

CHAPTER 61

PROBATE, TRUSTS, AND FIDUCIARIES

SENATE BILL 21-075

BY SENATOR(S) Gardner and Ginal, Bridges, Buckner, Cooke, Danielson, Fields, Gonzales, Hansen, Hisey, Holbert, Jaquez Lewis, Kirkmeyer, Kolker, Lee, Liston, Lundeen, Moreno, Pettersen, Priola, Rankin, Rodriguez, Simpson, Smallwood, Sonnenberg, Story, Winter, Woodward, Zenzinger, Garcia;
 also REPRESENTATIVE(S) Tipper and Young, Bacon, Burnett, Bird, Cutter, Esgar, Exum, Froelich, Gonzales-Gutierrez, Hooton, Jackson, Kipp, Lontine, Michaelson Jenet, Mullica, Ortiz, Snyder, Valdez A.

AN ACT

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

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

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

PART 8
SUPPORTED DECISION-MAKING AGREEMENT FOR
ADULTS WITH A DISABILITY

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

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

(b) GUARDIANSHIP SHOULD BE EMPLOYED ONLY WHEN A LESS RESTRICTIVE ALTERNATIVE WOULD FAIL TO MEET THE NEEDS OF THE ADULT WITH A DISABILITY;

(c) ADULTS WITH DISABILITIES ARE PRESUMED COMPETENT AND HAVE THE CAPACITY TO FACILITATE THE EXERCISE OF DECISIONS REGARDING THEIR DAY-TO-DAY HEALTH, SAFETY, WELFARE, OR FINANCIAL AFFAIRS, UNLESS OTHERWISE DETERMINED THROUGH LEGAL PROCEEDINGS;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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

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

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

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

(h) SUPPORTED DECISION-MAKING AGREEMENTS DO NOT:

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

(II) ELEVATE A MEMBER OF THE SUPPORTIVE COMMUNITY TO A PERSON IN A POSITION OF TRUST IN REGARD TO THE ADULT WITH A DISABILITY BASED SOLELY ON THE MEMBER OF THE SUPPORTIVE COMMUNITY'S INVOLVEMENT IN THE SUPPORTED DECISION-MAKING AGREEMENT;

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

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

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

(i) IN ADDITION TO SUPPORTED DECISION-MAKING, ADULTS WITH DISABILITIES SHOULD HAVE A VARIETY OF FORMAL AND INFORMAL PROCESSES AVAILABLE TO MAKE DECISIONS AND EXPRESS PREFERENCES OF CHOICES, INCLUDING BUT NOT LIMITED TO MEDICAL AND FINANCIAL POWERS OF ATTORNEY, GUARDIANSHIP, LIMITED GUARDIANSHIP, CONSERVATORSHIP, SPECIAL CONSERVATORSHIP, RELEASE

OF INFORMATION FORMS, AND REPRESENTATIVE PAYEES.

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

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

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

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

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

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

(a) HELP UNDERSTAND THE ISSUES AND CHOICES;

(b) ANSWER QUESTIONS;

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

(d) COMMUNICATE THE ADULT WITH A DISABILITY'S DECISION TO OTHERS, IF NECESSARY AND IF SPECIFICALLY REQUESTED BY THE ADULT WITH A DISABILITY; OR

(e) FACILITATE THE EXERCISE OF DECISIONS REGARDING THE ADULT WITH A DISABILITY'S DAY-TO-DAY HEALTH, SAFETY, WELFARE, OR FINANCIAL AFFAIRS.

(6) "SUPPORTED DECISION-MAKING AGREEMENT" OR "AGREEMENT" MEANS A VOLUNTARY AGREEMENT ENTERED INTO PURSUANT TO THIS PART 8 BETWEEN AN ADULT WITH A DISABILITY AND ONE OR MORE MEMBERS OF THE ADULT WITH A DISABILITY'S SUPPORTIVE COMMUNITY.

15-14-803. Supported decision-making agreement - term. (1) AN ADULT WITH A DISABILITY MAY VOLUNTARILY, WITHOUT UNDUE INFLUENCE OR COERCION, ENTER INTO A SUPPORTED DECISION-MAKING AGREEMENT WITH ONE OR MORE MEMBERS OF THE SUPPORTIVE COMMUNITY. THE SUPPORTED DECISION-MAKING AGREEMENT DOES NOT ADVERSELY AFFECT THE DECISION-MAKING AUTHORITY GRANTED TO A COURT-APPOINTED GUARDIAN OR COURT-APPOINTED CONSERVATOR. UNDER THE AGREEMENT, THE ADULT WITH A DISABILITY MAY REQUEST THE MEMBER OF THE

SUPPORTIVE COMMUNITY TO DO ANY OR ALL OF THE FOLLOWING:

(a) 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 WITH A DISABILITY;

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

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

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

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

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

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

(II) THE MEMBER OF THE SUPPORTIVE COMMUNITY IS:

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

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

(C) CONVICTED OF A FINANCIAL CRIME; OR

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

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

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

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

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

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

15-14-805. Agreement requirements - signature - witnesses or notary public.

(1) A SUPPORTED DECISION-MAKING AGREEMENT MAY BE IN ANY FORM BUT IS VALID ONLY IF IT CONTAINS, AT A MINIMUM, THE FOLLOWING:

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

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

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

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

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

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

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

(IV) PROVIDE THE MOST UP-TO-DATE AND RELEVANT INFORMATION TO THE

ADULT WITH THE DISABILITY BASED ON ALL THE AVAILABLE AND KNOWN INFORMATION THE MEMBER OF THE SUPPORTIVE COMMUNITY HAS.

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

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

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

15-14-806. Reliance on agreement - limitation of liability. (1) A PERSON WHO RECEIVES THE ORIGINAL OR A COPY OF THE SUPPORTED DECISION-MAKING AGREEMENT SHALL RELY ON THE AGREEMENT AND ITS AUTHORITY TO ASSIST AS PRESENTED.

(2) A PERSON IS NOT SUBJECT TO CRIMINAL OR 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 A SUPPORTED DECISION-MAKING AGREEMENT AND ITS AUTHORITY TO ASSIST AS PRESENTED.

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

Approved: April 26, 2021