEEDS OF THE
13 ADULT WITH A DISABILITY;

14 (c) ADULTS WITH DISABILITIES ARE PRESUMED COMPETENT AND

1 HAVE THE CAPACITY TO FACILITATE THE EXERCISE OF DECISIONS
2 REGARDING THEIR DAY-TO-DAY HEALTH, SAFETY, WELFARE, OR FINANCIAL
3 AFFAIRS, UNLESS OTHERWISE DETERMINED THROUGH LEGAL PROCEEDINGS;

4 (d) SUPPORTED DECISION-MAKING, AS DEFINED IN SECTION
5 15-14-802 (5), OFFERS ADULTS WITH DISABILITIES A [REDACTED] VOLUNTARY
6 METHOD OF DECISION-MAKING THAT, AS APPROPRIATE, MAY ALSO BE USED
7 CONCURRENTLY WITH, BUT SUBJECT TO, AN EXISTING GUARDIANSHIP,
8 CONSERVATORSHIP, OR POWER OF ATTORNEY;

9 (e) SUPPORTED DECISION-MAKING FACILITATES ADULTS WITH
10 DISABILITIES IN MAINTAINING DECISION-MAKING AUTHORITY OVER THEIR
11 OWN LIVES WHILE ALSO ENCOURAGING THESE ADULTS TO RECOGNIZE,
12 CREATE, AND MAINTAIN SUPPORTIVE COMMUNITIES, THROUGH SUPPORTED
13 DECISION-MAKING TEAMS, THAT CAN ASSIST ADULTS WITH DISABILITIES IN
14 MAKING INFORMED DECISIONS;

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

17 (g) ADULTS WITH DISABILITIES WHO DO NOT HAVE A
18 COURT-APPOINTED GUARDIAN OR A COURT-APPOINTED CONSERVATOR
19 HAVE THE RIGHT TO INDEPENDENTLY MAKE ANY DECISION WITHOUT ANY
20 MEMBER OF THE SUPPORTIVE COMMUNITY, REGARDLESS OF HAVING
21 ENTERED INTO A SUPPORTED DECISION-MAKING AGREEMENT; AND

22 (h) SUPPORTED DECISION-MAKING AGREEMENTS DO NOT:

23 (I) CREATE A FIDUCIARY OR CONTRACTUAL RELATIONSHIP
24 BETWEEN AN ADULT WITH A DISABILITY AND A MEMBER OF THE
25 SUPPORTIVE COMMUNITY;

26 (II) ELEVATE A MEMBER OF THE SUPPORTIVE COMMUNITY TO A
27 PERSON IN A POSITION OF TRUST IN REGARD TO THE ADULT WITH A

1 DISABILITY BASED SOLELY ON THE MEMBER OF THE SUPPORTIVE
2 COMMUNITY'S INVOLVEMENT IN THE SUPPORTED DECISION-MAKING
3 AGREEMENT;

4 (III) ALTER, DIMINISH, OR SUPERSEDE THE TERMS OF A
5 COURT-ORDERED GUARDIANSHIP OR CONSERVATORSHIP. A GUARDIAN OR
6 CONSERVATOR HAS THE RIGHT, IF AUTHORIZED BY THE COURT, TO
7 DETERMINE IF A WARD OR PROTECTED PERSON MAY ENTER INTO OR
8 CONTINUE A SUPPORTED DECISION-MAKING AGREEMENT.

9 (IV) AUTHORIZE A MEMBER OF THE SUPPORTIVE COMMUNITY TO
10 OBTAIN OR USE PERSONAL, FINANCIAL, OR CONFIDENTIAL INFORMATION OF
11 THE ADULT WITH A DISABILITY FOR THE MEMBER OF THE SUPPORTIVE
12 COMMUNITY'S OWN PURPOSE OR BENEFIT, OR FOR THE PURPOSE OR BENEFIT
13 OF A THIRD-PARTY; OR

14 (V) SHIELD A MEMBER OF THE SUPPORTIVE COMMUNITY FROM
15 CRIMINAL OR CIVIL LIABILITY FOR ACTS THAT WOULD OTHERWISE BE
16 SUBJECT TO CIVIL OR CRIMINAL LIABILITY, NOTWITHSTANDING SECTION
17 15-14-806 (2); AND

18 (i) IN ADDITION TO SUPPORTED DECISION-MAKING, ADULTS WITH
19 DISABILITIES SHOULD HAVE A VARIETY OF FORMAL AND INFORMAL
20 PROCESSES AVAILABLE TO MAKE DECISIONS AND EXPRESS PREFERENCES
21 OF CHOICES, INCLUDING BUT NOT LIMITED TO MEDICAL AND FINANCIAL
22 POWERS OF ATTORNEY, GUARDIANSHIP, LIMITED GUARDIANSHIP,
23 CONSERVATORSHIP, SPECIAL CONSERVATORSHIP, RELEASE OF
24 INFORMATION FORMS, AND REPRESENTATIVE PAYEES.

25 **15-14-802. Definitions.** AS USED IN THIS PART 8, UNLESS THE
26 CONTEXT OTHERWISE REQUIRES:

27 (1) "ADULT" MEANS AN INDIVIDUAL WHO IS EIGHTEEN YEARS OF

1 AGE OR OLDER, OR AN EMANCIPATED MINOR.

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

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

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

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

16 (a) HELP UNDERSTAND THE ISSUES AND CHOICES;

17 (b) ANSWER QUESTIONS;

18 (c) PROVIDE EXPLANATIONS IN A LANGUAGE THE ADULT WITH A
19 DISABILITY UNDERSTANDS;

20 (d) COMMUNICATE THE ADULT WITH A DISABILITY'S DECISION TO
21 OTHERS, IF NECESSARY AND IF SPECIFICALLY REQUESTED BY THE ADULT
22 WITH A DISABILITY; 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
2 ONE OR MORE MEMBERS OF THE ADULT WITH A DISABILITY'S SUPPORTIVE
3 COMMUNITY. ==

4 **15-14-803. Supported decision-making agreement - term.**

5 (1) AN ADULT WITH A DISABILITY MAY VOLUNTARILY, WITHOUT UNDUE
6 INFLUENCE OR COERCION, ENTER INTO A SUPPORTED DECISION-MAKING
7 AGREEMENT WITH ONE OR MORE MEMBERS OF THE SUPPORTIVE
8 COMMUNITY. THE SUPPORTED DECISION-MAKING AGREEMENT DOES NOT
9 ADVERSELY AFFECT THE DECISION-MAKING AUTHORITY GRANTED TO A
10 COURT-APPOINTED GUARDIAN OR COURT-APPOINTED CONSERVATOR.

11 UNDER THE AGREEMENT, THE ADULT WITH A DISABILITY MAY REQUEST
12 THE MEMBER OF THE SUPPORTIVE COMMUNITY TO DO ANY OR ALL OF THE
13 FOLLOWING:

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

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

27 (c) ASSIST THE ADULT WITH A DISABILITY IN COMMUNICATING THE

1 ADULT'S DECISIONS TO APPROPRIATE PERSONS WHEN EXPRESSLY
2 REQUESTED BY THE ADULT WITH A DISABILITY.

3 (2) A MEMBER OF THE SUPPORTIVE COMMUNITY SHALL NOT BE
4 ENTITLED TO COMPENSATION OR OTHER CONSIDERATION, IN CASH OR IN
5 KIND, FOR ASSISTANCE PROVIDED TO THE ADULT WITH A DISABILITY FOR
6 THE PURPOSES OF A SUPPORTIVE DECISION-MAKING AGREEMENT.

7 (3) (a) THE SUPPORTED DECISION-MAKING AGREEMENT IS
8 EFFECTIVE UNTIL TERMINATED BY EITHER THE ADULT WITH A DISABILITY
9 OR THE MEMBER OF THE SUPPORTIVE COMMUNITY, OR BY THE TERMS OF
10 THE AGREEMENT. ANY PARTY MAY CHOOSE TO TERMINATE THE
11 AGREEMENT AT ANY POINT BY PROVIDING WRITTEN OR VERBAL NOTICE OF
12 THE TERMINATION TO ALL PARTIES TO THE SUPPORTED DECISION-MAKING
13 AGREEMENT.

14 (b) THE SUPPORTED DECISION-MAKING AGREEMENT IS
15 AUTOMATICALLY TERMINATED IF:

16 (I) AFTER INVESTIGATING A MEMBER OF THE SUPPORTIVE
17 COMMUNITY FOR MISTREATMENT, AS DEFINED IN SECTION 18-6.5-102
18 (10.5), ADULT PROTECTIVE SERVICES FINDS THAT THE ADULT WITH A
19 DISABILITY HAS BEEN MISTREATED BY THE MEMBER OF THE SUPPORTIVE
20 COMMUNITY; OR

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

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

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

1 (C) CONVICTED OF A FINANCIAL CRIME; OR

2 (D) FOUND TO HAVE COMMITTED THEFT PURSUANT TO SECTION
3 18-4-405.

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

6 **15-14-804. Access to personal information.** (1) THE MEMBER OF
7 THE SUPPORTIVE COMMUNITY MAY ONLY ASSIST THE ADULT WITH A
8 DISABILITY IN ACCESSING, COLLECTING, OR OBTAINING INFORMATION
9 THAT IS RELEVANT TO A DECISION MADE PURSUANT TO THE SUPPORTED
10 DECISION-MAKING AGREEMENT AND ONLY WHEN SUCH ASSISTANCE IS
11 SPECIFICALLY REQUESTED BY THE ADULT WITH A DISABILITY.

12 (2) IF THE MEMBER OF THE SUPPORTIVE COMMUNITY ASSISTS THE
13 ADULT WITH A DISABILITY IN ACCESSING, COLLECTING, OR OBTAINING
14 FINANCIAL OR PERSONAL INFORMATION, THE MEMBER OF THE SUPPORTIVE
15 COMMUNITY SHALL KEEP THE INFORMATION CONFIDENTIAL, AS
16 REQUESTED BY THE ADULT WITH A DISABILITY.

17 (3) A MEMBER OF THE SUPPORTIVE COMMUNITY WHO OBTAINS
18 INFORMATION PURSUANT TO THIS SECTION MAY ONLY USE SUCH
19 INFORMATION FOR THE SPECIFIC PURPOSES REQUESTED BY THE ADULT
20 WITH A DISABILITY AND ANY MISUSE OF THE INFORMATION MAY BE
21 SUBJECT TO CRIMINAL AND CIVIL LIABILITY.

22 (4) THE EXISTENCE OF A SUPPORTED DECISION-MAKING
23 AGREEMENT DOES NOT PRECLUDE AN ADULT WITH A DISABILITY FROM
24 SEEKING PERSONAL INFORMATION ON THEIR OWN WITHOUT THE
25 ASSISTANCE OF THE MEMBER OF THE SUPPORTIVE COMMUNITY.

26 **15-14-805. Agreement requirements - signature - witnesses or**
27 **notary public.** (1) A SUPPORTED DECISION-MAKING AGREEMENT MAY BE

1 IN ANY FORM BUT IS VALID ONLY IF IT CONTAINS, AT A MINIMUM, THE
2 FOLLOWING:

3 (a) THE NAME OF THE ADULT WITH A DISABILITY;

4 (b) THE NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS
5 OF THE MEMBER OF THE SUPPORTIVE COMMUNITY, IF APPLICABLE;

6 (c) A LIST OF DECISIONS THE ADULT WITH A DISABILITY REQUESTS
7 THE MEMBER OF THE SUPPORTIVE COMMUNITY TO ADVISE THE ADULT WITH
8 A DISABILITY ON;

9 (d) A DESCRIPTION OF THE MEMBER OF THE SUPPORTIVE
10 COMMUNITY'S AGREEMENT TERMS, INCLUDING, AT A MINIMUM, THE
11 AGREEMENT TERM TO:

12 (I) PROVIDE INFORMATION AS REQUESTED BY THE ADULT WITH A
13 DISABILITY;

14 (II) RESPECT THAT THE FINAL AND ULTIMATE DECISION IS THE
15 ADULT WITH THE DISABILITY'S AND NOT THE MEMBER OF THE SUPPORTIVE
16 COMMUNITY'S;

17 (III) NOT COERCE OR MANIPULATE THE ADULT WITH THE
18 DISABILITY INTO MAKING ANY DECISION; AND ==

19

20 (IV) PROVIDE THE MOST UP-TO-DATE AND RELEVANT
21 INFORMATION TO THE ADULT WITH THE DISABILITY BASED ON ALL THE
22 AVAILABLE AND KNOWN INFORMATION THE MEMBER OF THE SUPPORTIVE
23 COMMUNITY HAS.

24 (e) A NOTICE THAT ANY MANDATORY REPORTER, AS DESCRIBED IN
25 SECTION 18-6.5-108, WHO IS RELYING ON THE SUPPORTED
26 DECISION-MAKING AGREEMENT AND HAS CAUSE TO BELIEVE THAT THE
27 ADULT WITH A DISABILITY IS BEING MISTREATED, AS DEFINED IN SECTION

1 18-6.5-102 (10.5), BY THE MEMBER OF THE SUPPORTIVE COMMUNITY,
2 SHALL REPORT THE ALLEGED MISTREATMENT TO ADULT PROTECTIVE
3 SERVICES; AND

4 (f) THE DAY, MONTH, AND YEAR THE AGREEMENT WAS ENTERED
5 INTO.

6 (2) A SUPPORTED DECISION-MAKING AGREEMENT MUST BE SIGNED
7 VOLUNTARILY, WITHOUT COERCION OR UNDUE INFLUENCE, BY THE ADULT
8 WITH A DISABILITY AND EACH MEMBER OF THE SUPPORTIVE COMMUNITY
9 IN THE PRESENCE OF TWO OR MORE ATTESTING AND DISINTERESTED
10 WITNESSES WHO ARE EIGHTEEN YEARS OF AGE OR OLDER, OR A NOTARY
11 PUBLIC.

12 **15-14-806. Reliance on agreement - limitation of liability.**

13 (1) A PERSON WHO RECEIVES THE ORIGINAL OR A COPY OF THE SUPPORTED
14 DECISION-MAKING AGREEMENT SHALL RELY ON THE AGREEMENT AND ITS
15 AUTHORITY TO ASSIST AS PRESENTED.

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

21 **SECTION 2. Act subject to petition - effective date.** This act
22 takes effect at 12:01 a.m. on the day following the expiration of the
23 ninety-day period after final adjournment of the general assembly; except
24 that, if a referendum petition is filed pursuant to section 1 (3) of article V
25 of the state constitution against this act or an item, section, or part of this
26 act within such period, then the act, item, section, or part will not take
27 effect unless approved by the people at the general election to be held in

- 1 November 2022 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.