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MEMORANDUM

To: Senate Committee on Judiciary

From: Jason B. Long, Senior Assistant Revisor of Statutes
Jason Thompson, Senior Assistant Revisor of Statutes

Date: March 13, 2019

Subject: HB 2034 – Supported Decision-making Agreement Act

House Bill No. 2034 (HB 2034) would enact the Supported Decision-making Agreement Act (Act). The purpose of the Act is to allow adults, who may or may not be under a guardianship or conservatorship, to make decisions regarding such person’s life with assistance from one or more other adults (supporters).

The duties and obligations of the principal (the adult receiving decision-making assistance), and the supporter (the adult providing such assistance) are agreed to in a supported decision-making agreement. Such agreements must name each supporter providing the principal with assistance, and the scope of the assistance each supporter is providing. One agreement may include multiple supporters and may name alternate supporters who may assume the duties and obligations of a supporter who can no longer act under the agreement. Each agreement must also contain a notice to third parties summarizing the rights and obligations of each supporter named in the agreement. Each supporter must also make a declaration acknowledging such supporter’s relationship with the principal, the supporter’s willingness to provide assistance, and the supporter’s duties under the agreement. Each declaration is incorporated into the agreement.

To be valid, each agreement must be signed by the principal, each supporter, and two independent witnesses. The agreement must also be notarized. An agreement may become effective on a certain date and may be effective for a certain period of time. If no dates are provided, then the agreement is effective upon completed execution, and terminates upon subsequent action by the parties. An agreement may be terminated either in whole or in part. If the principal terminates all or a portion of the agreement, then such termination must be in writing, signed by the principal and two witnesses, and notarized. Likewise, if a supporter is

terminating their obligations under an agreement, it must be in writing, signed by the principal and two witnesses, and notarized. If there is a partial termination, then the non-terminated provisions of the agreement remain in effect.

Under an agreement, a supporter may provide decision-making assistance regarding the affairs of the principal. Such affairs are described in Section 2(b) of the bill, and include monitoring of health and healthcare issues, living arrangements, work arrangements, income and assets and daily financial management. Under Section 7 of HB 2034, a supporter may: (1) Assist the principal in understanding and communicating decisions; (2) obtain information relevant to a decision and assist the principal in understanding such information; (3) ascertain and assist in communicating the desires of the principal, including advocating that such desires are implemented; and (4) accompany the principal and participate in discussions relevant to any decision. A supporter cannot: (1) Exert undue influence on the principal; (2) make decisions for or on behalf of the principal; (3) execute any document for the principal; (4) obtain information not related to a decision; or (5) use information acquired for any purpose other than to assist the principal. A supporter's assistance cannot encroach on the authority of guardian or conservator if one has been appointed for the principal. All information obtained by a supporter must be kept confidential and disposed of appropriately when no longer useful.

Section 8 of HB 2034 provides that a third party must recognize the decision of a principal made under a supported decision-making agreement as a legally binding decision. However, a third party will not be liable for failing to recognize such a decision if: (1) The third party has actual knowledge that the supported decision-making agreement is invalid or has been terminated; or (2) the decision is related to health care and the decision is contrary to the good faith medical judgement of the third party or a written policy of the third party based on reasons of conscience.

Section 9 of HB 2034 provides that the presence of a supported decision-making agreement cannot be used as evidence that the principal lacks capacity to make legally binding decisions. Further, the principal may make legally binding decisions without receiving assistance under the agreement.

The House Committee on Federal and State Affairs added Section 10 to amend K.S.A. 21-5417, the crime of mistreatment of a dependent adult or an elder person. Violation of the Act is referenced as one means of taking the personal property or financial resources of a dependent adult or an elder person.