Session of 2025

HOUSE BILL No. 2144

By Representative Rhiley

1-29

AN ACT enacting the supported decision-making agreements act; relating to decision-making assistance for adults; amending K.S.A. 21-5417 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Sections 1 through 9, and amendments thereto, shall be known and may be cited as the supported decision-making agreements act.

New Sec. 2. As used in the supported decision-making agreements act, unless the context indicates otherwise:

(a) "Adult" means an individual who is 18 years of age or older.

(b) "Affairs" means decisions related to the following affairs of a principal:

(1) Monitoring health, obtaining, scheduling, implementing and coordinating health and support services, understanding healthcare information and options, providing for care and comfort, and other healthcare and personal matters in which the principal makes decisions about the principal's healthcare;

(2) managing income and assets and the use of income and assets for clothing, support, care, comfort, education, shelter and payment of other liabilities of the principal;

(3) handling personal, healthcare and financial matters that arise in the course of daily living;

(4) monitoring information about the principal's support services, including necessary or recommended future support services;

(5) living arrangements, including where and with whom the principal wants to live; and

(6) working arrangements, including where the principal wants to work.

(c) "Capacity" means the ability to understand and appreciate the nature and consequences of a decision and the ability to reach and communicate an informed decision.

(d) "Conservator" means a person appointed a conservator under the act for obtaining a guardian or a conservator, or both, K.S.A. 59-3050 et seq., and amendments thereto, or a similar law of another state.

(e) "Decision" means a decision relating to the affairs of a principal.

(f) "Decision-making assistance" means the decision-making assistance described in section 7, and amendments thereto.

(g) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.

(h) "Guardian" means a person appointed a guardian under the act for obtaining a guardian or a conservator, or both, K.S.A. 59-3050 et seq., and amendments thereto, or a similar law of another state.

(i) "Immediate family member" means a spouse, child, sibling, parent, grandparent, grandchild, stepparent, stepchild or stepsibling.

(j) "Person" means an individual, healthcare institution, healthcare provider, corporation, partnership, limited liability company, association, joint venture, government, governmental subdivision, governmental agency, governmental instrumentality, public corporation, or another legal or commercial entity.

(k) "Principal" means an adult who enters into a supported decision-making agreement under the supported decision-making agreements act to receive decision-making assistance.

(l) "Support services" means the following services:

(1) House repair, home cleaning, laundry, shopping and providing meals;

(2) transportation, accompanying a principal and facilitating a principal's written, oral and electronic communication;

(3) nurse visitations and attendant care;

(4) provision of healthcare;

(5) physical and psychosocial assessments;

(6) financial assessments and advice on banking, taxes, loans, investments and management of real property;

(7) legal assessments and advice;

(8) education and educational assessments and advice;

(9) assistance with bathing, dressing, eating, range of motion, toileting, transferring, ambulation and other direct assistance with the activities of daily living;

(10) care planning; and

(11) services that assist in maintaining the independence of a principal.

(m) "Supported decision-making agreement" means an agreement authorized under section 3, and amendments thereto.

(n) "Supporter" means an adult who enters into a supported decision-making agreement under the supported decision-making agreements act and provides decision-making assistance.

New Sec. 3. (a) Except as provided in subsections (b) and (c), an adult may enter into a supported decision-making agreement. A supported decision-making agreement allows an adult to receive decision-making

assistance with the adult's affairs from one or more other adults.

(b) The adult wanting to receive decision-making assistance shall not enter into a supported decision-making agreement unless the adult:

(1) Enters into the agreement voluntarily and without coercion or undue influence; and

(2) understands the nature and effect of the agreement.

(c) An adult shall not enter into a supported decision-making agreement if the agreement encroaches on the authority of a guardian or conservator of the adult, unless the guardian or conservator approves in writing the adult entering into the supported decision-making agreement.

(d) A supporter shall be an adult, but shall not be a person against whom a protective order or restraining order has been entered by a court on request of or on behalf of the principal.

New Sec. 4. (a) A supported decision-making agreement shall:

(1) Name one or more adults to provide a principal with decision-making assistance;

(2) describe the decision-making assistance that each person acting as a supporter may provide the principal; and

(3) contain a notice to third parties that summarizes the rights and obligations of the supporter under the supported decision-making agreements act and expressly identifies sections 1 through 9, and amendments thereto.

(b) A supported decision-making agreement may:

(1) Name an alternate supporter to act in the place of a supporter and the circumstances under which the alternate supporter may act;

(2) authorize a supporter to share information with another supporter named in the agreement, including an alternate supporter.

(c) A supported decision-making agreement shall contain a separate declaration by each supporter, including an alternate supporter, that states the supporter's relationship with the principal, states the willingness of the supporter to act as a supporter for the principal and indicates that the supporter acknowledges the duties of a supporter under the supported decision-making agreements act. Each declaration shall be signed by the supporter making the declaration.

New Sec. 5. (a) A supported decision-making agreement shall be valid if:

(1) The agreement is dated and in writing;

(2) the agreement satisfies the requirements of sections 3 and 4, and amendments thereto;

(3) the agreement has been signed by the principal and each named supporter, including any alternate supporter, and the:

(A) Signing takes place in the presence of two witnesses who also sign the agreement; or

(B) signatures of the principal and each named supporter, including any alternate supporter, are notarized; and

(4) when the principal has a guardian or conservator, the principal has notified the guardian or conservator of the agreement.

(b) (1) Each witness under subsection (a) shall be an adult who understands the means of communication used by the principal, except, if there is an individual who understands the principal's means of communication present to assist during the execution of the supported decision-making agreement, the witnesses are not required to understand the means of communication used by the principal.

(2) A witness under subsection (a) shall not be a supporter named in the supported decision-making agreement or an employee or agent of a supporter named in the supported decision-making agreement.

(c) A supported decision-making agreement shall be substantially in compliance with the form set forth by the judicial council. The judicial council shall develop a form for use under the supported decision-making agreements act.

New Sec. 6. (a) A supported decision-making agreement may indicate the date it becomes effective and its duration. If the agreement does not indicate the date it becomes effective, the agreement becomes effective immediately. If the agreement does not indicate its duration, the agreement remains effective until terminated under this section.

(b) A principal may, at any time, terminate all or a portion of a supported decision-making agreement. A supporter may, at any time, terminate all or a portion of the supporter's obligations under a supported decision-making agreement, including the declaration of support described in section 4, and amendments thereto.

(c) A termination under this section shall be dated and in writing. The termination shall be signed by the terminating party.

(d) If the adult who entered the supported decision-making agreement becomes incapacitated such agreement remains valid unless a third party has actual knowledge that the principal is incapacitated.

(e) A principal or supporter terminating all or a portion of a supported decision-making agreement shall notify the other party to the agreement that the agreement has been terminated. Notice shall be given in person, by certified mail or by electronic means.

(f) If a portion of a supported decision-making agreement is terminated under this section and the termination is consistent with this section, the remainder of the agreement remains in effect.

New Sec. 7. (a) A supporter owes the adult a fiduciary duty to act in accordance with the supported decision-making agreement.

(b) Except as limited by a supported decision-making agreement, a supporter may provide to a principal the following decision-making

assistance about the principal's affairs:

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

(2) accessing, obtaining, and understanding information that is relevant to decisions necessary for the principal to manage the principal's affairs, including medical, psychological, financial and educational information, medical treatment records and other records;

(3) ascertaining the wishes and decisions of the principal, assisting in communicating those wishes and decisions to other persons, and advocating to ensure the implementation of the principal's wishes and decisions; and

(4) accompanying the principal and participating in discussions with other persons when the principal is making decisions or attempting to obtain information for decisions.

(c) Under subsection (b), a supporter may use the principal's dated consent to assist the principal in obtaining protected health information under the health insurance portability and accountability act of 1996 (public law 104-191) or educational records under the family educational rights and privacy act of 1974, 20 U.S.C. § 1232g.

(d) A supporter shall not:

(1) Exert undue influence on the principal;

(2) make decisions for or on behalf of the principal;

(3) sign for the principal or provide an electronic signature of the principal to a third party;

(4) obtain, without the consent of the principal, information that is not reasonably related to matters with which the supporter may assist the principal under the supported decision-making agreement; or

(5) use, without the consent of the principal, information acquired for a purpose authorized by the supported decision-making agreement for a purpose other than assisting the principal to make a decision under the supported decision-making agreement.

(e) A supporter who collects information on behalf of the principal under the supported decision-making agreement shall:

(1) Keep the information confidential;

(2) not use the information for a use that is not authorized by the principal;

(3) protect the information from unauthorized access, use or disclosure; and

(4) dispose of the information properly when appropriate.

(f) A supporter acting in good faith in accordance with the provisions of this act shall not be liable to either the principal or any third party for any injuries, damages or other losses arising from a decision made by a

principal in which the supporter assisted the principal or was otherwise involved.

New Sec. 8. (a) A person shall recognize a decision or request made or communicated with the decision-making assistance of a supporter under the supported decision-making agreements act as the decision or request of the principal for the purposes of a provision of law, and the principal or supporter may enforce the decision or request in law or equity on the same basis as a decision or request of the principal.

(b) A person who, in good faith, either acts in reliance on an authorization in a supported decision-making agreement or declines to honor an authorization in a supported decision-making agreement is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(1) Complying with an authorization in a supported decision-making agreement, if the person is complying based on an assumption that the underlying supported decision-making agreement was valid when made and has not been terminated;

(2) declining to comply with an authorization in a supported decision-making agreement if the person is declining based on actual knowledge that the supported decision-making agreement is unauthorized:

(A) If the financial institution cannot in good faith comply with the limitations set forth in the agreement; and

(B) if the person makes, or has actual knowledge that another person has made a report under K.S.A. 39-1402 or 39-1431, and amendments thereto, stating a good faith belief that the adult may be subject to physical or financial abuse, neglect, exploitation or abandonment by the supporter; or

(3) declining to comply with an authorization related to healthcare in a supported decision-making agreement, if the person is declining because the action proposed to be taken under the supported decision-making agreement is contrary to the good faith medical judgment of the person or to a written policy of a healthcare institution that is based on reasons of conscience.

New Sec. 9. (a) An adult who enters into a supported decision-making agreement may act without the decision-making assistance of the supporter.

(b) The execution of a supported decision-making agreement shall not constitute evidence that the principal does not have capacity.

(c) In the application of the supported decision-making agreements act:

(1) A decision that a principal is incapable of managing the principal's affairs may not be based on the manner in which the principal communicates with others; and

(2) a principal is considered to have capacity even if the capacity is achieved by the principal receiving decision-making assistance, unless a court has determined that the principal does not have capacity.

Sec. 10. K.S.A. 21-5417 is hereby amended to read as follows: 21-5417. (a) Mistreatment of a dependent adult or an elder person is knowingly committing one or more of the following acts:

(1) Infliction of physical injury, unreasonable confinement or unreasonable punishment upon a dependent adult or an elder person;

(2) taking the personal property or financial resources of a dependent adult or an elder person for the benefit of the defendant or another person by taking control, title, use or management of the personal property or financial resources of a dependent adult or an elder person through:

(A) Undue influence, coercion, harassment, duress, deception, false representation, false pretense or without adequate consideration to such dependent adult or elder person;

(B) a violation of the Kansas power of attorney act, K.S.A. 58-650 et seq., and amendments thereto;

(C) a violation of the Kansas uniform trust code, K.S.A. 58a-101 et seq., and amendments thereto; ~~or~~

(D) a violation of the act for obtaining a guardian or a conservator, or both, K.S.A. 59-3050 et seq., and amendments thereto; or

(E) a violation of the supported decision-making agreements act, section 1 et seq., and amendments thereto; or

(3) omission or deprivation of treatment, goods or services that are necessary to maintain physical or mental health of such dependent adult or elder person.

(b) Mistreatment of a dependent adult or an elder person as defined in:

(1) (A) Subsection (a)(1) is a severity level 5, person felony, except as provided in subsection (b)(1)(B);

(B) subsection (a)(1) is a severity level 2, person felony, when the victim is a dependent adult who is a resident of an adult care home, as described in subsection (e)(2)(A), during the commission of the offense;

(2) subsection (a)(2) if the aggregate amount of the value of the personal property or financial resources is:

(A) $1,000,000 or more is a severity level 2, person felony;

(B) at least $250,000 but less than $1,000,000 is a severity level 3, person felony;

(C) at least $100,000 but less than $250,000 is a severity level 4, person felony;

(D) at least $25,000 but less than $100,000 is a severity level 5, person felony;

(E) at least $1,500 but less than $25,000 is a severity level 7, person

felony;

(F) less than $1,500 is a class A person misdemeanor, except as provided in subsection (b)(2)(G); and

(G) less than $1,500 and committed by a person who has, within five years immediately preceding commission of the crime, been convicted of a violation of this section two or more times is a severity level 7, person felony; and

(3) (A) subsection (a)(3) is a severity level 8, person felony, except as provided in subsection (b)(3)(B); and

(B) subsection (a)(3) is a severity level 5, person felony, when the victim is a dependent adult who is a resident of an adult care home, as described in subsection (e)(2)(A), during the commission of the offense.

(c) It shall be an affirmative defense to any prosecution for mistreatment of a dependent adult or an elder person as described in subsection (a)(2) that:

(1) The personal property or financial resources were given as a gift consistent with a pattern of gift giving to the person that existed before the dependent adult or elder person became vulnerable;

(2) the personal property or financial resources were given as a gift consistent with a pattern of gift giving to a class of individuals that existed before the dependent adult or elder person became vulnerable;

(3) the personal property or financial resources were conferred as a gift by the dependent adult or elder person to the benefit of a person or class of persons, and such gift was reasonable under the circumstances; or

(4) a court approved the transaction before the transaction occurred.

(d) No dependent adult or elder person is considered to be mistreated under subsection (a)(1) or (a)(3) for the sole reason that such dependent adult or elder person relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which such dependent adult or elder person is a member or adherent.

(e) As used in this section:

(1) "Adequate consideration" means the personal property or financial resources were given to the person as payment for bona fide goods or services provided by such person and the payment was at a rate customary for similar goods or services in the community that the dependent adult or elder person resided in at the time of the transaction.

(2) "Dependent adult" means an individual 18 years of age or older who is unable to protect the individual's own interest. Such term ~~shall include~~ *includes*, but is not limited to, any:

(A) Resident of an adult care home including, but not limited to, those facilities defined by K.S.A. 39-923, and amendments thereto;

(B) adult cared for in a private residence;

(C) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a medical care facility;

(D) individual with intellectual disability or a developmental disability receiving services through a community facility for people with intellectual disability or residential facility licensed under K.S.A. 39-2001 et seq., and amendments thereto;

(E) individual with a developmental disability receiving services provided by a community service provider as provided in the developmental disability reform act; or

(F) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a state psychiatric hospital or state institution for people with intellectual disability.

(3) "Elder person" means a person 60 years of age or older.

(f) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 21-6418, and amendments thereto.

Sec. 11. K.S.A. 21-5417 is hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.