

# SENATE BILL 559

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CF HB 529

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By: **Senators Waldstreicher, Smith, Lee, Hettleman, Zucker, and Guzzone**

Introduced and read first time: January 31, 2022

Assigned to: Judicial Proceedings

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## 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,

27 That the Laws of Maryland read as follows:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



## 1 Article – Estates and Trusts

## 2 TITLE 18. SUPPORTED DECISION MAKING.

## 3 18-101.

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

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

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

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

15 (2) THE RIGHTS OF THE ADULT; AND

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

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

## 20 18-102.

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

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

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

28 (B) THIS TITLE SHALL BE LIBERALLY CONSTRUED AND APPLIED TO  
29 PROMOTE ITS UNDERLYING PURPOSES AND POLICIES.

1 18-103.

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

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

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

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

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

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

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

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

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

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

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

21 18-104.

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

25 (B) (1) IF A PERSON UNDER GUARDIANSHIP ENTERS INTO A SUPPORTED  
26 DECISION-MAKING AGREEMENT UNDER THIS TITLE, THE AGREEMENT DOES NOT  
27 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;**

1           **(4) OBTAIN INFORMATION ABOUT THE ADULT WITHOUT THE ADULT'S**  
2 **CONSENT;**

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

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

8 **18-106.**

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

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

13           **(1) A MINOR;**

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

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

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

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

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

27 **18-107.**

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

1           **(B) A SUPPORTED DECISION-MAKING AGREEMENT SHALL:**

2                   **(1) BE DOCUMENTED;**

3                   **(2) BE DATED;**

4                   **(3) NAME AT LEAST ONE SUPPORTER;**

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

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

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

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

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

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

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

22                           **(I) A SUPPORTER FOR THE ADULT; OR**

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

25           **(C) A SUPPORTED DECISION-MAKING AGREEMENT MAY:**

26                   **(1) APPOINT MORE THAN ONE SUPPORTER; AND**

27                   **(2) APPOINT AN ALTERNATE TO ACT IN THE PLACE OF A SUPPORTER**  
28 **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;



1                   **(3) FAILED TO PROVIDE INFORMATION EITHER TO THE ADULT OR A**  
2 **SUPPORTER OF THE ADULT THAT WOULD BE NECESSARY FOR INFORMED CONSENT;**  
3 **OR**

4                   **(4) OTHERWISE ACTED INCONSISTENTLY WITH APPLICABLE LAW.**

5   **Article – Health – General**

6       5–601.

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

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

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

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