

SDM Favorable Testimony SB 559 Template.pdf

Uploaded by: Alicia Wopat

Position: FAV

Senate Judicial Proceedings Committee
SB 559 – Supported Decision-Making
February 17, 2022
Position: Support

Self-Directed Advocacy Network of Maryland, Inc. wholeheartedly endorses SB 559 Supported Decision-Making (SDM) Bill.

SDM is a welcome tool to help those with I/DD make their choices clear and respected without the often-onerous restrictions of a guardian or appointing a power of attorney.

In fact, SDM is a concept embodied in the idea of self-direction and person-centered planning - allowing a person to make their own decision with support is what we all need. We all rely on experts, friends and family to help us form our decisions. This bill helps to codify and provide structure to this concept.

Many in the disability community have been pushed into guardianships that may be more restrictive than is necessary. With the addition of SDM option there is a wider array of choices and a greater likelihood that a person can maintain more control and choice over day to day decisions.

Note especially:

- This bill was created with much input from Maryland’s Cross-Disability SDM Coalition, (over 27 partners), including representation from state agencies, the courts, advocacy groups, self-advocates and family members, and others across the disability and aging communities.
- Supported decision-making is a nationally and internationally recognized best practice that helps preserve a person’s right to make their own decision by recognizing that just like people without disabilities, people with disabilities rely on “supporters” the people who they trust to help them make, communicate, and effectuate their decisions.

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Uploaded by: Alle Andresen

Position: FAV



MARYLAND
LEGAL AID

Advancing
Human Rights and
Justice for All

STATEWIDE
ADVOCACY SUPPORT UNIT

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04.2021



February 9, 2022

The Honorable William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee
2 East
Miller State Office Building
Annapolis, MD 21401

Re: Support for Senate Bill 559: Estates and Trusts – Supported Decision Making

Dear Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of SB 559. Maryland Legal Aid (MLA) is a non-profit law firm that provides free legal services to the State's low-income and vulnerable residents, including abused and neglected children, nursing home residents, and veterans. Maryland Legal Aid frequently represents and advocates for older adults and people with disabilities in matters pertaining to accessing long-term care, Medicaid services in the community, and their rights concerning nursing homes and assisted living facilities.

SB 559 creates the process to establish Supported Decision-Making agreements (SDM) in Maryland. If enacted, it will provide assistance and support to adults with disabilities while they make, communicate and effectuate decisions. It can prevent the need for a substitute decision-maker, such as a guardian, and give self-determination to adults with disabilities. Alle Andresen, Esq. will be testifying in support of SB 559 at the request of Senator Waldstreicher.

Persons with disabilities and older adults must retain self-determination. Individual decision-making is a human right.¹ Every adult has the right to make life choices and to have those choices respected.² The right to personal decision-making applies to older adults with declining cognition and persons with disabilities.³ Adults make choices about where they live, what they eat, what they do, and how they spend money. SDM provides a statutory tool for disabled people to retain their right to make personal decisions.

¹ Convention on the Rights of Persons with Disabilities (CRPD):

<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/guiding-principles-of-the-convention.html>

² <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#preamble>

³ Id.

It is a less restrictive alternative than guardianship, which completely strips a person of their decision-making rights.

MLA regularly represents persons who are disabled and those with diminished capacity. For the past several years, MLA has been an active member of the Cross-Disability Supported Decision Making Coalition, comprised of more than 27 partner organizations, including non-profit advocates and Maryland government agencies. One purpose of the Coalition is to promote the self-determination of older adults and people with intellectual and developmental disabilities.

For example, MLA was recently contacted by a county Department of Aging nursing home and assisted living Ombudsman regarding an assisted living resident with a court-appointed Guardian. The Ombudsman wanted to know how they could help the resident if she had a guardian who would not talk to her ward because she no longer had the right to decide where she lived. The Guardian moved the resident from one assisted living home to another every few months. The Guardian would not communicate about decisions, did not explain options, or ask for the resident's preference about her residency. No court-appointed attorney was available. With the assistance of the Ombudsman, the resident was referred to the Guardianship Attorney for the Circuit Court to have her case reviewed by a Magistrate. This entire proceeding may have been avoided if the supported decision-making process had been considered or included in the guardianship process.

Maryland Legal Aid supports SB 599 for several reasons. The Bill would codify the concept that adults have the right to make life choices. It will formalize SDM agreements to ensure acceptance and provide clear guidelines and protections in creating these agreements.

Thank you for considering this written testimony. For the reasons stated above, **MLA urges a favorable report on SB 559.**

Sincerely,

_____/s/Alle Andresen
Alle Andresen
Long Term Assistance Project Attorney

_____/s/Mary Aquino
Mary Aquino
Senior Attorney for Elder Law

Supported Decision Making Info.pdf

Uploaded by: Ande Kolp

Position: FAV

Supported Decision Making



Supported decision-making (SDM) is a nationally and internationally recognized best practice that helps preserve a person's right to make their own decisions by recognizing that just like people without disabilities, people with disabilities rely on "supporters" the people who they trust to help them make, communicate, and effectuate their decisions.

The Maryland Cross-Disability SDM Coalition, of which The Arc Maryland is a part, consists of 27 partners, including representation from various state agencies, the Judiciary, advocacy groups, self-advocates and family members, and others across the disability and aging communities to help draft a plan to implement SDM in Maryland.

To understand why supported decision-making is so important to people with disabilities you need to understand the problems that result from guardianship.

- Guardianship, while an important tool in the toolbox, is restrictive—it takes away a person's basic right to direct their life.
- Imagine not being able to make decisions about where you live, what job you pursue, who you associate with, whether you can vote, what medical care you receive—those are the rights at stake in guardianship.
- Unfortunately, once under guardianship, it is very difficult to terminate it. Often guardianship is permanent.

Passing supported decision-making in Maryland would not be a ground-breaking act. In 2015 the legislature passed a narrow bill recognizing supported decision-making in the context of organ transplants. As of today, 20 jurisdictions in the US have passed laws formally recognizing SDM and over 40 states have introduced legislation.

Passing SDM is a critical civil rights issue for people with disabilities—it is about the right to have rights and use them to direct your own life.

HB529 Sponsored by Delegates Pena–Melnyk, Bagnall, Carey, Love, Saab, Shetty, Terrasa, and Valentino–Smith

SB 559 Sponsored by Senators Waldstreicher, Smith, Lee, Hettleman, Zucker, and Guzzone



**For more information:
Contact: Ande Kolp
akolp@thearcmd.org**

SB 559_PJC_Support.pdf

Uploaded by: Ashley Black

Position: FAV



Ashley Black, Staff Attorney
Public Justice Center
201 North Charles Street, Suite 1200
Baltimore, Maryland 21201
410-625-9409, ext. 224
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SB 559
Estates & Trusts – Supported Decision Making
Hearing of the Senate Judicial Proceedings Committee
February 17, 2022
1:00 PM

SUPPORT

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Health Rights Project supports policies and practices that promote the overall health of Marylanders struggling to make ends meet, with the explicit goal of promoting strategies that work to eliminate racial and ethnic disparities in health outcomes. The PJC stands in **strong support of SB 559**, which would authorize the use of supported decision-making agreements to assist an adult in making, communicating or effectuating certain decisions without the need for a court to appoint a substitute decision maker.

Guardianship has the impact of stripping away the rights that adults naturally have to make certain decisions for themselves. Though there are times where guardianship may be the appropriate course, courts tend to place adults with disabilities, primarily those with intellectual, developmental or mental health disabilities, under guardianship that is more broad than necessary.¹ At risk for individuals proposed for guardianship is the ability to make decisions that impact their quality of life, like the right to marry, who to communicate with, how to spend money, receiving healthcare and voting. Further, individuals who are appointed a public guardian are at risk of neglect, abuse from others and being unnecessarily institutionalized.²

Supported decision making is a person-centered tool that empowers adults with disabilities to make decisions for themselves with limited support from someone they trust. By not recognizing supported decision making as a less restrictive alternative to guardianship, Maryland is actually behind more than 20 other states that have enacted laws allowing adults to utilize supported decision-making agreements. SB 559, if passed, would prevent the

¹ Teaster, Pamela B., et al. *Wards of the State: A National Study of Public Guardianship* (2007), http://www.supporteddecisionmaking.org/sites/default/files/wards_of_the_state.pdf.

² *Id.*

appointment of a guardian where the adult can make decisions with assistance from a support person. It would also allow for a court to terminate or limit guardianship where a supported decision-making agreement exists.

It is time for Maryland to join other states in recognizing supported decision making as a tool to preserving the self-determination of adults with disabilities. For these reasons, the Public Justice Center urges the committee to issue a **FAVORABLE** report for **SB 559**. If you have any questions about this testimony, please contact Ashley Black at 410-625-9409 x 224 or blacka@publicjustice.org.

SB559Comments.Custer.pdf

Uploaded by: Carol Custer

Position: FAV

**Senate Judicial Proceedings Committee
SB 559 – Supported Decision-Making
February 17, 2022
Position: Support**

- Supported decision-making is something used every day by all citizens. It is the essence of the self-direction option under the Developmental Disabilities Administration waivers.
- This law would help formalize supported decision-making agreements, to ensure that people accept it and that there are clear guidelines and protections in making these agreements.

Please make a favorable report.

Carol Custer, 3527 Chick Lane, Knoxville, MD 21758

SB 559_BIAMD_fav.pdf

Uploaded by: Catherine Mello

Position: FAV



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Senator William Smith, Chair
Senator Jeff Waldstreicher, Vice Chair
Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

Re: Favorable-SB 559 Estates and Trust-Supported Decision Making

Dear Senator Smith, Senator Waldstreicher and Members of the Judicial Proceedings Committee,

I am writing on behalf of the Brain Injury Association of Maryland (BIAMD) in support of SB 559. Through advocacy, education, and research partnerships, BIAMD has sought to improve the lives of Marylanders affected by brain injury. We are part of the no wrong door system for access to long-term care services and regularly responds to over 300 phone calls a month from individuals living with brain injury, family members, and professionals seeking information and assistance on how best to help. Our organization regularly provides information on supported decision making and other alternatives to guardianship when individuals and family members navigating the changes after a brain injury that impact decision making.

A brain injury can cause physical, cognitive, and emotional changes that may last a few days or weeks but can be life-long. The ongoing symptoms of brain injury can impact all domains of a person's life, resulting changes in roles and relationships, employment, and finances in addition to physical and mental health. The ripple effects can alter a person's sense of self as they navigate changes in their roles and routines. Maintaining self-determination, control, and autonomy through supported decision-making allows the individual to define how they want to move forward.

During the acute phase of recovery from a moderate to severe brain injury, rehabilitation providers utilize the surrogate decision maker law because the person may be in a coma or have limited ability to participate in decision making but family and health providers cannot project the person's needs in the coming days, weeks, or months as they are trying to navigate a very traumatic situation for all involved. The expectation, according to the Attorney General's office, is that while a surrogate decision maker is in place, decisions should be consistent with the person's wishes¹. Currently there is no clear gradual process for shifting decision making back to the person as they regain capacity during recovery. Implementing supported decision making can allow the process of shifting decision making back to the individual gradually with updates to supported decision-making agreements as the individual regains capacity to make increasing complex decisions with supports. Using this process allows them to avoid guardianship, which in our organization's experience, is difficult to terminate, even when those supporting a person see evidence that they want to make decisions consistent with the values and considerations that they did prior to their brain injury.

A person's frontal lobe that controls executive functions that critical to decision making. Due to its position in the front of the skull and anatomy of the skull itself it makes it the lobe that is most likely to be injured. Injury to the

frontal lobe can impact attention, memory, understanding and processing information and self-awareness. A person may need the assistance of supporters to gather information, understand or interpret information, understand the consequences of making their decision and implement their decisions. Putting a person centered, structured framework for considering important decisions may lead to better clinical outcomes for individuals. Using supported decision making can improve self-awareness, which is associated with better rehabilitation outcomesⁱⁱ.

We request that the Committee give a favorable report to HB559.

Thank you for your consideration of our position.

Sincerely,
Catherine Rinehart Mello
Brain Injury Association of Maryland
443-364-9856

ⁱ <https://www.marylandattorneygeneral.gov/Health%20Policy%20Documents/HCDASummary.pdf>

ⁱⁱ Robertson K, Schmitter-Edgecombe M. Self-awareness and traumatic brain injury outcome. *Brain Inj.* 2015;29(7-8):848-58. doi: 10.3109/02699052.2015.1005135. Epub 2015 Apr 27. PMID: 25915097; PMCID: PMC4769700.

Adam McCrensky.pdf

Uploaded by: Coni Nepomuceno

Position: FAV

Thursday, February 17, 2022

I have all my rights with autism with all the things I need.

Sincerely,

Adam McCrensky

adaaa11@aol.com

Angelica Perez- Testimonial.pdf

Uploaded by: Coni Nepomuceno

Position: FAV

16 de febrero del 2022

A quien corresponda:

Me gustaría que en la vida adulta de mi hijo él pueda tomar sus propias decisiones, y tal vez un pueda tener un poco de ayuda cuando lo necesite. Mi familia se sentirá a gusto y comfortable al ver el crecimiento personal de mi hijo. Estoy a favor de SB0559/HB0529

Atentamente,

Angelica Pérez

(443)455-7968

Anne Arundel County, Maryland

Grace Torres.pdf

Uploaded by: Coni Nepomuceno

Position: FAV

2/17/22

Estimados,

Me adhiero y apoyo "Supported Decision Making Cause" para todos los individuos con necesidades especiales.

Apoyo a esta causa como madre de un niño con autismo y entiendo lo necesario y beneficio que puede ser cuando alcance su mayoría de edad y tenga que tomar decisiones importantes en su vida.

Supported Decision Making sería de gran ayuda para él y todos los individuos que necesitan asistencia en su vida cuando llegan a la adultez.

Atentamente,

Grace Torres

(240)338-1860

Howard County

Jülide Aker.pdf

Uploaded by: Coni Nepomuceno

Position: FAV

Thursday, February 17, 2022

There should be an alternative to full guardianship. I want Supported Decision Making to be an option in Maryland as it is in 20 other states so more individuals will keep their rights.

Thanks so much

Jülide Aker
(pronouns: she/her/hers)
julide.aker@gmail.com

Karla Vigil López.pdf

Uploaded by: Coni Nepomuceno

Position: FAV

2/17/22

Buenos días, mi nombre es **Karla Vigil López**, vivo actualmente en el Condado de Baltimore, Maryland.

Soy la mamá de **Daniel Melkonyan** un niño de casi 3 años de edad; que fue diagnosticado con autismo el 16 de agosto del 2021 en el Instituto Kennedy Krieger, me encantaría que mi hijo Daniel tenga las mismas oportunidades, deberes y derechos que cualquier otro niño.

me gustaría que Daniel pueda tomar sus propias decisiones y que él pueda dirigir su vida, que siempre tenga un apoyo de una persona que lo pueda guiar o dirigir con mucha paciencia y sobre todo con respeto tanto física, mental y emocional.

Que Daniel decida dónde quiera vivir, dónde quiera trabajar, dónde desee estudiar, etc.

Yo como mamá deseo con todo mi corazón que Daniel sea libre de tomar decisiones y es por eso que me encantaría que existieran Programas de apoyo que puedan asegurarme de que él va a estar bien, que lo van a proteger y cuidar.

Necesitamos programas que lo guíen; que le digan que opciones tiene, para poder evaluar y seleccionar la mejor según sean sus necesidades.

Es por eso que estoy interesada en que legislen Programas como:

- La toma de decisiones asistida (SDM, por sus siglas en ingles) para garantizar que Los derechos de mi hijo los respeten y sobre todo que se cumplan todos y cada uno de los derechos civiles según la constitución, incluidas todas sus enmiendas.

Daniel es un niño Maravilloso que se esfuerza todos los días, para poder ser la mejor persona que él pueda ser.

Necesitamos Programas en Maryland que Garanticen el respeto y la igualdad de derechos, hacia personas con necesidades especiales, físicas o neurológicas y puedan tener una excelente calidad de vida.

Atentamente:

KARLA J VIGIL LOPEZ

(443)939-5069

Lianna Brown.pdf

Uploaded by: Coni Nepomuceno

Position: FAV

February 17, 2022

Good morning Chairman and Committee,

My name is Lianna Brown and I am here today to support bill SB0559/HB0529 Support Making Decision. This bill is very important to me because I and a couple of other individual with a disabilities feel that sometimes we need the extra support because somethings throughout our daily living we just don't understand like going to doctor appointments, taking a trip to the grocery store, speaking with someone on the phone about an important matter. It is more that comes along with making these decisions knowing that sometimes I am not able to understand. Sometimes it is very hard for us to get someone as a close family member to get the guidance, advice and the understanding that we need to move forward as the days goes by. I want to have this option for others and myself because I believe that this will make it much easier get through our daily living and that I know that we are not a lone in making any mistakes or not understanding something. Supporting this bill will help me and other individuals disabilities feel comfortable and knowing we have this support during these difficult times. Thank you for letting me share my testimony.

Sincerely,

Lianna Brown

rds2001@comcast.net

Teofila Liriano- Testimonio.pdf

Uploaded by: Coni Nepomuceno

Position: FAV

16 de febrero del 2022

A quien pueda corresponder:

Soy Teofila Liriano. Tengo un hijo de 4 años que fue diagnosticado con autismo, y me gustaría que el llegara a ser independiente. Quiziera que mi hijo pueda tomar desiciones por EL mismo. Estoy a favor de SB0559/HB0529. Apoyo la libertad de las personas.

Sinceramente

Teofila Liriano

(203)500-8625

Anne Arundel County, Maryland

SDM Favorable Testimony SB 559 for Ellen Callegary

Uploaded by: Ellen Callegary

Position: FAV

Ellen A. Callegary
The Law Offices of Ellen A. Callegary, P.A.
Senate Judicial Proceedings Committee
SB 559 – Supported Decision-Making
February 17, 2022
Position: Support

The attorneys in The Law Offices of Ellen A. Callegary, P.A. represent individuals with disabilities throughout Maryland. For over forty years, I have worked to protect the most vulnerable members of our community --- children and adults with disabilities. Beginning with my time as an Assistant Attorney General in Maryland in 1979 and continuing through today as a private attorney working on their behalf. Because of my desire to promote greater independence in decision-making for all Maryland adults including adults with disabilities, I submit this testimony in support of Senate Bill 559.

- Supported decision-making is a nationally and internationally recognized best practice that helps preserve a person’s right to make their own decisions by recognizing that just like people without disabilities, people with disabilities rely on “supporters” the people who they trust to help them make, communicate, and effectuate their decisions.
- This law would help formalize supported decision-making (SDM) agreements, to ensure that these agreements are accepted and that there are clear guidelines and protections in making these agreements.
- Passing supported decision-making in Maryland would not be a ground-breaking act. In 2015 the legislature passed a narrow bill recognizing supported decision-making in the context of organ transplants. As of today, 20 jurisdictions in the US have passed laws formally recognizing SDM and over 40 states have introduced legislation. The Administration on Community Living has funded SDM projects in over 18 states and created a National Resource Center for Supported Decision-Making, which is a hub for best practices across the country.
- Maryland’s Developmental Disabilities (DD) Council provided a small grant to help propel the creation of the Cross-Disability SDM Coalition, which consists of over 27 partners, including representation from various state agencies, the Administrative Office of the Courts, advocacy groups, self-advocates and family members, and others across the disability and aging communities to help draft a plan to implement SDM in Maryland. The Coalition received technical assistance from the National Resource Center for Supported Decision-Making to draft its action plan, which included an action plan item around passing legislation. I have the honor of being a member of this Coalition.

I am also Co-Editor of “Guardianship and Its Alternatives: A Handbook on Maryland Law”, a joint publication of The University of Maryland Francis King Carey School of Law and the Maryland State Bar Association. SB 559 would provide one more valuable alternative to guardianship for all Maryland adults and their families. Personally, SDM would help my family members with disabilities to receive the support they need throughout their lives. I urge you to give SB 559 a favorable report.

SB559_Supported Decision Making_KennedyKrieger_Sup

Uploaded by: Emily Arneson

Position: FAV



DATE: February 17, 2022 **COMMITTEE:** Judicial Proceedings
BILL NO: Senate Bill 559
BILL TITLE: Supported Decision-Making
POSITION: Support

Kennedy Krieger Institute supports Senate Bill 559 – Supported Decision Making

Bill Summary:

Senate Bill 559 would formalize supported decision-making agreements. Supported Decision-Making is a tool where individuals with disabilities can make their own choices, with support.

Background:

Kennedy Krieger Institute provides specialized services to patients nationally and internationally. Kennedy Krieger Institute is dedicated to improving the lives of children and young adults with developmental, behavioral, cognitive and physical challenges. Kennedy Krieger's services include inpatient, outpatient, school-based and community-based programs.

The Maryland Center for Developmental Disabilities (MCDD) at Kennedy Krieger Institute is proud to be Maryland's University Center for Excellence in Developmental Disabilities Education, Research, and Service (UCEDD) and a member of the national Association of University Centers on Disabilities (AUCD).

MCDD links the community to vital services, research and information to improve the lives of people with disabilities. Our mission is to provide leadership that advances the inclusion of people with intellectual, developmental and other disabilities through preservice preparation and training; research and evaluation; community service and technical assistance; and information dissemination.

Rationale:

Supported Decision-making is a process of supporting and accommodating a person so that they can make, communicate, and effectuate life decisions in accordance with their preferences and right to self-determination. This tool allows anyone, but especially a person with disabilities, to retain their decision-making capacity by selecting people who they trust to assist them with making and communicating their will, choices, and opinions.

Supported Decision-Making respects individuals with disabilities voices and choices. This process establishes independence, so that individuals with disabilities have a support system when making informed decisions about their life. In addition, individuals with disabilities develop self-advocacy and decision making skills.

Supported Decision-making is a nationally-recognized best practice that preserves the civil rights of people with disabilities by providing an alternative for guardianship and is endorsed by the American Bar Association, The American Civil Liberties Union, the Uniform Law Commission, and the United Nation's Committee on the Rights of Persons with Disabilities.

Kennedy Krieger Institute requests a favorable report on Senate Bill 559

2.17.22TheArcCCR.SB559 Support.pdf

Uploaded by: Jonathon Rondeau

Position: FAV



Central Chesapeake Region

☎ 410.269.1883

✉ info@thearcccr.org

🌐 www.thearcccr.org

February 17, 2022

Chair William C. Smith, Jr.
Judicial Proceedings Committee
Maryland State Senate
Miller Senate Office Building, 2 East
Annapolis, MD 21401

Dear Chair Smith, Vice-Chair Waldstreicher, and Committee Members:

I am writing to you on behalf of The Arc Central Chesapeake Region in SUPPORT of SB559 – *Estates and Trusts - Supported Decision Making*.

The Arc Central Chesapeake Region provides services and supports people with intellectual and developmental disabilities through living options, workforce development, and fiscal management services. Serving Anne Arundel County and the Eastern Shore of Maryland, The Arc provides an innovative, person-directed approach across the Arc of a person's life, focusing on equity and self-determination.

People with disabilities have continued to face inequalities in their ability to make personal decisions for themselves and choose a supported decision-maker in a time of need. SB559 creates the necessary provisions for adults with developmental and intellectual disabilities to support making, communicating, and effectuating personal life decisions. We routinely encounter situations where hospitals refuse to perform medically necessary procedures unless a surrogate decision-maker or guardian is appointed. Recently, a hospital refused to perform a procedure to treat a wound infected with flesh-eating bacteria unless The Arc agreed to assume the surrogate decision-maker's role. SB559 would promote these opportunities.

We support people with intellectual and developmental disabilities to live the lives they choose by creating opportunities, promoting respect and equity, and providing access to services. The Arc asks for your support this session by voting in favor of SB559 and allowing adults with intellectual and developmental disabilities to make the personal choice to enter into supported decision-making agreements.

Sincerely,

Jonathon Rondeau
President & CEO

Achieve With Us.®

SB 559_MACS_FAV.pdf

Uploaded by: Lauren Kallins

Position: FAV

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Community Living, Inc.

Jonathon Rondeau,
The Arc Central Chesapeake Region

Laura Howell,
Executive Director

Senate Judicial Proceedings Committee SB 559 – Estates and Trusts - Supported Decision-Making

February 17, 2022

Position: Support

The Maryland Association of Community Services (MACS) is a nonprofit association of over 100 agencies across Maryland serving people with intellectual and developmental disabilities (IDD). MACS members provide residential, day and supported employment services to thousands of Marylanders, so that they can live, work and fully participate in their communities.

This bill would help to safeguard the fundamental right of people with disabilities to direct their own lives and make decisions for themselves. SB 559 creates a framework that permits people with disabilities to rely on the support of people whom they know and trust-- as people without disabilities do-- to help understand, communicate and effectuate an array of decisions—from buying a car to making decisions about medical care.

This bill provides an alternative to the far more restrictive status of guardianship. While guardianship may be an appropriate vehicle in a given situation, it should not be the default option for people with disabilities who have long been placed under guardianship due to stereotypes and outdated notions of competency. A person placed under legal guardianship risks losing their right to vote, marry, make decisions about medical care, decide who can visit them and other rights. The process for terminating guardianship can present daunting obstacles including accessing medical records and navigating court proceedings.

The bill incorporates best practices from the 20+ [other states](#) that have passed supported decision-making legislation, including clear language that limits the authority of a supporter to the choices of the person they are supporting.

MACS urges your favorable vote of SB 559 which will increase self-determination and enhance the quality of life for people with disabilities.

Respectfully submitted,

Lauren Kallins
Director of Government Relations

SB0559 Estates and Trusts_Supported Decision Makin

Uploaded by: Margo Quinlan

Position: FAV

Senate Bill 559 Estates and Trusts - Supported Decision Making

Senate Judicial Proceedings Committee

February 17, 2022

Position: SUPPORT

The Mental Health Association of Maryland is a nonprofit education and advocacy organization that brings together consumers, families, clinicians, advocates and concerned citizens for unified action in all aspects of mental health, mental illness and substance use. MHAMD, and the Policy Committee of the Maryland Coalition on Mental Health and Aging, appreciate this opportunity to present testimony in support of Senate Bill 559.

SB 559 would authorize the use of supported decision making to assist an adult through the provision of certain support in making, communicating, or effectuating certain decisions and preventing the need for the appointment of certain substitute decision makers for the adult. It would authorize an adult to enter into a supported decision-making agreement with one or more supporters, thus protecting the dignity and autonomy of the individual by centering their capacity for choice, care, and appropriate community supports.

Maryland's public guardianship program guides the care of hundreds of vulnerable older adults, many with dementia, mental illness and substance use disorders. Individuals with behavioral health disorders represent a disproportionate number of those in the overall program and they tend to be in the program for many years. Alternatively, supported decision-making agreements prioritize an individual's ability to make decisions with appropriate supports if and as needed. It has been demonstrated as an effective intervention to public guardianship when an individual retains the legal capacity to make decisions for themselves. Through supported decision-making, an older adult may rely on trusted friends, family members, and professionals to help them understand the choices they face, thus supporting their own autonomy and independence without state intervention.

While MHAMD appreciates the necessity of public guardianship in certain situations, it must be viewed as a last resort. The legislature must pass legislation that would recognize supported decision-making as a pre-requisite to the public guardianship program. For these reasons, we urge a favorable report on SB 559.

For more information contact:

Margo Quinlan, Director of Youth & Older Adult Policy: 410-236-5488 / mquinlan@mhamd.org

SB559_The Arc Maryland.NFB_Support.docxWednesday F

Uploaded by: Mathew Rice

Position: FAV



Figure 1 The Arc Maryland Logo



Figure 2: The National Federation of the Blind of Maryland Logo

**Senate Judicial Proceedings Committee
SB 559 - Supported Decision-Making
February 17, 2022**

Position: Support

The Arc Maryland is the largest statewide advocacy organization dedicated to protecting and advancing the rights of people with intellectual and developmental disabilities. The National Federation of the Blind of Maryland is the Maryland state affiliate of the [National Federation of the Blind](#). The National Federation of the Blind is the oldest and largest nationwide organization of blind Americans. Founded in 1940 and currently headquartered in Baltimore, the NFB consists of affiliates, chapters, and divisions in all fifty states, Washington, DC, and Puerto Rico. We are in support of SB 559 as it will require the legal recognition of supported decision-making as a foundational civil rights issue for people with disabilities.

Everyone relies on the support of people they know and trust to help them to make, communicate, and effectuate important decisions in their lives. Unfortunately, many people with disabilities, due to historic stereotypes and perceptions about capacity, have been placed in overboard and unnecessary guardianships. Under guardianship, a person loses their ability to make even the most basic decisions for themselves. A person loses the ability to control their medical care, make decisions on their friends/who can visit them and with whom they may have a relationship. They are not allowed to vote or make other decisions that those not under guardianship often take for granted. Also, once a person is placed under guardianship or conservatorship, it is very difficult for a person to have that arrangement terminated.

While guardianship is an important tool in our toolbox, and may be appropriate for some cases, **it must not be the default for people with disabilities. This is why recognition of Supported Decision-Making is so important.**

Supported Decision-Making preserves a person's right to make their own choices—fundamentally it is their right to have rights. Support Decision-Making has been recognized as a reasonable accommodation under the Americans with Disabilities Act. Nineteen states and Washington DC have passed laws similar to this legislation, recognizing supported decision-making agreements.

This bill has the opportunity to prevent unnecessary guardianship for many Marylanders with disabilities. The significance of this legislation cannot be overstated. For all of these reasons, The Arc Maryland and National Federation of the Blind of Maryland support

Contact:

Mat Rice, Director of Public Policy, The Arc Maryland, ph: 410-571-9320

email: mrice@thearcmd.org

Ronza Othman, President, National Federation of the Blind of Maryland, ph: 443-426-4110

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SDM SB 559 Favorable Testimony__DRM.pdf

Uploaded by: Megan Rusciano

Position: FAV

Senate Judicial Proceedings Committee
Senate Bill 559 – Supported Decision-Making
February 17, 2022
Position: Support

Disability Rights Maryland (DRM), formerly *Maryland Disability Law Center*, is Maryland's federally-designated protection and advocacy organization charged with advancing the rights of people with disabilities for over 40 years. DRM has witnessed how people with disabilities are denied the supports and accommodations they need to make their own decisions and are placed under guardianship as a result. Their stories are harrowing: some have been institutionalized against their will; others have been unable to control their own medical care; and some have been unable marry the person that they love. By recognizing supported decision-making (SDM) as an alternative to guardianship, Senate Bill 559 creates a tool to empower people with and without disabilities to be the architects of their own lives and retain the ability to make their own decisions. As such, DRM strongly supports Senate Bill 559.

History

Supported decision-making (SDM) 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. Most of us informally choose our own supporters (our close friends, family members, and mentors), to weigh the consequences and pros and cons of our decisions. While we use their support to reach our decision, we remain the decision-maker: that's SDM.

SDM is not a new concept. The first law recognizing SDM passed in British Columbia Canada in 1996.¹ Roughly ten years later in 2006, the United Nations Convention on the Rights of Persons with Disabilities enshrined that people with disabilities have a right to enjoy legal capacity on an equal basis with others and may use SDM to exercise that right.² By 2015, Texas became the first state in the US to pass a law formally recognizing SDM agreements, followed by our neighbor Delaware, later in 2015. In fact, in 2015, the Maryland General Assembly passed a narrow law recognizing people with developmental disabilities right to use SDM to access organ transplants.³ Since then an additional 17 states and DC have passed laws recognizing SDM as an alternative to guardianship and at least an additional 20 have introduced legislation on it. More states pass legislation each year. Senate Bill 559 brings Maryland in line with near majority of states that have broadly recognized SDM as an alternative to guardianship.

¹ British Columbia, Representation Agreement Act, 1996, available at https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96405_01

² United Nations Convention on the Rights of Persons With Disabilities, 2006, available at <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

³ Maryland General Assembly, 2015, <https://mgaleg.maryland.gov/mgawebsite/legislation/details/sb0792?ys=2015rs>

The momentum to recognize SDM around the country is palpable. SDM has been endorsed by several national organizations, including the National Guardianship Association (2016)⁴, the National Council on Disabilities (2018)⁵, the Social Security Advisory Board (2016)⁶, The American Association of Intellectual and Developmental Disabilities and The Arc of the United States (2016)⁷, The US Department of Education (2017)⁸, the US Senate Special Committee on Aging (2018)⁹, the American Civil Liberties Union¹⁰, and others. In 2017, the Administration on Community Living established the National Resource Center for Supported Decision-Making,¹¹ which has become a hub for resources, and best practices surrounding SDM across the country.

Furthermore, SDM has gained acceptance as a best practice among attorneys and courts. In 2016 the American Bar Association (ABA) developed the PRACTICAL Tool, a guide that helps lawyers identify and implement decisions-making options that are less restrictive than guardianship, including SDM.¹² Then in 2017, the ABA passed a resolution advocating for states to pass legislation to recognize SDM and for courts to utilize it to prevent or terminate guardianship.¹³ In 2017 the Uniform Law Commission drafted model legislation, the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Acts (UGCOPAA), that recognizes SDM and requires its consideration as a less restrictive alternative to guardianship.¹⁴

SDM is also reasonable accommodation under the Americans with Disabilities Act (ADA). The ADA requires that people with disabilities have equal access to services and programs as those without disabilities. Equal access can include tools to ensure effective communication, which means that whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people without disabilities.¹⁵ Supporters play a critical role in ensuring that people with disabilities have the tools they need to understand and communicate their own decisions. Indeed, the National Guardianship Summit's 2021 recommendations urged the

⁴ National Guardianship Association, Position Statement, https://www.guardianship.org/wp-content/uploads/2018/09/SupportedDecision_Making_PositionStatement.pdf

⁵ <https://ncd.gov/publications/2018/beyond-guardianship-toward-alternatives>

⁶ Social Security Advisory Board, Representative Payees: A Call to Action, http://ssab.gov/Portals/0/OUR_WORK/REPORTS/Rep_Payees_Call_to_Action_Brief_2016.pdf

⁷ AAIDD and The Arc of the United States, Position Statement, <https://www.aaidd.org/news-policy/policy/position-statements/autonomy-decision-making-supports-and-guardianship>

⁸ US Department of Education, Transition Guide, <https://www2.ed.gov/about/offices/list/osers/transition/products/postsecondary-transition-guide-may-2017.pdf>

⁹ US Senate Special Committee on Aging, <https://www.aging.senate.gov/download/guardianship-report-2018>

¹⁰ ACLU, <https://www.aclu.org/issues/disability-rights/integration-and-autonomy-people-disabilities/supported-decision-making>

¹¹ See generally, <http://www.supporteddecisionmaking.org/>

¹² ABA PRACTICAL Tool, https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool/

¹³ ABA Resolution, 2017, https://www.americanbar.org/content/dam/aba/administrative/law_aging/2017_SDM_%20Resolution_Final.pdf

¹⁴ See generally, <https://www.uniformlaws.org/committees/community-home/digestviewer/viewthread?MessageKey=62fffa0e-c746-49ea-9d84-7d2303788433&CommunityKey=d4b8f588-4c2f-4db1-90e9-48b1184ca39a&tab=digestviewer>

¹⁵ See ADA toolkit for State & Local Governments, available at <https://www.ada.gov/pcatoolkit/chap3toolkit.htm>

Department of Justice to issue guidance about SDM's use as a reasonable accommodation under the ADA.¹⁶

In January 2020, DRM established Maryland's Cross-Disability Supported Decision-Making Coalition, which consists of over 27 partners, including private attorneys, advocacy groups and self-advocacy groups for people with developmental disabilities, mental health conditions, traumatic brain injury, and older adults, as well as partners from state agencies including the Department of Disabilities, the Department of Aging, the Department of Human Services, the Behavioral Health Administration, as well as the Judiciary. With a grant from our Developmental Disabilities (DD) Council, the Coalition received technical assistance from the National Resource Center for Supported Decision-Making to develop an action plan for implementing SDM in Maryland. The Coalition devised action plan goals around education, community outreach, legislation, and data collection and is currently implementing these goals.

Senate Bill 559 reflects the Coalition's collaborative work to create an effective model for Maryland to implement SDM. We have reviewed legislation, initiatives, and pilot projects in other states and spoken with advocates about how it is working in practice. We have crafted a model that is responsive to Maryland's needs and builds upon what others have learned. This bill is the result of a deliberative and comprehensive evaluation of the SDM landscape across the US.

From 2015 to today, the SDM landscape has changed. What was an innovative and new concept seven years ago, is now widely recognized and accepted as a best practice. As the favorable testimony from advocacy organizations, 20 of our partners from the Maryland's Cross-Disability Rights Coalition, the Judiciary, and others show—our state is ready to recognize SDM.

What does this bill do?

This bill builds best practices from other states who implemented supported decision-making by:

- Creating a framework for how to make a supported decision-making agreement so that third parties are more likely to recognize them
- Allowing courts to terminate or limit guardianship due to the existence of SDM
- Making it clear that a supporter cannot make a decision for a person, rather the person remains the decision-maker
- Limiting who can be a supporter, including excluding people who have been convicted of exploitation of vulnerable adults or people who are the subject of a peace order or protective order against the person
- Limiting liability for those who in good faith rely on the use of SDM agreements
- It does not replace the need for guardianship. Maryland law requires that less restrictive alternatives to guardianship are considered before guardianship is imposed. This bill creates an additional alternative that should be considered and can be a tool to modify or terminate guardianships in certain situations. Guardianship remains available if supported decision-making does not work or is not appropriate.

¹⁶ See, https://www.americanbar.org/content/dam/aba/administrative/law_aging/2021-grd-smmmt-recmndtns.pdf

- It does not replace powers of attorney or other legal tools, it instead creates another tool in the toolbox. A supporter does not have the same authority as an agent under a power of attorney. An agent has the authority to make decisions on behalf of an adult and stand in their shoes, a supporter has no authority to make decisions for a person. They merely provide support and accommodation to ensure that a person has the tools they need to communicate their own decisions.

Why do we need this legislation?

Unfortunately, people with disabilities continue to be denied access to the supports and accommodations they need to have their decisions respected. Bias leads to some people to be found incapable, even though if they had a supporter present to help convey information or even advocate for accommodations, they could make their own decisions. A person's capacities for understanding and decision-making are far more nuanced than their diagnoses. Senate Bill 559 ensures others recognize their obligation to respect the decision a person makes with support.

Senate Bill 559 is also critical because it can prevent the need for guardianship in certain situations and limit and terminate overbroad or unnecessary guardianships. 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. We have seen people remain under unnecessary guardianships and even be abused 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."¹⁷ While guardianship still may be the appropriate tool in some cases, it must not be the default. Senate Bill 559 enshrines SDM as an alternative to guardianship. In doing so, it preserves a person's right to make their own choices—fundamentally it is their right to have rights.

This bill provides us all with a tool that can ensure that we can continue to have the dignity to direct our lives and make our own choices. Senate 559 ensures that people with disabilities have access to the same fundamental right to make their own decisions as we all do and can chart the course of their own lives. For that right, DRM urges this committee to give SB 559 a favorable report. For additional information, please contact, meganr@disabilityrightsmd.org.

Respectfully submitted,
Megan Rusciano
Managing Attorney
Disability Rights Maryland

¹⁷ 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>.

SDM Testimony on behalf of ELDRSC 2.16.22.pdf

Uploaded by: Morris Klein

Position: FAV



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Stephen R. Elville, Principal, J.D., LL.M. (Tax)

Lindsay V.R. Moss, J.D.

Duncan Scott Keir, J.D.

Shannon F. Werbeck, J.D.

Shannon K. Mumaw, J.D.

Renee Q. Boyd, J.D.

Gary Greenwald, J.D., LL.M. (Tax) †

Charles A. ("Chuck") Borek, J.D., MBA, CPA ††

†Of Counsel

††Special Counsel

Senate Judicial Proceedings Committee

SB 559 – Supported Decision-Making

February 17, 2022

Position: Support

Testimony of Stephen R. Elville, J.D., LL.M.

and Statement on behalf of the Elder Law and Disability Rights Section Council

My name is Stephen R. Elville. I am the principal and lead attorney of Elville & Associates, P.C. a mid-size estate planning, elder law, and special-needs planning law firm located in Columbia, Maryland. I am the former Chair of the Elder Law and Disability Rights Section Council of the Maryland State Bar Association, and I currently serve as a continuing member of the Council and chair its Pro Bono Subcommittee. I am also the Elder Law and Disability Rights Section Council liaison to the Estates & Trust Section Council of the Maryland State Bar Association. I have been a practicing attorney in the areas of estate planning, elder law, special needs planning, and taxation for over twenty-one years.

Approximately seven ago I met the acquaintance of Megan Rusciano, an attorney and disability rights advocate, and the main proponent of supported decision-making legislation in Maryland. I met Megan while presenting at the ARC of Frederick on the topic of guardianship while she co-presented on the subject of supported decision-making. At that time, I had never heard of the concept of supportive decision-making and went about my business of presenting to the large audience of special needs parents during which I expounded on the concepts and mechanics of guardianship. Megan presented on supported decision-making as an alternative and tool in guardianship. In the weeks and months following the presentation, I continued to stay in touch with Megan as a new awareness of supportive decision-making permeated my thinking during the daily ins and outs of our firm's very busy special needs and guardianship practice. Over time, I began to understand that supported decision-making was something parents of children with disabilities, older adults with disabilities, and the aging population strongly desired and wished to see passed into law. As I continued to gain more insight into the idea that persons with disabilities (and their advocates) want to be able to make their own decisions to whatever degree possible, I began to understand that the traditional paradigm of guardianship limits our ability to think in terms of persons with disabilities being able to take risks. I gradually realized that supported decision-making is a powerful tool that attorneys and courts need to ensure that all alternatives to guardianship are explored prior to the implementation of a guardianship.

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But beyond that, I concluded that supported decision-making was an essential tool for persons with disabilities to be able to reach their fullest capacity, something that is one of the foundational principles of special needs planning. Along these lines, I undertook to educate myself about the supported decision-making laws in various states such as Indiana, Alaska, Texas, Delaware, the District of Columbia, and Wisconsin. I then decided that it would be a worthy goal to dedicate the use of my production studio (Elville Studios, LLC) for the purpose of producing a documentary film to educate the citizenry of Maryland and its thought leaders and decision makers about the need for supported decision-making; and further to educate the public about the uses and applications for supportive decision-making on a practical level so that the idea not be passed into law and then pigeonholed in a one or two dimensional approach. As part of the production of the documentary (still underway), I have interviewed and filmed top Maryland guardianship attorneys, persons with disabilities, and their advocates. I have concluded that the leading guardianship attorneys in Maryland agree that supportive decision-making is not only an idea whose time has come, but that courts are already improvising by way of consent orders and in essence creating quasi-supported decision-making agreements (largely by necessity). It is also clear from my research that persons with disabilities who have advocates and supporters who can help them effectuate their own wishes and desires to whatever extent they are capable of making such wishes and desires known have a very high quality of life compared to persons with disabilities who live in and labor under the conditions of the traditional paradigm of guardianship.

Having provided the foregoing narrative summary, I submit the following further points:

Supported Decision-Making (SDM) is about support - supported decision-making is about providing support. It is about this concept: people with disabilities can make their own decisions to a very large degree provided that they have the support to do so. Again, supported decision-making is about whether persons with disabilities can make their own decisions. It is a question of whether we are willing to provide enough support so that they can do so;



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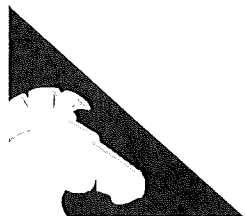
Senate Judicial Proceedings Committee
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People with disabilities can make their own decisions to a very large degree provided they have the support to do so - - persons with disabilities do not want to live under the paradigm of protection such as exists under the old regime of guardianship. Rather, persons with disabilities want to be able to take risks; and only by being able to take risks can they live as persons with the same rights and opportunities as those without disabilities. Persons with disabilities have to be given the right to take risks and to make mistakes - and only by doing so can they be free. This is the theme of the documentary film in progress and again I submit it as the core concept that, once accepted, leads to a greater understanding of what supported decision-making is all about and that *it is to be embraced rather than feared*;

Supported decision-making recognizes everyone - regardless of whether they have a disability, and relies on the support of people that they know and trust to help them understand, make, and effectuate decisions. A person may rely on their supporter to help them understand a medical situation that they face, but they remain the ultimate decision-maker. This is a critical feature of SDM and one that distinguishes it from other less restrictive alternatives: the supporter does not have any authority to make decisions for a person, instead the supporter merely provides feedback and helps the person understand the nature and consequences of the decision.

A tool for the individuals – Supported decision-making can be a stand-alone document and legal mechanism for a person with disabilities to appoint a supporter to help them make their own decisions – and that supporter could be the same person who is named as the attorney-in-fact in a power of attorney document, or as health care agent in an advance directive; or it could be a different person than these agents who are named as fiduciaries;

Can be used as a tool for the legal community (and as part of guardianship) – as discussed herein, supported decision-making is another tool in the toolbox for attorneys and for courts. If supported decision-making were part of Maryland Law, courts could truly say they are examining *all lesser restrictive alternatives* to guardianship and also implement guardianships where necessary while including the right of the ward to have a supported decision-maker. Thus, the concepts of guardianship and supported decision-making do not have to be mutually exclusive. Rather, they can live together in a framework for achieving the highest and best outcomes for persons with disabilities;



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AND ASSOCIATES

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Senate Judicial Proceedings Committee
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Does Not replace guardianship Supported decision-making does not replace the need for guardianship. Maryland law requires that less restrictive alternatives to guardianship are considered before guardianship is imposed. Supported decision-making creates an additional alternative that should be considered and can be a tool to terminate guardianships in certain situations. Guardianship remains available if supported decision-making does not work or is not appropriate.

Does not replace powers of attorney or advance medical directives - as mentioned and implied above, a supported decision-making agreement *does not replace* a power of attorney or advance medical directive document. It does *not* provide the supporter with any decision-making power over the disabled person's decisions. Rather, the supported decision-making agreement can be an adjunct to these important incapacity documents. At the risk of redundancy, it's important to understand that a supporter under a supported decision-making agreement does not have the authority to make decisions for the person with disabilities. Rather, the supporter is only there to provide *support* and to *accommodate* the person with disabilities so they can make their own decisions to the extent possible. The supporter has *no legal access or control* over the funds of the disabled person;

The concept is simple, not complex - Supported decision-making is a *simple* concept. It is not a complex concept. It becomes complex only if misunderstood. The supporter *accommodates and supports* the person with disabilities. The supporter *does not make decisions* for or *control* the person with disabilities;

SDM is mandated by the United Nations - if Maryland passes supported decision-making into law, it will be fulfilling the United Nations' Convention on the Rights of Persons with Disabilities (CRPD) (Article 12);

SDM-type agreements are already happening now in guardianships - as mentioned above, Maryland's top guardianship attorneys will tell us that attorneys and courts are already accommodating and facilitating agreements short of guardianship in an attempt to address the customize needs of each individual who is faced with the prospect of guardianship. Supported decision-making would simply bring to light in a simpler fashion what is already going on under the traditional paradigm of guardianship;



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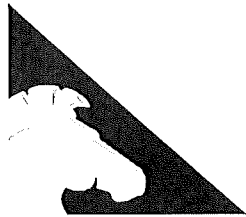
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SDM is eagerly anticipated by most parents, grandparents, and other relatives of disabled children, along with their providers and advocates too - all eagerly anticipate the passage of supported decision-making into law as an expansion of human rights and dignity for persons with disabilities. It is my hope that the Maryland General Assembly will hear these voices and provide the legal mechanism necessary to effectuate this path to self-determination; and

Equally powerful for the Aging Community - supported decision-making is not just for young persons with disabilities or those with intellectual disabilities - it is an equally powerful and necessary tool for the aging population who oftentimes are not accommodated to continue to make their own decisions for as long as possible or given the opportunity to avoid guardianship. With the proper understanding that a supporter only exists to provide support and to accommodate the person with disabilities, young or old, it becomes clear that the concerns or risks associated with allowing a person with disabilities to appoint a supporter are outweighed by the benefits and the enhanced rights of the self-determination experienced by the aging or disabled person.

Other points:

- Several national organizations, including the National Guardianship Association, the National Council on Disabilities, the US Administration on Community Living, the American Civil Liberties Union, and others, have endorsed supported decision-making as an alternative to guardianship.
- SDM has been endorsed by the American Bar Association, which passed a resolution in 2017 advocating for states to pass legislation to recognize SDM and for courts to utilize it as a tool to prevent or terminate guardianship.
- SDM is a reasonable accommodation under the Americans with Disabilities Act. Indeed, the National Guardianship Summit's 2021 recommendations recognize it as such and urge the Department of Justice to issue guidance about SDM's use as a reasonable accommodation. The recommendations also reiterate the need for courts to consider SDM and for states to make explicit in their laws that it must be considered as a less restrictive alternative. Those recommendations are available here.



ELVILLE
AND ASSOCIATES

Planning for Life, Planning for Legacies

Senate Judicial Proceedings Committee
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In closing, the great state of Maryland is situated between the District of Columbia and Delaware, both states having already passed supported decision-making legislation into law several years ago. Maryland is therefore behind its neighbors and must consider a more progressive view of the rights of its many citizens with disabilities. Furthermore, Maryland must continue to shift away from the traditional notion and paradigm of guardianship while always walking towards the bright and shining path of human rights and dignity for all. Based on my foregoing testimony, I ask the Maryland General assembly to pass SB 559 – Supported Decision-Making a decision into law this legislative session. By doing so you will be enhancing the lives of those persons who seek a voice, who seek to direct their own lives, and who do not wish to live under the auspices of protectionism.

Thank you,

Stephen R. Elville, J.D., LL.M

Supported Decision Making Testimony - SB0559.pdf

Uploaded by: Nina Liakos

Position: FAV

February 16, 2022

Senate Judicial Proceedings Committee

SB868, Estates and Trusts - Supported Decision Making

Position: Favorable

I would like to register my support for SB0559, Estates and Trusts - Supported Decision Making.

Most of us make decisions after thinking over the pros and cons, often discussing the issues with a trusted friend or family member. People with disabilities should have the same right to consult the people they trust before coming to a decision that will impact their lives. They should not be forced to decide on their own something that people without disabilities do not have to decide on their own.

Please vote to recommend passage of this bill out of committee. As the mother of an adult daughter on the Autism Spectrum, I am asking for your support of her right to choose the types and intensity of supports and services she receives, so that she has control over how she wants to live her own life. I believe that everyone should have that right.

Thank you!

Nina Liakos

SB559.DD Council.Support.pdf

Uploaded by: Rachel London

Position: FAV



Maryland Developmental Disabilities Council

CREATING CHANGE • IMPROVING LIVES

Senate Judicial Proceedings Committee

February 17, 2022

SB 559: Estates and Trusts – Supported Decision Making

Position: Support

The Maryland Developmental Disabilities Council (DD Council) is a statewide public policy organization that creates change to make it possible for people with developmental disabilities to live the lives they want with the support they need. The DD Council is led by people with developmental disabilities and their families. From that perspective, the DD Council strongly supports SB 559.

In fact, the DD Council's support of supported decision making (SDM) began years ago when we provided a grant to help create the Cross-Disability SDM Coalition – a group of over 27 partners, including representation from various state agencies, the Judiciary, advocacy groups, self-advocates and family members, and others across the disability and aging communities. Our funding provided technical assistance to the Coalition from the National Resource Center for SDM to draft an action plan.

WHY is this legislation important to people with disabilities and their families?

- **Supported decision making is a critical civil rights issue for people with disabilities—it is about the right to have rights and use them to direct your own life.** Too often people with disabilities have been placed in overbroad and unnecessary guardianships based on stereotypes about their capabilities. **Guardianship is incredibly restrictive—it takes away a person's basic rights to direct their life.** 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.
- **Supported decision-making is a nationally and internationally recognized best practice that helps preserve a person's right to make their own decision.** It recognizes that just like people without disabilities, people with disabilities rely on "supporters" - the people who they trust to help them make, communicate, and effectuate their decisions.
- **This law would help formalize supported decision-making agreements, to ensure that people accept it and that there are clear guidelines and protections in making these agreements.** Passing supported decision-making in Maryland would not be a ground-breaking act. In 2015, the legislature passed a narrow bill recognizing supported decision-making in the context of organ transplants. **As of today, 20 jurisdictions in the US have passed laws formally recognizing SDM and over 40 states have introduced legislation.**

WHAT does this legislation do?

This bill ensures people with disabilities have access to the same fundamental rights and decisions that we all do. It does this by:

- Creating a framework for how to make a supported decision making agreement so that third parties are more likely to recognize them.

217 E. Redwood Street, Suite 1300 • Baltimore, MD 21202 • 410.767.3670 • md-council.org

Kalani Brown, *Chairperson* • Rachel London, Esq., *Executive Director*

- Providing an alternative that courts must consider before placing someone under guardianship, and allowing courts to terminate or limit guardianship due to the existence of a supported decision making agreement.
- 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.
- 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.

Supported decision making 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.

For these reasons, the Maryland Developmental Disabilities Council supports SB 559.

Contact: Rachel London, Executive Director: RLondon@md-council.org

SB559 Letter of Suport.pdf

Uploaded by: Rene Averitt-Sanzone

Position: FAV



Senate Judicial Proceedings Committee
SB 559 – Supported Decision-Making
February 17, 2022
Position: Support

The Honorable Senator Smith, Jr & Senator Waldstreicher
& Members of the Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, MD 21401

Dear Senators Smith, Jr and Waldstreicher:

I am writing today as the Executive Director of The Parents' Place of MD (www.ppmmd.org) in support of SB 559. The Parents' Place of MD is the statewide Parent Training and Health Information Center for the state of MD. We serve families who have children and youth with disabilities and special healthcare needs with a mission to empower families as advocates and partners in improving education and health outcomes for children with disabilities and special healthcare needs with a commitment to diversity and equity.

Passing Supported Decision Making (SDM) is a critical civil rights issue for people with disabilities—it is about the right to have rights and use those rights to direct their own life with supports from loved ones. Guardianship, while a tool in the toolbox, is incredibly restrictive—it takes away a person's basic rights to direct their life. Imagine not being able to make decisions about where you live, what job you pursue, who you associate with, whether you can vote, what medical care you receive—those are the rights at stake in guardianship, simply because they have a specific diagnosis or IQ. Unfortunately, once under guardianship, it is very difficult to terminate it. We have seen people be denied access to medical records and evaluations that they need to prove their legal capacity and to attorneys who they need to represent them. Often guardianship is permanent

SB 559 is a powerful opportunity that will afford our families who have youth with disabilities the potential to lead lives like their peers without disabilities – *a life they choose for themselves*. Again, thank you for your time and consideration.

Sincerely,

Rene Averitt-Sanzone
Executive Director

MDCDRC SDM Favorable Testimony SB 559 Draft 2.14.2

Uploaded by: Rodney Coster

Position: FAV

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.

sb559.pdf

Uploaded by: Sara Elalamy

Position: FAV

MARYLAND JUDICIAL CONFERENCE
OFFICE OF GOVERNMENT RELATIONS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 559
Estates and Trusts – Supported Decision Making
DATE: February 9, 2022
(2/17)
POSITION: Support

The Maryland Judiciary supports Senate Bill 559. This bill authorizes the use of supported decision making to assist an adult through the provision of support for the adult in making, communicating, or effectuating decisions and preventing the need for the appointment of certain substitute decision makers for the adult.

The Judiciary supports this bill because it affirms supported decision-making (SDM) as both a communication accommodation and as a less restrictive alternative to guardianship. Additionally, it is a basis for modifying or terminating a guardianship. The bill recognizes that an adult must have the capacity to enter a SDM arrangement and clarifies that a “supporter” is not a substitute decision-maker and is not authorized to act on behalf of that adult. The bill further specifies a supporter’s duties and limits on their role and gives appropriate deference a court-appointed guardian. The legislation also sets parameters that will help courts assess whether an SDM arrangement is consistent with the welfare and safety of a person for whom a petition for guardianship is filed, or as an option for an adult under guardianship who seeks to terminate or modify the terms of their guardianship. Md. Code, Estates & Trusts Art. §13-705, Md. Rule 10-112, *Meek v. Linton*, 245 Md.App. 689 (2020), *Kircherer v. Kircherer*, 285 Md. 114 (1979).

The Judiciary’s Domestic Law Committee’s Guardianship & Vulnerable Adults Workgroup recognizes SDM as an accommodation for people with disabilities who have capacity but who need support in making or communicating their decisions. SDM also avoids the need for a person to be placed under an unnecessary or overly broad guardianship, which is important for the courts. Information on SDM is included in training programs for judges, court staff, and court-appointed guardianship attorneys who are supported by workgroup members and consultants. SDM will also be addressed as part of a video series on alternatives to guardianship that will be posted on the Judiciary website in the near future.

The Judiciary would like to point out, however, that in section 18-106(b)(2), the bill provides an individual against whom the adult has obtained a peace order may be disqualified from acting as a supporter. This may want to be clarified to also include peace or protective order.

cc. Hon. Jeff Waldstreicher
Judicial Council
Legislative Committee
Kelley O'Connor

SB 559 - Estates and Trusts- Supported Decision Ma

Uploaded by: Tami Goldsmith

Position: FAV



Testimony in Support
SB 559 - Estates and Trusts- Supported Decision Making
Judicial Proceedings
February 17, 2022
By Ken Capone

Hello committee members my name is Ken Capone. I am the Director of People On the Go of Maryland which is Maryland's statewide self-advocacy organization. We are here to testify in support of SB 559 Estates and Trusts - Supported Decision Making.

Background: People On the Go Maryland builds community through diversity and inclusion. We respect the individuality of our members and are committed to making inclusion a priority so that everyone feels comfortable, valued, and heard. People On the Go remains distinct by maintaining a cross-disability strategy that focuses on effecting positive change in the lives of people with and without disabilities.

Rationale: Supported decision making is a tool that allows people with disabilities to retain their decision- making capacity by choosing supporters to help them make choices instead of the alternative of having someone appointed as a certain substitute decision maker.

With the introduction of supported decision-making, people with disabilities have the opportunity to do really what people without disabilities have done when it comes to having input in life choices; if you think about it if you don't have a disability you still are using supported decision-making. We all ask our friends, family and others how we should handle certain choices in a given situation. In a sense the policy of supported decision-making helps level the playing field between those with disabilities and those without, because this policy presumes competence and that anybody is capable of making choices for them they just might want and need some support.

A person using supported decision making chooses trusted advisors; such as friends, family members, or professionals to serve as supporters. The supporters agree to support the person with a disability to understand, consider, and

communicate decisions. This gives the person with a disability the tools to make his or her own, informed decisions.

With Supported decision making I was able to get advice, information and communicate decisions with supporters and retain my ability to make my own decisions on important issues like purchasing a house, Trust and Estate documents for my deceased mother and purchasing a modified van. With supported decision making the supporters do not make decisions for you like a certain substitute decision maker may decide if appointed to do so.

We feel supported decision-making is important for people with disabilities and their families as an alternative to guardianship. This method of assistance allows for people with disabilities to have the input from their family, and other key supporters recognized without taking away the person's legal rights to make the decisions. Historically we have not presumed competence when it comes to people with disabilities being able to make appropriate life choices, some examples include the area of finance, and managing one's own money, choosing where and with whom to live and even whether or not you can refuse or accept medical treatment. Some families have turned to guardianship to make some of these life decisions for their love ones even though guardianship was not necessary.

In conclusion supported decision making give options for those seeking to retain independence with supports and the dignity of presuming competence. We ask for a favorable report

SB 559 Estates and Trusts Supported Decision Makin

Uploaded by: Tammy Bresnahan

Position: FAV



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1-866-542-8163 | Fax: 410-837-0269
aarp.org/md | md@aarp.org | twitter: @aarpmd
facebook.com/aarpmd

SB 559 Estates and Trusts - Supported Decision Making
Senate Judicial Proceedings Committee
FAVORABLE
February 17, 2022

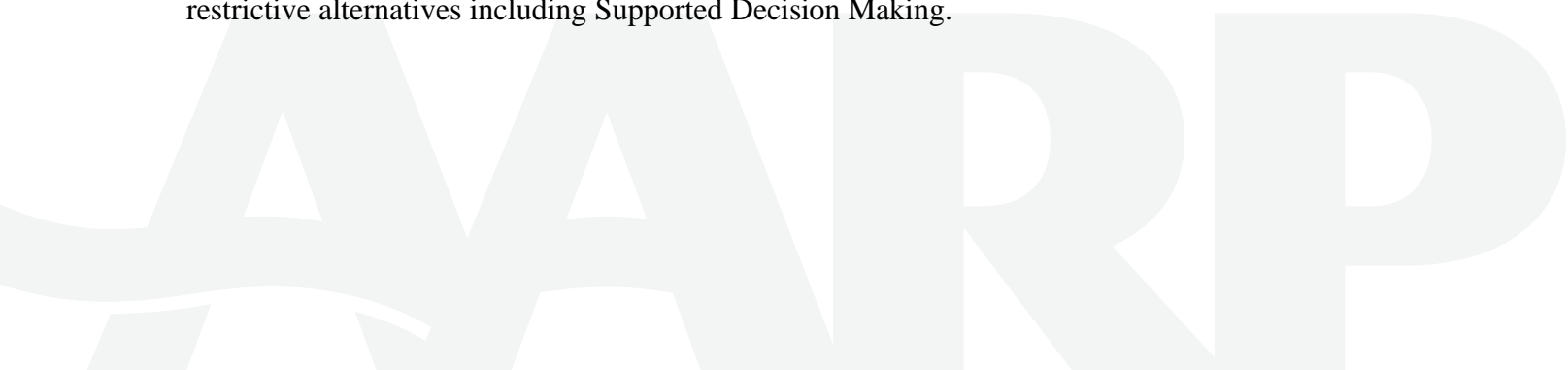
Good afternoon Chair Smith and members of the Senate Judicial Proceedings Committee. I am Tammy Bresnahan. I am the Director of Advocacy for AARP Maryland. AARP Maryland is one of the largest membership-based organizations in the Free State, encompassing almost 870,000 members. **AARP MD overwhelmingly supports SB 559 Estates and Trusts – Supported Decision Making.** We thank Senator Waldstreicher for championing this issue.

AARP is a nonpartisan, nonprofit, nationwide organization that fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

SB 559 authorizes the use of Supported Decision Making. Supported Decision Making allows adults to retain their decision-making capacity by choosing supporters to help them make choices. A person using Supported Decision Making selects trusted advisors, such as friends, family members, or professionals, to serve as supporters. SB 559 codifies Supported Decision Making in Maryland law and outlines the guidelines and protections for both the individual and the individual's supporter.

Supported Decision Making has emerged as a cutting-edge alternative to guardianship, placing the individual at the center of the decision-making process. Supported Decision Making describes the process by which most individuals make decisions - by consulting with friends, family, social services, community organizations, and and/or other sources of support to weigh the pros and cons of a decision, review potential outcomes, and finally make a choice. Supported Decision Making promotes self-determination, control, and autonomy. It fosters independence. We all engage in Supported Decision Making. We all consult with family or friends, colleagues or classmates, mechanics or mentors before we make decisions.

AARP for nearly a decade has advocated for and has led to reforms that include establishing standards and training for guardians, safeguarding the rights of those under guardianship, combating abuse and strengthening court oversight of guardians and conservators. Other reforms encourage judges to make guardianships a last resort and to explore, when appropriate, less restrictive alternatives including Supported Decision Making.



AARP shares the provisions of Supported Decision Making, which align perfectly with our bedrock principles: empowering people to choose how they live as they age and to lead their best lives possible.

For these reasons, AARP supports SB 559. AARP MD respectfully ask the Committee for a favorable report. For questions or follow up, please contact Tammy Bresnahan tbresnahan@aarp.org or by calling 410-302-8451.

SB559 Written Testimony MSBA E&T Law Section Favor

Uploaded by: Christine Hubbard

Position: FWA

To: Members of Senate Judicial Proceedings Committee

From: MSBA Estate & Trust Law Section

Date: February 17, 2022

Subject: SB 559 – Estates and Trusts - Supported Decision Making

Position: Support With Amendments

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports with amendments** Senate Bill 559 – **Estates and Trusts - Supported Decision Making**.

Senate Bill 559 seeks to implement a process by which any adult (an “Adult”), whether or not such Adult has capacity, may enter into a Supported Decision-Making Agreement (a “SDM Agreement”) with another adult (a “Supporter”) who may assist the Adult with any life decisions specified by the Adult in the SDM Agreement. For example, these decisions may relate to healthcare issues, medical insurance, personal finances, personal relationships, cell phone plans, changing beneficiaries under the Adult’s will or IRAs, arranging for transportation to doctor’s appointments, or other similar life experiences.

We understand and agree with the concept of a SDM Agreement and understand that it may help prevent the need for the appointment of a guardian when a person may be compromised but still capable of making their own decisions. We also recognize and deeply respect the importance of personal dignity and self-pride that comes with appropriate self-determination. However, there are serious problems with the language of SB559 that could lead to conflicts with powers of attorneys and advance directives, create unnecessary opportunities for abuse of Adults, and create civil and criminal liability for third parties who may, for example, decline to honor the SDM Agreement because they have a reasonable good faith belief that the supporter is unduly influencing the Adult but has no “actual knowledge” of such conduct.

It is also troublesome that although the SDM Agreement is to be documented and witnessed, it does not have to be signed by the Adult or the Supporter. Nonetheless, third parties are required to honor the SDM Agreement unless they have “actual knowledge” that (i) the SDM Agreement was invalid, revoked or abrogated, or (ii) the Supporter was coercing or unduly influencing the Adult or otherwise acting outside the scope of the SDM Agreement. Further, the bill contains no oversight or accountability mechanisms, except between the Adult and the Supporter, and does not require a

copy of the SDM Agreement to be provided to anyone. We are concerned that this may allow for situations where the Supporter may be unduly influencing the Adult in complete isolation of other interested persons.

In order to address these concerns, we respectfully request that SB559 be amended to generally provide that:

1. Neither the existence of a SDM Agreement, nor any provision contained therein, shall (i) authorize the Supporter to act on behalf of the Adult, (ii) supplant the authority of an agent under a validly executed power of attorney or valid advance directive, or (iii) supplant or grant authority or agency powers contemplated to be provided by a power of attorney under the Maryland Power of Attorney Act or a valid advance directive;
2. The Supporter shall make a good faith effort to (i) determine whether the Adult has a validly executed power of attorney, and (ii) if one is found to exist, deliver a complete copy of the fully executed SDM Agreement to the agent under such power of attorney, unless the Adult expressly objects to the same;
3. The SDM Agreement shall state that the Supporter may not (i) make decisions for the Adult, (ii) effectuate transactions on behalf of the Adult, or (iii) enforce the Adult's decisions;
4. The SDM Agreement is to be signed by the Adult and the Supporter or Supporters with each signature to be witnessed by two adults who are not a Supporter or the Adult, or an employee or agent of the Supporter;
5. A third party may decline to honor a SDM Agreement if they have a reasonable good faith belief (instead of actual knowledge) that the SDM Agreement was invalid, revoked or abrogated, or the supporter was coercing or unduly influencing the Adult or otherwise acting outside the scope of the SDM Agreement; and
6. The language in Section 18-109(a) indicating that a third party may be subject to civil or criminal liability for declining to honor the SDM Agreement would be removed.

We believe that these amendments address our most serious concerns with SB559 without undermining the fundamental elements of the bill that allow for meaningful and effective SDM Agreements.

For the reasons stated above, the Estate and Trust Law Section of the MSBA **urges a committee report on SB559 that is favorable with amendments. For Further Information, Please Contact:**

Michaela C. Muffoletto (410) 332-8534 mcm@nqgrg.com	Christine W. Hubbard (410) 798-4533 christine@chubbardlaw.com	Jonathan G. Lasley (410) 263-4876 jlasley@frankebeckett.com	Todd Bornstein (301)634-3104 tbornstein@sgrwlaw.com
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SENATE BILL 559

N2

2lr1148
CF HB 529

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

Introduced and read first time: January 31, 2022

Assigned to: Judicial Proceedings

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:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Estates and Trusts

TITLE 18. SUPPORTED DECISION MAKING.

18-101.

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

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

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

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

(2) THE RIGHTS OF THE ADULT; AND

(3) THE RESPONSIBILITIES OF THE SUPPORTER OR SUPPORTERS.

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

18-102.

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

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

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

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

(C) Neither the existence of a Supported Decision-Making Agreement, nor any provision contained therein, shall (i) authorize the supporter to act on behalf of the Adult, (ii) supplant the authority of an agent under a validly executed power of attorney or valid advance directive, or (ii) supplant or grant authority or agency powers contemplated to be provided by a power of attorney under the Maryland Power of Attorney Act or a valid advance directive.

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 (D) (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 and advocacy IN IMPLEMENTING A
18 DECISION.

19 (E) (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 (F) (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 (G) (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:

(7) Make a good faith effort to (i) determine whether the Adult has a validly executed power of attorney, and (ii) if one is found to exist, deliver a complete copy of the fully executed Supported Decision-Making Agreement to the agent under such power of attorney, unless the Adult expressly objects to the same.

✓

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:

for effectuate transactions

✓

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

25 (2) EXERT UNDUE INFLUENCE ON THE ADULT;

26 (3) COERCE THE ADULT;

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

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

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

18-106.

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

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

(1) A MINOR;

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

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

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

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

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

18-107.

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

(9) State that the Supporter cannot make decisions for the Adult nor effectuate transactions on behalf of the Adult.

(10) Contain a statement that neither the existence of the Supported Decision-Making Agreement, nor any provision contained therein, shall (i) authorize the supporter to act on behalf of the Adult, (ii) supplant the authority of an agent under a validly executed power of attorney or valid advance directive, or (iii) supplant or grant authority or agency powers contemplated to be provided by a power of attorney under the Maryland Power of Attorney Act or a valid advance directive.

(1) BE DOCUMENTED;

(2) BE DATED;

(3) NAME AT LEAST ONE SUPPORTER;

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

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

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

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

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

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

Signed by the Adult and the Supporter or supporters with each signature to be

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

(I) A SUPPORTER FOR THE ADULT; OR

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

(C) A SUPPORTED DECISION-MAKING AGREEMENT MAY:

(1) APPOINT MORE THAN ONE SUPPORTER; AND

(2) APPOINT AN ALTERNATE TO ACT IN THE PLACE OF A SUPPORTER 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~~X~~

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 (B) ~~(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.

HFAM Testimony SB 559.pdf

Uploaded by: Joseph DeMattos

Position: UNF



TESTIMONY BEFORE THE
SENATE JUDICIAL PROCEEDINGS COMMITTEE
Senate Bill 559: Estates and Trusts - Supported Decision Making
February 17, 2022
Written Testimony Only

POSITION: UNFAVORABLE

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to offer this testimony and background regarding Senate Bill 559. HFAM represents over 170 skilled nursing centers and assisted living communities in Maryland, as well as nearly 80 associate businesses that offer products and services to healthcare providers. Our skilled nursing members provide the majority of long-term and post-acute care to Marylanders in need.

Senate Bill 559 would authorize the use of supported decision making to assist an adult through the provision of certain support for the adult in making, communicating, or effectuating certain decisions and preventing the need for the appointment of certain substitute decision makers for the adult. It would also authorize an adult to enter into a supported decision-making agreement with one or more supporters under certain circumstances and it provides immunity from civil or criminal liability under certain circumstances.

While support for independent decision-making by individuals is a laudable goal, existing law already addresses this. Senate Bill 559 leaves many questions unanswered and would, if enacted, cause confusion and conflict, particularly in a healthcare context.

Individuals wishing to enlist the support of others in decision-making have various established and recognized tools available to them including powers of attorney (which they can choose whether to make durable and survive incapacity) and advance directives for health care. For those needing support and who have not made such arrangements, there are guardianships of person and/or property and a process for certain family and friends to act as a surrogate decisionmaker under the Health Care Decisions Act (HCDA). Each of these has thought-out processes and protections, which SB 559 lacks.

Examples include:

- The absence of any definition of the kinds of decisions covered by the legislation.
- The absence of any clear process or documentation by which a supported decision maker is appointed or any such appointment can be limited or revoked. In fact, SB 559 provides expressly that the appointment need not require any supported-decision making agreement.
- There are no qualifications, relationship or other protections for who can be appointed. It refers to the appointment of a “person” (not an individual) which can mean the appointment of corporate entities as supporters.
- The legislation refers to an arrangement with a supporter or supporters, meaning that there is risk of disputes between multiple supporters claiming to act for an individual. (This is in stark contrast to the HCDA which outlines a clear process and hierarchy for identifying a surrogate decision maker).

- There is no provision making clear whether or not a supporter's authority is only in effect while the individual has capacity, unlike powers of attorney that may or may not be durable.
- A supporter under such an arrangement appears to be authorized to make decisions for an individual so long as they "correspond" to an individual's "will" (unclear if this means a testamentary document or something else), preferences and choices without clarifying how these are made known. This is the language of SB 559 even though elsewhere the legislation refers to the supporter not making decisions.
- It is unclear why there is a legislatively stated preference for preventing a substitute decision maker (a term for which there is no definition) or guardian. If an individual wishes to avoid any such process, a power of attorney and advance directive is an established way to accomplish this.
- In fact, SB 559 contemplates a supporter having authority to terminate the use of a substitute decision maker (undefined). If the reference to a substitute decision maker would overlap with the term surrogate decision maker under the Health Care Decisions Act, this would be very problematic since surrogates under the HCDA are identified under a clear process and with an established scope of authority when there are findings of incapacity. The risk of conflict making health care provider services difficult is clear.
- SB 559 refers to an individual under a guardianship entering into a supported decision-making agreement, even though this would mean that there would be a process via SB 559 under which an individual who has been determined by a court to lack capacity would nonetheless be entering into an agreement with supporters outside the authority of the court. In fact, SB 559 refers to a supporter having authority to supplant the authority of a judicially appointed guardian for asserted "good cause" (which is also undefined). Conflict is a material risk.
- SB 559 refers to "informal supported decision-making" arrangements without definition or process.
- There is a material internal inconsistency in that the legislation requires the supporter to act within authority granted under an agreement but the definition of supported decision-making states no such agreement is required.
- The lack of a decision-making agreement along with references to informal decision-making arrangements is very problematic since the immunity provisions risk being read to apply those who rely on agreements, which are not required. This places third parties at substantial risk.

For these reasons, we respectfully request an unfavorable report for Senate Bill 559.

Submitted by:

Joseph DeMattos, Jr.
President and CEO
(410) 290-5132

SB 559 Supported Decision Making- Letter of Inform

Uploaded by: Erin Dorrien

Position: INFO



February 17, 2022

To: The Honorable William C. Smith Jr., Chair, Senate Judicial Proceedings Committee

Re: Letter of Information - Senate Bill 559 - Estates and Trust - Supported Decision Making

Dear Chair Smith:

On behalf of the Maryland Hospital Association's (MHA) 60 member hospitals and health systems, we appreciate the opportunity to comment on Senate Bill 559. The hospital field supports the intent of SB 559, to provide an alternative to guardianship, when possible, particularly for people with disabilities.

The guardianship process in Maryland can often be cumbersome and lengthy. Patients in acute care hospitals who require a surrogate decision maker may languish in the facility beyond medical necessity as they wait for judicial action on their guardianship petitions. The judiciary is studying ways to improve Maryland's guardianship process.

MHA supports attempts to improve the guardianship process and create alternatives when appropriate. For supported decision-making agreements to be effective, health care professionals and staff will need to understand their promise, limitations, and restrictions. Given this is a new concept in Maryland, the hospital field is prepared to work with stakeholders to ensure that an already unwieldy guardianship process is not further complicated.

We hope you find this information useful as you deliberate on SB 559.

For more information, please contact:
Erin Dorrien, Vice President, Policy
Edorrien@mhaonline.org

SB 559_cpr_info.pdf

Uploaded by: Morgan Whitlatch

Position: INFO



Center for Public
Representation

WRITTEN TESTIMONY OF THE CENTER FOR PUBLIC REPRESENTATION

Informational Only

2022 Regular Session, SENATE BILL 558 “Estates and Trusts - Supported Decision Making”

Submitted by Morgan K. Whitlatch, Director of Supported Decision-Making Initiatives

Hearing before the Senate Judicial Proceedings Committee
Maryland General Assembly

February 17, 2022

Dear Chair William C. Smith, Jr., Vice Chair Jeff Waldstreicher, and Honorable Members of the Senate Judicial Proceedings Committee”

My name is Morgan K. Whitlatch, and I am the Director of Supported-Making Initiatives at the Center for Public Representation (CPR). I am submitting this informational testimony to provide a national perspective on Supported Decision-Making (SDM) across the United States.

CPR is a nationally recognized legal advocacy center that is committed to protecting and advancing the rights of people with disabilities by using legal strategies, systemic reform initiations, and policy advocacy. We have offices in Massachusetts, New York, and Washington, D.C. Working on state, national, and international levels, CPR is committed to equality, diversity, and social justice in all its activities. CPR is also a national leader in advancing SDM. We lead the State Team Community of Practice for the Center on Youth Voice, Youth Choice,¹ a national resource center that works to increase access to alternatives to guardianship for youth with intellectual and developmental disabilities. We also regularly provide training, consultation, and technical assistance on SDM to people with disabilities, family members, and other advocates around the country. We have established and maintain an SDM virtual library of resources at <https://supporteddecisions.org/>.

Under the SDM model, people can turn to a network of supporters – family members, friends, colleagues, and others they trust – to help them make their own decisions regarding healthcare, finances, jobs, and other personal matters. It is a model that allows people, including adults with disabilities, to exercise their autonomy and promotes self-determination. Based on what we have

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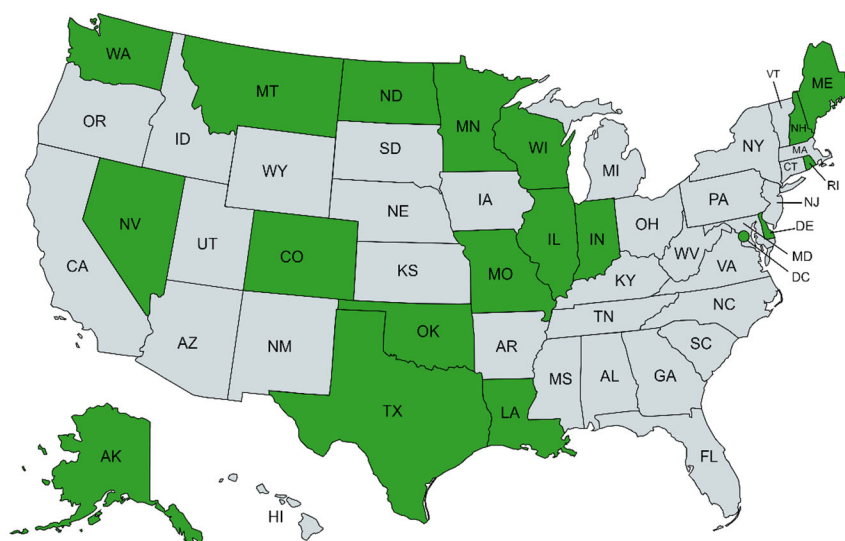
22 Green Street
Northampton, MA 01060
413-586-6024
www.centerforpublicrep.org

246 Walnut Street
Newton, MA 02460
617-965-0776

learned from our work nationally and in individual states, too many people are unnecessarily placed under restrictive guardianships, even when they would be able to make their own decisions with individualized assistance from people they trust. Widespread recognition of their right to use SDM as an alternative would allow them to retain their legal rights and dignity.

CPR launched the nation's first SDM pilot in 2014 and has since overseen five other pilots in Massachusetts.² From our pilots, which have been independently evaluated, we know that the SDM model works, strengthens support networks, and can transform lives. To see evidence of this, you have only to read some of the powerful stories shared by our pilot participants.³ CPR has expanded our SDM pilot work to Georgia, and we know that other states are also piloting SDM with great success.⁴

Through our national work, we have seen formal recognition of SDM gain momentum across the United States. At least 18 states and the District of Columbia have already passed statutes that formally recognize SDM agreements and/or specifically require courts to rule out SDM as a less-restrictive option before appointing a guardian. These include Texas (2015), Delaware (2016), Wisconsin (2018), Maine (2018), the District of Columbia (2018), Missouri (2018), Alaska (2018), North Dakota (2019), Indiana (2019), Nevada (2019), Rhode Island (2019), Washington (2020), Minnesota (2020), Louisiana (2020), Montana (2021), Colorado (2021), Illinois (2021), Oklahoma (2021), and New Hampshire (2021).⁵



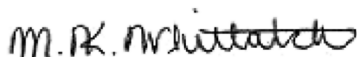
We have heard from partners in a number of these states that implementing these SDM statutes has resulted in people with disabilities improving their decision-making skills and experiencing greater self-esteem and better family relationships. In addition, there has been an apparent decrease in the need for guardianship. For example, since Wisconsin's SDM law was introduced, the annual number of guardianship requests in that state has decreased by 20 percent.⁶ This suggests that formal recognition of SDM not only benefits people with disabilities

and their supporters by making it easier for them to access and enforce their use of the SDM model. It also benefits the state courts by reducing the financial and administrative burden of having to address guardianship petitions for people who do not need them. That said, SDM does not replace guardianship for those who do need it. Rather, SDM is an additional and less restrictive option -- another legal tool in the decision-making toolbox that people with disabilities and their families can consider using.

SDM has been recommended and endorsed by a number of respected national organizations and federal agencies, including the American Bar Association, the National Guardianship Association, The Arc of the United States, the U.S. Department of Education, the U.S. Department of Health and Human Services, the American Association on Intellectual and Developmental Disabilities, United States Senate Special Committee on Aging, and the National Council on Disability.⁷ SDM is also recognized as a less restrictive alternative in the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA),⁸ a 2017 update to the model guardianship law. Further, at the recent Fourth National Guardianship Summit, leaders in the field of guardianship law and reform from around the country recommended states adopt practices, policies, and laws that promote SDM.⁹

In short, CPR's experience with SDM has shown that it is a viable and beneficial alternative to guardianship that is a nationally and internationally recognized best practice. Formal recognition of Supported Decision-Making would enable many more individuals and families to access and enforce this innovative model.

Sincerely,



Morgan K. Whitlatch
Director of Supported Decision-Making Initiatives
Center for Public Representation
mwhitlatch@cpr-ma.org

¹ See Center on Youth Voice, Youth Choice website, <https://youth-voice.org/>

² See Supported Decision-Making Pilots, <https://supporteddecisions.org/supported-decision-making-pilots/>

³ See Supported Decision-Making Stories, <https://supporteddecisions.org/stories-of-supported-decision-making/>

⁴ See Cathy Costanzo, Hon. Kris Glen, & Anna Krieger, *Supported Decision-Making: Lessons Learned from Pilot Projects*, draft available at <http://law.syr.edu/uploads/docs/academics/constanzo-glen-krieger.pdf> (background paper prepared for the Fourth National Guardianship Summit held in May 2021; pending publication in Syracuse Law Review)

⁵ See TEX. EST. CODE ANN. §§ 1357.001 - 1357.102 (2015 & 2017); DEL. CODE ANN. tit. 16, §§ 9401A-9410A (2016); WIS. STAT. ANN. §§ 52.01-52.32 (2018); ME. STAT. tit. 18-C, §§ 5-102, -301, -304, -317, -401, -405, -502, -503, -506 (2018); D.C. CODE ANN. §§ 7-2131 - 7-2134 (2018); MO. REV. STAT. § 475.075(13) (2018); ALASKA STAT. ANN. §§ 13.56.010-13.56.195 (2018); N.D. CENT. CODE ANN. §§ 30.1-36-01 - 30.1-36-08 (2019); IND. CODE ANN. §§ 29-3-14-1 - 29-3-14-13 (2019); NEV. REV. STAT. ANN. §§ 162C.010 - 162C.330 (2019); 42 R.I. GEN. LAWS

ANN. §§ 42-66.13-1 - 42-66.13- 10 (2019); WASH. REV. CODE ANN. §§ 11.130.700 – 11.130.755 (2020, eff. 2022); MINN. STAT. §§ 524.5-102, -310, -409 (2020); LA. STAT. ANN. § 13:4261.101- 13:4261.302 (2020); MONT. CODE ANN. §§ 72-5-305(3), -319, -316 (2021); COLO. REV. STAT. ANN. Sec. 15-14-801 - 15-14-806 (2021); H. Bill 3849, 102nd Gen. Assem., Act 102-0614 (Ill. 2021); N.H. REV. STAT. § 464-D:1 (2021); Sen. Bill 198, 58th Leg., 1st Reg. Sess. (Okla. 2021).

⁶ See WSAW-TV, *Guardianship requests decline as knowledge of alternative legal option grows* (Aug. 9, 2021), available at <https://www.wsaw.com/2021/08/10/guardianship-requests-decline-knowledge-alternative-legal-option-grows/> (stating that, in Wisconsin, “since the [SDM] law was introduced, guardianship requests have declined each year from 5,147 in 2017 to 4,146 by 2020”).

⁷ See Organizations Endorsing Supported Decision-Making, <https://supporteddecisions.org/about-supported-decision-making/organizations-advocating-for-supported-decision-making/>; Tina Campanella & Morgan Whitlatch, *Supported Decision-Making: U.S. Status and Trends*, 32 IMPACT 1 (2019), available at <https://publications.ici.umn.edu/impact/32-1/supported-decision-making-us-status-and-trends>.

⁸ See NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, *Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act* (2017), available at <https://tinyurl.com/b6uzh43k>. UGCOPAA is an update of Article V of the Uniform Probate Code, which is the basis of Massachusetts guardianship law in the Massachusetts Uniform Probate Code, G.L. c. 190B.

⁹ See FOURTH NATIONAL GUARDIANSHIP SUMMIT, *Recommendations Adopted by Summit Delegates (May 2021)*, at p. 1 and Recommendations 2.1, 2.2, 2.3, 2.4, 3.3, 3.4, and 5.2, available at: <http://law.syr.edu/academics/conferences-symposia/the-fourth-national-guardianship-summit-autonomy-and-accountability>.