

Senate Judicial Proceedings Committee
SB 559 – Supported Decision-Making
February 17, 2022
By the Maryland Cross Disability Rights Coalition
Position: Support

The Maryland Cross-Disability Rights Coalition (CDRC) is a network of advocacy organizations that advocate for people across disabilities—including people with developmental disabilities, mental health concerns, and older adults. As such, the CDRC supports SB 559.

Why is this bill important?

Recognition of supported decision-making is a foundational civil rights issue for people with disabilities. Everyone, regardless of whether they have a disability, relies on the support of people they know and trust to make, communicate, and effectuate their decisions. Whether it is a decision about what car to buy, whether to rent an apartment, or whether to undergo a medical procedure, we all rely on the people closest to us to help us make sense of the situations and decisions we face. However, for people with disabilities simply recognizing this support can ensure that they can continue to direct their lives and make their own decisions.

Too often people with disabilities have been placed in overbroad and unnecessary guardianships based on stereotypes about their capabilities. Under guardianship a person loses their ability to make decisions for themselves, which is placed in the hands of their guardian. A person can lose their right to vote, their ability to marry or partner with the person they love, their ability to control what medical care they receive or who can visit them, and other decisions. Once placed under guardianship it is very difficult for a person to have that guardianship terminated. Too often, we have seen people with disabilities remain under unnecessary guardianships and even experience abuse and neglect, because they cannot access the medical evaluations or legal resources they need to terminate it. Studies have shown that people in overbroad guardianships experience “a significant negative impact on...physical and mental health, longevity, ability to function.”¹ While guardianship still may be the appropriate tool in some cases, it must not be the default for people with disabilities.

This is why recognition of supported decision-making is so critical. Supported decision-making provides an alternative that courts must consider before placing someone under guardianship and allows a person to continue to make their own decisions—just recognizing that they use support to do so. It preserves a person’s right to make their own choices—fundamentally it is their right to have rights.

Supported decision-making is not a new concept. It has been recognized as a reasonable accommodation under the Americans with Disabilities Act and over 20 states have passed laws similar to this legislation recognizing supported decision-making agreements. Several national organizations, including the National Guardianship Association, the National Council on

¹ Wright, J. (2010). Guardianship for Your Own Good: Improving the Well-Being of Respondents and Wards in the USA. *International Journal of Law and Psychiatry*, 33(5-6), 350-368. <http://dx.doi.org/10.1016/j.ijlp.2010.09.007>.

Disabilities, the US Administration on Community Living, the American Civil Liberties Union, and others, have endorsed supported decision-making as an alternative to guardianship. It is time that Maryland joins the ranks of those that more broadly recognize supported decision-making and an alternative to guardianship.

What does this bill do?

This bill that builds on and incorporates best practices from others who passed and implemented supported decision-making in other states, including by:

- Helping to prevent abuse and neglect of people with disabilities by bolstering their self-determination and control of their own lives
- Creating a framework for how to make a supported decision-making agreement so that third parties are more likely to recognize them
- Ensuring that the manner in which a person communicates is not grounds for determining that a person is incapable of making a supported decision-making agreement
- Allowing courts to terminate or limit guardianship due to the existence of a supported decision-making agreement
- Making it clear that a supporter does not have the authority to make a decision for a person, rather the person remains the decision-maker
- Limiting liability for those who in good faith rely on the use of supported decision-making agreement

This bill has the opportunity to immediately restore a person's rights who is subject to guardianship and to prevent the need for guardianship for many Marylanders with disabilities. The significance of this legislation cannot be overstated. The CDRC supports SB 559 and its critical efforts to ensure that people with disabilities have access to the same fundamental rights and decisions that we all do and can chart the course of their own lives.

Sincerely,

Accessible Resources for Independence

American Council of the Blind of Maryland

The Arc Baltimore

The Arc of Maryland

B'More Clubhouse

Consumers for Accessible Ride Services (CARS)

The Coordinating Center

Disability Rights Maryland

The Freedom Center

IMAGE Center for People with Disabilities

Independence Now

The League for People with Disabilities

Maryland Association of Community Services

Maryland Center for Developmental Disabilities at Kennedy Krieger Institute

Maryland Developmental Disabilities Council

Mental Health Association of Maryland

National Federation of the Blind of Maryland

On Our Own of Maryland

Patient Providers

Peer Wellness and Recovery Services, Inc. (PWRS Inc)

People Encouraging People

People On the Go of Maryland

Shared Support Maryland, Inc.