

HOUSE BILL 529

N2

2lr1522
CF 2lr1148

By: **Delegates Pena–Melnyk, Bagnall, Carey, Love, Saab, Shetty, Terrasa, and Valentino–Smith**

Introduced and read first time: January 21, 2022

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Supported Decision Making**

3 FOR the purpose of authorizing the use of supported decision making to assist an adult
4 through the provision of support for the adult in making, communicating, or
5 effectuating decisions and preventing the need for the appointment of certain
6 substitute decision makers for the adult; authorizing an adult to enter into a
7 supported decision–making agreement with one or more supporters under certain
8 circumstances; providing immunity from civil or criminal liability under certain
9 circumstances; and generally relating to supported decision making for adults.

10 BY adding to

11 Article – Estates and Trusts

12 Section 18–101 through 18–109 to be under the new title “Title 18. Supported
13 Decision Making”

14 Annotated Code of Maryland

15 (2017 Replacement Volume and 2021 Supplement)

16 BY repealing and reenacting, without amendments,

17 Article – Health – General

18 Section 5–601(a)

19 Annotated Code of Maryland

20 (2019 Replacement Volume and 2021 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article – Health – General

23 Section 5–601(o)

24 Annotated Code of Maryland

25 (2019 Replacement Volume and 2021 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 That the Laws of Maryland read as follows:

2 **Article – Estates and Trusts**

3 **TITLE 18. SUPPORTED DECISION MAKING.**

4 **18-101.**

5 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (B) “SUPPORTED DECISION MAKING” MEANS A PROCESS BY WHICH AN
8 ADULT, WITH OR WITHOUT HAVING ENTERED A SUPPORTED DECISION-MAKING
9 AGREEMENT, UTILIZES SUPPORT FROM A SERIES OF RELATIONSHIPS IN ORDER TO
10 MAKE, COMMUNICATE, OR EFFECTUATE THE ADULT’S OWN LIFE DECISIONS.

11 (C) “SUPPORTED DECISION-MAKING AGREEMENT” MEANS AN
12 ARRANGEMENT BETWEEN AN ADULT AND A SUPPORTER OR SUPPORTERS THAT
13 DESCRIBES:

14 (1) HOW THE ADULT USES SUPPORTED DECISION MAKING TO MAKE
15 DECISIONS;

16 (2) THE RIGHTS OF THE ADULT; AND

17 (3) THE RESPONSIBILITIES OF THE SUPPORTER OR SUPPORTERS.

18 (D) “SUPPORTER” MEANS AN INDIVIDUAL SELECTED BY AN ADULT TO
19 PROVIDE SUPPORT IN MAKING, COMMUNICATING, OR EFFECTUATING THE ADULT’S
20 OWN LIFE DECISIONS.

21 **18-102.**

22 (A) THE PURPOSE OF THIS TITLE IS TO ASSIST ADULTS BY:

23 (1) OBTAINING SUPPORT FOR THE ADULT IN MAKING,
24 COMMUNICATING, OR EFFECTUATING DECISIONS THAT CORRESPOND TO THE WILL,
25 PREFERENCES, AND CHOICES OF THE ADULT; AND

26 (2) PREVENTING THE NEED FOR THE APPOINTMENT OF A
27 SUBSTITUTE DECISION MAKER FOR THE ADULT, INCLUDING A GUARDIAN OF THE
28 PERSON OR PROPERTY.

29 (B) THIS TITLE SHALL BE LIBERALLY CONSTRUED AND APPLIED TO

1 PROMOTE ITS UNDERLYING PURPOSES AND POLICIES.

2 18-103.

3 (A) AN ADULT MAY UTILIZE SUPPORTED DECISION MAKING TO:

4 (1) INCREASE THE ADULT'S SELF-DETERMINATION;

5 (2) PREVENT THE NEED FOR THE APPOINTMENT OF A SUBSTITUTE
6 DECISION MAKER; OR

7 (3) LIMIT OR TERMINATE THE USE OF A SUBSTITUTE
8 DECISION MAKER.

9 (B) ALL ADULTS ARE PRESUMED CAPABLE OF MAKING A SUPPORTED
10 DECISION-MAKING AGREEMENT.

11 (C) THE MANNER IN WHICH AN ADULT COMMUNICATES WITH OTHERS IS
12 NOT GROUNDS FOR DETERMINING THAT THE ADULT IS INCAPABLE OF MAKING,
13 CHANGING, OR REVOKING A SUPPORTED DECISION-MAKING AGREEMENT.

14 (D) EXECUTION OF A SUPPORTED DECISION-MAKING AGREEMENT BY AN
15 ADULT MAY NOT:

16 (1) BE USED AS EVIDENCE OF INCAPACITY; OR

17 (2) PRECLUDE THE ABILITY OF THE ADULT TO:

18 (I) ACT INDEPENDENTLY OF A SUPPORTED DECISION-MAKING
19 AGREEMENT; OR

20 (II) ACCESS THE ADULT'S PERSONAL INFORMATION WITHOUT A
21 SUPPORTER.

22 18-104.

23 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AN ADULT
24 MAY VOLUNTARILY, WITHOUT UNDUE INFLUENCE OR COERCION, ENTER INTO A
25 SUPPORTED DECISION-MAKING AGREEMENT WITH A SUPPORTER OR SUPPORTERS.

26 (B) (1) IF A PERSON UNDER GUARDIANSHIP ENTERS INTO A SUPPORTED
27 DECISION-MAKING AGREEMENT UNDER THIS TITLE, THE AGREEMENT DOES NOT
28 SUPPLANT THE AUTHORITY OF A GUARDIAN OF THE ADULT, UNLESS THE COURT

1 AUTHORIZES THE LIMITATION OR REMOVAL OF GUARDIANSHIP DUE TO THE
2 EXISTENCE OF A SUPPORTED DECISION-MAKING AGREEMENT.

3 (2) A GUARDIAN MAY NOT PREVENT AN ADULT FROM ENTERING INTO
4 A VALID SUPPORTED DECISION-MAKING AGREEMENT THAT DOES NOT SUPPLANT
5 THE AUTHORITY OF THE GUARDIAN WITHOUT GOOD CAUSE.

6 (C) IF AN ADULT VOLUNTARILY ENTERS INTO A SUPPORTED
7 DECISION-MAKING AGREEMENT WITH ONE OR MORE SUPPORTERS, THE ADULT MAY
8 AUTHORIZE A SUPPORTER TO PROVIDE SUPPORT TO THE ADULT IN MAKING
9 DECISIONS IN AREAS OF THE ADULT'S CHOOSING, INCLUDING:

10 (1) GATHERING INFORMATION;

11 (2) UNDERSTANDING AND INTERPRETING INFORMATION;

12 (3) WEIGHING OPTIONS AND ALTERNATIVES TO A DECISION;

13 (4) UNDERSTANDING THE CONSEQUENCES OF MAKING OR NOT
14 MAKING A DECISION;

15 (5) PARTICIPATING IN CONVERSATIONS WITH THIRD PARTIES WITH
16 THE ADULT'S EXPLICIT AUTHORIZATION; AND

17 (6) PROVIDING THE ADULT WITH SUPPORT IN IMPLEMENTING A
18 DECISION.

19 (D) NOTHING IN THIS TITLE OR THE EXISTENCE OF A SUPPORTED
20 DECISION-MAKING AGREEMENT MAY PRECLUDE THE ADULT FROM ACTING
21 INDEPENDENTLY OF A SUPPORTED DECISION-MAKING AGREEMENT.

22 (E) THE AVAILABILITY OF A SUPPORTED DECISION-MAKING AGREEMENT IS
23 NOT INTENDED TO LIMIT THE INFORMAL USE OF SUPPORTED DECISION MAKING OR
24 TO PRECLUDE JUDICIAL CONSIDERATION OF INFORMAL SUPPORTED
25 DECISION-MAKING ARRANGEMENTS AS A LESS RESTRICTIVE ALTERNATIVE TO
26 GUARDIANSHIP.

27 (F) EXECUTION OF A SUPPORTED DECISION-MAKING AGREEMENT MAY NOT
28 BE A CONDITION OF PARTICIPATING IN ANY ACTIVITY, SERVICE, OR PROGRAM.

29 18-105.

30 (A) A SUPPORTER SHALL:

1 **(1) SUPPORT THE WILL AND PREFERENCE OF THE ADULT AND NOT**
2 **THE SUPPORTER'S OPINION OF THE REASONABLENESS OF THE ADULT'S WISHES,**
3 **PREFERENCES, OR CHOICES;**

4 **(2) ACT HONESTLY, DILIGENTLY, AND IN GOOD FAITH;**

5 **(3) ACT WITHIN THE AUTHORITY GIVEN IN THE SUPPORTED**
6 **DECISION-MAKING AGREEMENT;**

7 **(4) AVOID CONFLICTS OF INTEREST;**

8 **(5) MAINTAIN RECORDS, WHICH THE SUPPORTER SHALL MAKE**
9 **AVAILABLE TO THE ADULT ON REQUEST, CONCERNING:**

10 **(I) THE SUPPORTER'S ACTIONS UNDER THE SUPPORTED**
11 **DECISION-MAKING AGREEMENT; AND**

12 **(II) HOW THE ADULT COMMUNICATES AND EXPRESSES**
13 **OPINIONS TO THE SUPPORTER; AND**

14 **(6) KEEP ANY RECORDS AND INFORMATION OBTAINED UNDER A**
15 **SUPPORTED DECISION-MAKING AGREEMENT:**

16 **(I) SUBJECT TO THE LIMITATIONS UNDER TITLE 9, SUBTITLE 1**
17 **OF THE COURTS ARTICLE, CONFIDENTIAL AND PRIVILEGED; AND**

18 **(II) SECURE FROM UNAUTHORIZED ACCESS, USE, OR**
19 **DISCLOSURE.**

20 **(B) THE RELATIONSHIP BETWEEN THE ADULT AND THE SUPPORTER SHALL**
21 **BE ONE OF TRUST AND CONFIDENCE THAT PRESERVES THE DECISION-MAKING**
22 **AUTHORITY OF THE ADULT.**

23 **(C) A SUPPORTER MAY NOT:**

24 **(1) MAKE DECISIONS ON BEHALF OF THE ADULT;**

25 **(2) EXERT UNDUE INFLUENCE ON THE ADULT;**

26 **(3) COERCE THE ADULT;**

27 **(4) OBTAIN INFORMATION ABOUT THE ADULT WITHOUT THE ADULT'S**

1 CONSENT;

2 (5) ENFORCE DECISIONS MADE BY THE ADULT WITHOUT THE ADULT
3 BEING PRESENT, UNLESS THE ADULT EXPLICITLY AUTHORIZES THE SUPPORTER TO
4 ENFORCE THE DECISION; OR

5 (6) ACT OUTSIDE OF THE AUTHORITY GRANTED IN THE SUPPORTED
6 DECISION-MAKING AGREEMENT.

7 18-106.

8 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A
9 SUPPORTER MAY BE ANY PERSON CHOSEN BY THE ADULT.

10 (B) THE FOLLOWING INDIVIDUALS ARE DISQUALIFIED FROM ACTING AS A
11 SUPPORTER:

12 (1) A MINOR;

13 (2) AN INDIVIDUAL AGAINST WHOM THE ADULT HAS OBTAINED A
14 PEACE ORDER; AND

15 (3) AN INDIVIDUAL WHO HAS BEEN CONVICTED OF FINANCIAL
16 EXPLOITATION UNDER TITLE 13, SUBTITLE 6 OF THIS ARTICLE; OR

17 (4) AN INDIVIDUAL WHO IS THE SUBJECT OF A CIVIL OR CRIMINAL
18 ORDER PROHIBITING CONTACT WITH THE ADULT.

19 (C) A SUPPORTER MAY RESIGN AS A SUPPORTER BY WRITTEN OR ORAL
20 NOTICE TO THE ADULT, ANY REMAINING SUPPORTERS OF THE ADULT NAMED IN THE
21 AGREEMENT, AND ANY THIRD PARTIES WHO HAVE THE AGREEMENT ON FILE.

22 (D) IF A SUPPORTER RESIGNS, DIES, BECOMES INCAPABLE, OR BECOMES
23 FOR ANY OTHER REASON UNABLE TO ACT AS A SUPPORTER AND THERE IS NO
24 ALTERNATE SUPPORTER, THE AUTHORITY GIVEN TO THE SUPPORTER IS
25 SUSPENDED.

26 18-107.

27 (A) A SUPPORTED DECISION-MAKING AGREEMENT MAY BE IN ANY FORM
28 CONSISTENT WITH THE REQUIREMENTS UNDER THIS SECTION.

29 (B) A SUPPORTED DECISION-MAKING AGREEMENT SHALL:

1 (1) BE DOCUMENTED;

2 (2) BE DATED;

3 (3) NAME AT LEAST ONE SUPPORTER;

4 (4) DESCRIBE THE DECISION-MAKING ASSISTANCE THAT EACH
5 SUPPORTER MAY PROVIDE THE ADULT;

6 (5) DESCRIBE HOW THE SUPPORTERS MAY WORK TOGETHER IF
7 THERE IS MORE THAN ONE SUPPORTER;

8 (6) DESCRIBE HOW ANY PERCEIVED OR ACTUAL CONFLICT OF
9 INTEREST BETWEEN THE SUPPORTER OR SUPPORTERS AND THE ADULT SHALL BE
10 MITIGATED;

11 (7) DOCUMENT HOW THE ADULT SELECTED THE SUPPORTER OR
12 SUPPORTERS;

13 (8) BE APPROVED BY THE COURT IF THE ADULT HAS BEEN
14 APPOINTED A GUARDIAN OF THE PERSON OR PROPERTY AND THE SUPPORTED
15 DECISION-MAKING AGREEMENT AFFECTS THE AUTHORITY OF THE GUARDIAN;

16 (9) CONTAIN AN ATTESTATION THAT THE SUPPORTER OR
17 SUPPORTERS AGREE TO HONOR THE RIGHT OF THE ADULT TO MAKE DECISIONS AND
18 THAT THE SUPPORTER OR SUPPORTERS WILL NOT MAKE DECISIONS FOR THE
19 ADULT; AND

20 (10) BE WITNESSED BY TWO ADULTS WHO ARE NOT:

21 (I) A SUPPORTER FOR THE ADULT; OR

22 (II) AN EMPLOYEE OR AGENT OF A SUPPORTER NAMED IN THE
23 SUPPORTED DECISION-MAKING AGREEMENT.

24 (B) A SUPPORTED DECISION-MAKING AGREEMENT MAY:

25 (1) APPOINT MORE THAN ONE SUPPORTER; AND

26 (2) APPOINT AN ALTERNATE TO ACT IN THE PLACE OF A SUPPORTER
27 IN CIRCUMSTANCES SPECIFIED IN THE AGREEMENT.

1 18-108.

2 AN ADULT UTILIZING A SUPPORTED DECISION-MAKING AGREEMENT MAY:

3 (1) REVOKE THE SUPPORTED DECISION-MAKING AGREEMENT AT
4 ANY TIME ORALLY, IN WRITING, OR OTHERWISE BY EXPRESSING THE ADULT'S
5 SPECIFIC INTENT TO REVOKE THE AGREEMENT; AND

6 (2) RECEIVE ANY SUPPORT NEEDED FROM AN INDIVIDUAL OF THE
7 ADULT'S CHOOSING TO REVOKE THE AGREEMENT.

8 18-109.

9 (A) A THIRD PARTY WHO IN GOOD FAITH ACTS IN RELIANCE ON THE
10 DECISIONS MADE BY AN ADULT UTILIZING A SUPPORTED DECISION-MAKING
11 AGREEMENT OR WHO IN GOOD FAITH DECLINES TO HONOR A SUPPORTED
12 DECISION-MAKING AGREEMENT IS NOT SUBJECT TO CIVIL OR CRIMINAL LIABILITY
13 OR DISCIPLINE FOR UNPROFESSIONAL CONDUCT FOR:

14 (1) COMPLYING WITH AN ADULT'S DECISION IN ACCORDANCE WITH A
15 SUPPORTED DECISION-MAKING AGREEMENT BASED ON AN ASSUMPTION THAT THE
16 SUPPORTED DECISION-MAKING AGREEMENT WAS VALID WHEN MADE AND NOT
17 REVOKED OR ABROGATED; OR

18 (2) DECLINING TO COMPLY WITH A SUPPORTED DECISION-MAKING
19 AGREEMENT BASED ON ACTUAL KNOWLEDGE THAT:

20 (I) THE AGREEMENT WAS INVALID, REVOKED, OR ABROGATED;
21 OR

22 (II) A SUPPORTER WAS COERCING OR UNDULY INFLUENCING
23 THE ADULT OR OTHERWISE ACTING OUTSIDE THE SCOPE OF THE AGREEMENT.

24 (B) THIS SECTION MAY NOT BE CONSTRUED TO PROVIDE IMMUNITY FROM
25 ACTIONS ALLEGING THAT A THIRD PARTY HAS:

26 (1) CAUSED PERSONAL INJURY AS A RESULT OF A NEGLIGENT,
27 RECKLESS, OR INTENTIONAL ACT;

28 (2) FAILED TO GIVE EFFECT TO AN ADULT'S DECISION MADE IN
29 ACCORDANCE WITH A VALID DECISION-MAKING AGREEMENT;

30 (3) FAILED TO PROVIDE INFORMATION EITHER TO THE ADULT OR A

1 SUPPORTER OF THE ADULT THAT WOULD BE NECESSARY FOR INFORMED CONSENT;
2 OR

3 (4) OTHERWISE ACTED INCONSISTENTLY WITH APPLICABLE LAW.

4 Article – Health – General

5 5–601.

6 (a) In this subtitle the following words have the meanings indicated.

7 (o) (1) “Incapable of making an informed decision” means the inability of an
8 adult patient to make an informed decision about the provision, withholding, or withdrawal
9 of a specific medical treatment or course of treatment because the patient is unable to
10 understand the nature, extent, or probable consequences of the proposed treatment or
11 course of treatment, is unable to make a rational evaluation of the burdens, risks, and
12 benefits of the treatment or course of treatment, or is unable to communicate a decision.

13 (2) For the purposes of this subtitle, a competent individual who is able to
14 communicate by means other than speech **OR WITH OTHER SUPPORT, INCLUDING**
15 **SUPPORTED DECISION MAKING IN ACCORDANCE WITH TITLE 18 OF THE ESTATES**
16 **AND TRUSTS ARTICLE**, may not be considered incapable of making an informed decision.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2022.