

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5136**

By Delegate Criss

[Introduced; Referred  
to the Committee on ]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §44A-6-1, §44A-6-2, §44A-6-3, §44A-6-4, and §44A-6-5, all relating to creating  
 3 the Supported Decision-Making Act; providing for a legislative purpose; providing for  
 4 definitions; laying out the requirements for the petition; and providing for transitional  
 5 planning.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 6. SUPPORTED DECISION- MAKING ACT.**

**§44A-6-1. Legislative purpose.**

1 The purpose of this bill is to establish the Supported Decision-Making Act, which  
 2 authorizes an adult with a disability to enter into a supported decision-making agreement in which  
 3 he or she designates one or more supporters to provide assistance when making decisions or  
 4 engaging in certain other activities. An adult who enters into the agreement voluntarily and  
 5 understands the nature and effect of the agreement.

**§44A-6-2. Definitions.**

1 For the purpose of this article:  
 2 (a) "Adult" means an individual 18 years of age or older.  
 3 (b) "Coercion" means use of force or threats to persuade someone to do something.  
 4 (c) "Decision-maker" means an adult who seeks to execute or has executed, a supported-  
 5 decision making agreement with one or more supporters under this chapter.  
 6 (d) "Disability" means, with respect to an individual, a physical or mental impairment that  
 7 substantially limit one or more major life activities.  
 8 (e) "Supported decision-making" means the process of supporting, without impeding the  
 9 self-determination of the decision-maker, and accommodating the decision-maker in making life  
 10 decisions, including decisions related to where the decision-maker wants to live; the services,  
 11 supports, financial decisions, and medical care the decision-maker wants to receive; whom the  
 12 decision-maker wants to live with; and where the decision-maker wants to work.

13 (f) "Supported decision-making agreement" is an agreement a decision-maker enters into  
14 with one or more supporters under this section to use supported decision-making.

15 (g) "Supporter" means an adult who has entered into a supported decision-making  
16 agreement with a decision-maker.

**§44A-6-3.** **Applicability.**

1 (a) A decision-maker may voluntarily, without undue influence or coercion, enter into a  
2 supported decision-making agreement with a supporter or supporters. The decision-maker may  
3 amend or terminate a supported decision-making agreement at any time.

4 (b) Except as limited by a supported decision-making agreement, a supporter may provide  
5 to the decision-maker the following decision-making assistance with the decision-maker's affairs  
6 with the consent of the decision-maker:

7 (1) Assisting with making decisions, communicating decisions, and understanding  
8 information about options for the responsibilities of, and the consequences of decisions.

9 (2) Accessing, obtaining, and understanding information that is relevant to decisions  
10 necessary for the decision-maker to manage his or her affairs, including medical, psychological,  
11 financial, and educational information, and medical and other records. The information is kept  
12 privileged and confidential, as applicable, and is subject to neither unauthorized access, nor use,  
13 nor disclosure.

14 (3) Ascertaining the wishes and decisions of the decision-maker; assisting in  
15 communicating those wishes and decisions to other persons; and advocating to ensure their  
16 implementation; and

17 (4) Accompanying the decision-maker and participating in discussions with other persons  
18 when the decision-maker is making decisions or attempting to obtain information for decisions.

19 (c) A supporter may exercise only the authority granted to the supporter in the supported  
20 decision-making agreement.

21 (d) Except as provided in paragraph (b), the supported decision-making agreement

22 extends until terminated by the decision-maker, all supporters, the terms of the agreement, or  
23 court order, following notice and an opportunity to be heard, and if the decision-maker is indigent  
24 and does not have counsel, the appointment of counsel.

25 (e) If the supported decision-making agreement includes more than one supporter, the  
26 agreement shall survive for supporters who have not terminated unless it is terminated by the  
27 decision-maker or by all supporters.

28 (f) The supported decision-making agreement is suspended when Adult Protective  
29 Services, any mandatory reporter or representative from an authorized agency, or a court of  
30 competent jurisdiction finds that the adult with a disability has been abused, neglected, or  
31 exploited by a supporter or supporters. The agreement may survive if one or more of the  
32 supporters who were not found to have abused, neglected, or exploited the adult with a disability  
33 continues to be willing to serve as a supporter and the decision-maker agrees.

34 (g)(1) A supporter is only authorized to assist in the decision-maker accessing, collecting,  
35 or obtaining information that is relevant to a decision authorized under the supported decision-  
36 making agreement and to which the decision-maker agrees to that the supporter should have  
37 access.

38 (2) If a supporter assists the decision-maker in accessing, collecting, or obtaining personal  
39 information, including protected health information under the Health Insurance Portability and  
40 Accountability Act of 1996 (Pub. L. No. 104-191) or educational records under the Family  
41 Educational Rights and Privacy Act of 1974 (20 U.S.C. section 1232g), the supporter shall ensure  
42 the information is kept privileged and confidential, as applicable, and is subject to neither  
43 unauthorized access, nor use, nor disclosure.

44 (3) The existence of a supported decision-making agreement does not preclude a  
45 decision-maker from seeking personal information without the assistance of the supporter.

46 (4) A supported decision-making agreement must be signed voluntarily, without coercion  
47 or undue influence, by the decision-maker and the supporter or supporters in the presence of two

48 or more subscribing witnesses who are 18 years of age, and unrelated to the person with the  
49 disability, or a notary public.

50 (h) A supported decision-making agreement is valid only if it is in the form of the agreement  
51 in the subsection above. The agreement is intended to be personalized by the decision-maker to  
52 reflect his or her personal circumstances. The decision-maker should describe in the agreement  
53 the type of decision-making assistance he or she would like from his or her supporters.

54 (i) Agreement:

55 **SUPPORTED DECISION-MAKING AGREEMENT.**

56 My name is: \_\_\_\_\_

57 My address is: \_\_\_\_\_

58 My phone number is: \_\_\_\_\_

59 My email address is: \_\_\_\_\_

60 I want to have people I trust help me make decisions. The people who will help me are  
61 called Supporters. I can say what kind of help my Supporters will give me. I am entering into this  
62 agreement voluntarily and I understand that:

63  I can talk to an attorney before I sign this agreement.

64  I do not have to sign this agreement.

65  This agreement is because I want supporters to help me make decisions.

66  My supporter cannot make decisions for me.

67  I can end this agreement when I want it to.

68  I can change this agreement when I want to.

69  If I end this agreement or change this agreement, I must let my supporters know about  
70 the change. Anyone with a copy of the agreement needs to get a copy of the change in writing.

71  I can change my list of supporters when I want to.

72  My supporter(s) can quit if they want to.

73  If I have more than one Supporter in any area, those Supporters will work jointly

74 (together) unless I note otherwise.

75  My Supporter(s) is not liable for any consequences or decisions I make unless my  
76 Supporter's actions or omissions amount to fraud, misrepresentation, recklessness, or willful or  
77 wanton misconduct.

78 My Supporter(s) are not allowed to make choices for me. To help me with my choices, my  
79 supporters may:

80 Help me find out more about my options and what choices I have by giving me information  
81 in a way I can understand.

82 Help me understand what the choices are so I can make a good decision for me by  
83 discussing both the good things and bad things (pros and cons) that could happen if I make one  
84 decision or another.

85 Help me communicate or tell other people about my decision so the right people know what  
86 I want.

87 This supported decision-making agreement starts right now and will continue until the  
88 agreement is stopped by me or my supporters, or the agreement ends by law.

89 \_\_\_\_\_  
90 Signature of Decision-Maker Date (Month/Day/Year).

91 APPOINTMENT OF SUPPORTER(S) - SEPARATE FORM FOR EACH SUPPORTER

92 Name: \_\_\_\_\_

93 Address: \_\_\_\_\_

94 Phone Number: \_\_\_\_\_

95 Email address: \_\_\_\_\_

96 Relationship: \_\_\_\_\_

97 I want this person to help me with making choices about: (check as many boxes as you  
98 want)

99  Buying or obtaining food and clothing

- 100         Where I live and whom I live with
- 101         My personal relationships, including friendships, dating, sex, and marriage
- 102         How I spend my time, hobbies, and activities
- 103         My education or training, including what classes I will take and what accommodations I
- 104 will have
- 105         If I work and/or where I work, and what accommodations I will have
- 106         Choosing the level of services and supports and managing the people who work with me
- 107         Hiring a lawyer if I need one and working with the lawyer
- 108         My physical health (if yes, the Healthcare Addendum must be completed)
- 109         My mental health (if yes, the Healthcare Addendum must be completed)
- 110         My financial affairs, like banking and budgeting (if yes, the Finance Addendum must be
- 111 completed)
- 112         Other: \_\_\_\_\_

113        I express myself and show what I want in the following ways:

114        Telling people my likes and dislikes.

- 115         Verbally     In Writing     Using Assistive Technology  Demonstrate  Other

116        Telling people what I do and do not want to do.

- 117         Verbally     In Writing     Using Assistive Technology  Demonstrate  Other

118        Areas I specifically do not want Supporter(s) to assist me with:

- 119         Finances     Healthcare     Education     Relationships

- 120         Employment  Legal Matters  Daily Living  Services/Supports

121         Yes  No My Supporter may see my private health information under the Health  
 122 Insurance Portability and Accountability Act of 1996. This lets my Supporters see my medical  
 123 records. (If yes, I will provide a signed release form for HIPAA Authorization).

124         Yes  No My Supporter may see my educational records under the Family Educational  
 125 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). This lets my Supporters see my school

126 information. (If yes, I will provide a signed release form for Authorization to Disclose Educational  
127 Information)

128 **CONSENT OF SUPPORTER(S) - SEPARATE FORM FOR EACH SUPPORTER**

129 I, \_\_\_\_\_, consent to act as \_\_\_\_\_'s Supporter under this agreement. I  
130 understand that my job as a Supporter is to honor and express his/her expressed wishes. My  
131 support might include giving this person information in a way he/she can understand; discussing  
132 the pros and cons of decisions; and helping this person communicate his/her choice. I know that I  
133 may not make decisions for this person. I agree to support this person's decisions to the best of my  
134 ability, honestly, and in good faith. In the event I cannot perform my job under this agreement, I will  
135 contact the Decision-Maker and/or other team member(s).

136 This agreement must be signed in front of a Notary Public.

137 \_\_\_\_\_

138 Printed Name of Supporter \_\_\_\_\_ Printed Name of Witness \_\_\_\_\_

139 State of West Virginia \_\_\_\_\_ County of \_\_\_\_\_

140 This record was acknowledged before me on \_\_\_\_\_ (date).

141 (Name of Supporter) and

142 Signature of Notary \_\_\_\_\_

143 Title of Office \_\_\_\_\_

144 My Commission Expires: \_\_\_\_\_

145 **SUPPORTED DECISION-MAKING AGREEMENT - HEALTH CARE ADDENDUM**

146 You have the right to make your own health care decisions and the right to decide who  
147 helps you make those decisions. If you do not want a person named in this form to help you make  
148 health care decisions, you do not have to give them permission to help you with your physical or  
149 mental health choices. If you sign this agreement, you still have the right to make the final decision  
150 about your health care. Your health care supporter cannot force you to accept health care that you  
151 do not want or take away health care that you do want. This agreement does not give my



152 Supporter the authority to make decisions about my health care for me, or to influence me to make  
153 decisions that do not reflect my expressed wishes and preferences. My Supporter's consent to  
154 providing or withholding treatment is not a substitute for my consent.

155 MY PHYSICAL HEALTH

156  Yes  No Help me make appointments with doctors, dentists, therapists, case  
157 managers, or other health care providers

158  Yes  No Help me keep track of information about my physical health care, including  
159 my medical records, and whether I have had recommended medical check-ups, tests, and  
160 vaccines

161  Yes  No Help me with my physical health care plan, including, but not limited to,  
162 taking medications, monitoring blood sugar, administering insulin, and refilling prescriptions

163  Yes  No Permission for my supporter to talk to doctors when I am not present or when  
164 I am temporarily unable to communicate.

165 MY MENTAL HEALTH

166  Yes  No Help me make appointments with doctors, therapists, case managers, or  
167 other health care providers

168  Yes  No Help me keep track of information about my health care, including my  
169 medical records, and whether I have had recommended medical check-ups and tests

170  Yes  No Help me with my mental health care plan, including, but not limited to, taking  
171 medications, and refilling prescriptions

172  Yes  No Permission for my supporter to talk to doctors when I am not present or when  
173 I am temporarily unable to communicate.

174  Yes  No Permission for my supporter to access psychotherapy notes or other  
175 information conversations I have had during mental health counseling, substance use counseling,  
176 or group or family therapy.

177 \_\_\_\_\_

178 Supporter's Signature \_\_\_\_\_ Date

179 Decision-Maker's Signature \_\_\_\_\_ Date

180 **SUPPORTED DECISION-MAKING AGREEMENT - FINANCE ADDENDUM**

181 You have the right to make your own finance decisions and the right to decide who helps  
182 you make those decisions. If you do not want a person named in this form to help you make  
183 finance decisions, you do not have to give them permission to help you with your financial choices.  
184 If you sign this agreement, you still have the right to make the final decision about your finances.  
185 Your Supporter cannot force you to spend or save your money in a way that you do not want, or  
186 manage it in a way that you do not want.

187 This agreement does not give my Supporter the authority to make decisions about my  
188 healthcare for me, or to influence me to make decisions that do not reflect my expressed wishes  
189 and preferences. My Supporter's consent to providing or withholding treatment is not a substitute  
190 for my consent.

191 I want to have supporters help me make decisions about how I spend my money and how I  
192 save my money.

193 Consent of Supporters - Financial

194 I, \_\_\_\_\_, consent to act as \_\_\_\_\_'s supporter for financial decisions under this  
195 agreement. I agree to provide financial records to the supported decision-making monitor (listed  
196 below) monthly/ quarterly/ annually (circle one). I understand that my job as a supporter is to honor  
197 and present the wishes of the person with a disability. I understand that my support might include  
198 giving this person information in a way he/she can understand; discussing pros and cons of  
199 decisions; communicating the person's choice. I know that I may not make decisions for this  
200 person. I agree to support this person's decisions to the best of my ability, honestly, and in good  
201 faith.

202 \_\_\_\_\_

203 Supporter's Signature \_\_\_\_\_ Date

204 Consent of Monitor - A monitor must be appointed to oversee financial supporters.

205

206 I, \_\_\_\_\_, consent to act as a Monitor for financial decisions under this agreement.

207 I agree to review the financial records of the person with a disability when provided by the

208 supporters every month. I agree to make reasonable efforts to ensure that the supporters under

209 this agreement are acting honestly, in good faith, and in accordance with the choices of the person

210 with a disability. If I suspect financial abuse, misuse of funds, bad faith, or failure to comply with the

211 decisions of the person with a disability, I will require the supporters to explain their actions. If the

212 supporter fails to provide this information or if I continue to have reason to believe that the

213 supporter is abusing or failing to comply with the wishes of the person with a disability, I

214 will promptly inform Adult Protective Services.

215

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216 Monitor's Signature \_\_\_\_\_ Date \_\_\_\_\_

217 MEETING AND TIMELINE CONSIDERATIONS

218 My support people are very important to me and I want to be respectful of their time. I know

219 that I can call them to ask questions about my goals in this agreement at any time, but I would like

220 to talk with my whole Supported Decision Making team:

221 Check one:

222  Every week

223  One time a month

224  Two times a month

225  Every Six Months

226  One time a year

227  Before an important meeting (IEP/Doctor/Dentist)

228  I do not want my support team to meet on a regular basis

229 There will be times that I need to discuss certain topics in more detail and it won't be

230 necessary to call the entire team together. Here is what I would like to do for specific Supporters:

231 MEETING TOPIC:

232 Finances How Often? In Person? By Phone? By Video?

233 Health care How Often? In Person? By Phone? By Video?

234 Education How Often? In Person? By Phone? By Video?

235 Relationships How Often? In Person? By Phone? By Video?

236 Legal Matters How Often? In Person? By Phone? By Video?

237 Daily Living How Often? In Person? By Phone? By Video?

238 Services/Supports How Often? In Person? By Phone? By Video?

239 Other How Often? In Person? By Phone? By Video?

240 ADDITIONAL DOCUMENTATION OR ATTACHMENTS

241 I understand that certain documents may give my Supporters more authority in my life or

242 access to my personal information. I am including those documents as part of this agreement:

243  Authorization for Release of Records

244  Health Insurance Portability and Accountability Act (HIPAA) Release

245  Family Educational Rights and Privacy Act (FERPA) Release

246  Other Release

247  Letters of Guardianship [Temporary/  Permanent]

248  Guardianship of the Person and Estate

249  Guardianship of the Person

250  Guardianship of the Estate

251  Power of Attorney

252  General

253  Financial

254  Medical

255  Durable Power of Attorney

- 256  General
- 257  Financial
- 258  Medical
- 259  Protective Order
- 260  Educational Surrogate Authorization
- 261  Trust Documents
- 262  Health Care Representative Authorization
- 263  Psychiatric Advanced Directive
- 264  Representative Payee Authorization
- 265  WVABLE Documentation
- 266  Living Will

267 Other: \_\_\_\_\_

268 WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

269 If a person who receives a copy of this agreement or is aware of the existence of this  
 270 agreement has cause to believe that the adult with a disability is being abused, neglected, or  
 271 exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to the  
 272 WV Bureau for Children and Families by calling the Centralized Intake for Abuse and Neglect  
 273 Hotline at 1-800-352-6513 or online at <https://dhhr.wv.gov/bcf/Services/Pages/Centralized-Intake->  
 274 for-Abuse-and-Neglect.

275 DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

276 A person who receives the original or a copy of a Supported Decision-Making agreement  
 277 shall rely on the agreement. A person is not subject to criminal or civil liability and has not engaged  
 278 in professional misconduct for an act or omission of the act or omission is done in good faith and in  
 279 reliance on a Supported Decision-Making agreement.

280 REMINDER

281 This agreement should be reviewed by all parties to the agreement, and this agreement must be

282 read out loud or otherwise communicated to all parties to the agreement in the presence of a  
 283 notary. The form of communication shall be appropriate to the needs and preferences of each  
 284 party, including each individual's language and sensory processing wants or needs. Each  
 285 Supporter will acknowledge by signature his/her/their role as determined by the Decision-Maker.

286 This agreement must be signed in front of a Notary Public.

287 I have reviewed, agree with, and understand all the information contained in this  
 288 Supported Decision- Making Agreement.

289 I understand that this agreement may be revoked by me or by my supporter(s) at any time.

290 \_\_\_\_\_

291 Printed Name of Decision-Maker \_\_\_\_\_ Printed Name of Witness

292 State of West Virginia \_\_\_\_\_ County of \_\_\_\_\_

293 This record was acknowledged before me on \_\_\_\_\_ (date)

294 By \_\_\_\_\_

295 (Name of Decision-Maker) and

296 By \_\_\_\_\_

297 (Name of Witness)

298 [SEAL}

299 \_\_\_\_\_

300 Signature of Notary

301 My Commission Expires: \_\_\_\_\_

302 The text of this agreement was communicated to the person with a disability in my  
 303 presence by:

304  Reading the full agreement aloud

305  Otherwise communicating the agreement to the person with a disability (describe  
 306 communication used):

307 (j) A supported decision-making agreement may be in any form not inconsistent with the

308 first subsection of this article and the other requirements of this chapter.

309 (k)(1) A person who receives the original or copy of a supported decision-making  
310 agreement shall rely on the agreement and recognize a decision or request made or  
311 communicated with the decision-making assistance of a supporter under this chapter as the  
312 decision or request of the decision-maker.

313 (2) A person who, in good faith, acts in reliance on an authorization in a supported  
314 decision-making agreement is not subject to civil or criminal liability or to discipline for  
315 unprofessional conduct for relying on a decision made in accordance with a supported decision-  
316 making agreement.

317 (3) Execution of a supported decision-making agreement may not be a condition of  
318 participation in any activity, service, or program.

319 (l) If a person who receives a copy of a supported decision-making agreement or is aware  
320 of the existence of a supported decision-making agreement or is aware of the existence of a  
321 supported decision-making agreement has cause to believe that the decision-maker is being  
322 abused, neglected, or exploited by the supporter, the person shall report the alleged abuse,  
323 neglect, or exploitation to the WV Department of Health and Human Resources Adult Protective  
324 Services.

**§44A-6-4. Requirements of petition.**

1 The petition for guardianship must state:

2 (a) Whether alternatives to guardianship and available supports and services to avoid  
3 guardianship, including a supported decision-making agreement, were considered; and

4 (b) Whether any alternatives to guardianship and supports and services are feasible and  
5 would avoid the need for guardianship.

**§44A-6-5. Transitional planning.**

1 State agencies shall inform individuals and families who are in a transition planning  
2 process, of the availability of supported decision-making as an alternative to guardianship in such

3 cases where adult guardianship is being contemplated.

NOTE: The purpose of this bill is to create the Supported Decision-Making Act. The bill provides for a legislative purpose. The bill provides for definitions. The bill lays out the requirements for the petition. Finally, the bill provides for transitional planning.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.