

Senate Judiciary Engrossed Substitute for SB55



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A BILL
TO BE ENTITLED
AN ACT

Relating to guardianships and conservatorships; to create the Colby Act; to provide for a supported decision-making agreement as an alternative to a guardianship or conservatorship; and to provide the scope and limitations of a supported decision-making agreement.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the Colby Act.

Section 2. For the purposes of this act, the following terms have the following meanings:

(1) SUPPORTED DECISION-MAKING. The process of supporting and accommodating an adult in the decision-making process without impeding the self-determination of the adult. This term includes assistance in making, communicating, and effectuating life decisions.

(2) SUPPORTED DECISION-MAKING AGREEMENT. A written agreement detailing decision-making supports and accommodations that an adult chooses to receive from one or more supporters.

(3) SUPPORTER. An individual at least 18 years of age

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29 who has voluntarily entered into a supported decision-making
30 agreement with an adult and is designated as such in a
31 supported decision-making agreement.

32 Section 3. (a) An adult may not enter into a supported
33 decision-making agreement as an alternative to guardianship or
34 conservatorship unless the adult meets both of the following
35 conditions:

36 (1) The adult enters into the agreement voluntarily and
37 without coercion or undue influence.

38 (2) The adult understands the nature and effect of the
39 agreement.

40 (b) An adult may make, change, or revoke a supported
41 decision-making agreement.

42 (c) A court may not consider an adult's execution of a
43 supported decision-making agreement as evidence of the adult's
44 incapacity. The existence of an executed supported
45 decision-making agreement does not preclude the adult from
46 acting independently of the supported decision-making
47 agreement.

48 (d) An adult may not enter into a supported
49 decision-making agreement under this section if the agreement
50 supplants the authority of a guardian or conservator of the
51 adult.

52 (e) No third-party individual or entity may require an
53 adult to execute a supported decision-making agreement for any
54 purpose. For the purposes of this act, the term "third-party
55 individual or entity" does not include a guardian or
56 conservator.



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57 Section 4. A document substantially in the following
58 format may be used to create a supported decision-making
59 agreement that has the meaning and effect prescribed by this
60 act.

61 This document IS _____ / IS NOT _____
62 (check one) legally binding. Only a person with the legal
63 right and capacity to contract can make a legally binding
64 agreement.

65 I, _____ (Name of Principal), make
66 this supported decision-making agreement to choose supporters
67 to help me make decisions. I am choosing to make this
68 agreement. I may end this agreement at any time. These
69 supporters DO NOT make decisions for me. They give me
70 information, advice, and other support so I can make decisions
71 for myself.

72 DESIGNATION OF SUPPORTERS

73 HEALTH CARE

74
75 I DO _____ / DO NOT _____ (check one)

76 want help with health care. I want the following people to be
77 my supporters and help me with my health care decisions:

78 Name of Supporter:
79 _____

80 Relationship to Principal:
81 _____

82 Repeat as needed for each supporter.

83 I, _____ (Name of Principal), allow these
84 supporters to help me make decisions about my physical and

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85 mental health. These people do not make decisions for me -
86 they help me make decisions myself.

87 These supporters can help me in these ways:

88 _____

89 These supporters MAY NOT do these things:

90 _____

91 FINANCIAL DECISION-MAKING

92 I DO _____ / DO NOT _____ (check one)

93 want help with my financial decisions. I want the following
94 people to be my supporters and help me with my financial
95 decisions:

96 Name of Supporter:

97 _____

98 Relationship to Principal:

99 _____

100 Repeat as needed for each supporter.

101 I, _____ (Name of Principal), allow these
102 supporters to help me make decisions about my finances. These
103 people do not make decisions for me - they help me make
104 decisions myself.

105 These supporters can help me in these ways:

106 _____

107 These supporters MAY NOT do these things:

108 _____

109 WHERE I LIVE AND COMMUNITY LIVING

110 I DO _____ / DO NOT _____ (check one)

111 want help with decisions about where I live and community
112 living. I want the following people to be my supporters and

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113 help me with decisions about where I live:

114 Name of Supporter:

115 _____

116 Relationship to Principal:

117 _____

118 Repeat as needed for each supporter.

119 I, _____ (Name of Principal), allow these
120 supporters to help me make decisions about where I live and
121 community living. These people do not make decisions for me -
122 they help me make decisions myself.

123 These supporters can help me in these ways:

124 _____

125 These supporters MAY NOT do these things:

126 _____

127 EDUCATION

128
129 I DO _____ / DO NOT _____ (check one)

130 want help with decisions about my education. I want the
131 following people to be my supporters and help me with
132 decisions about my education:

133 Name of Supporter:

134 _____

135 Relationship to Principal:

136 _____

137 Repeat as needed for each supporter.

138 I, _____ (Name of Principal), allow these
139 supporters to help me make decisions about my education. These
140 people do not make decisions for me - they help me make

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141 decisions myself.

142 These supporters can help me in these ways:

143 _____

144 These supporters MAY NOT do these things:

145 _____

146 EMPLOYMENT

147

148 I DO _____ / DO NOT _____ (check one)

149 want help with employment. I want the following people to be
150 my supporters and help me with my employment:

151 Name of Supporter:

152 _____

153 Relationship to Principal:

154 _____

155 Repeat as needed for each supporter.

156 I, _____ (Name of Principal), allow these
157 supporters to help me make decisions about my employment.

158 These people do not make decisions for me - they help me make
159 decisions myself.

160 These supporters can help me in these ways:

161 _____

162 These supporters MAY NOT do these things:

163 _____

164 OTHER DECISIONS

165

166 I DO _____ / DO NOT _____ (check one)

167 want help with other decisions. I want the following people to
168 be my supporters and help me with other decisions:



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169 Name of Supporter:

170 _____

171 Relationship to Principal:

172 _____

173 Repeat as needed for each supporter.

174 I, _____ (Name of Principal), allow these
175 supporters to help me make certain decisions. These people do
176 not make decisions for me - they help me make decisions
177 myself.

178 These supporters can help me in these ways:

179 _____

180 These supporters MAY NOT do these things:

181 _____

182 SIGNATURE AND ACKNOWLEDGMENT

183 I agree to be a supporter under this agreement.

184 (Signature of Supporter):

185 _____

186 Signature Date:

187 _____

188 Supporter Name Printed:

189 _____

190 Supporter Address:

191 _____

192 Supporter Telephone Number:

193 _____

194 Supporter E-mail Address:

195 _____

196 Repeat as needed for each supporter listed in the

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197 supported decision-making agreement.

198 (Signature of Principal):

199 _____

200 Your Signature Date:

201 _____

202 Your Name Printed:

203 _____

204 Your Address:

205 _____

206 Your Telephone Number:

207 _____

208

209

210 State of:

211 _____

212 [County] of

213 _____

214 I, _____, a Notary Public, in and for the County

215 in this State, hereby certify that _____, whose name is

216 signed to the foregoing document, and who is known to me,

217 acknowledged before me on this day that, being informed of the

218 contents of the document, he or she executed the same

219 voluntarily on the day the same bears date.

220 Given under my hand this the _____ day of

221 _____, 2____.

222 _____

223 (Seal, if any)

224 Signature of Notary

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My commission expires:

[This document prepared by:
_____]

Section 5.(a) A supporter shall do all of the following:

- (1) Support the will and preference of the adult and not the supporter's opinion of the adult's best interest.
 - (2) Act honestly, diligently, and in good faith.
 - (3) Act within the scope set forth in the adult's supported decision-making agreement.
 - (4) Avoid conflicts of interest.
 - (5) Timely notify the adult in writing, in the adult's preferred language and mode of communication, of his or her intent to resign as a supporter.
- (b) A supporter is a fiduciary and shall make and communicate decisions in cooperation with the adult and preserve the adult's authority to make decisions.
- (c) A supporter shall not do any of the following:
- (1) Exert undue influence upon the adult.
 - (2) Receive a fee or compensation for services performed in the role of supporter.
 - (3) Obtain, without the consent of the adult, information for a purpose other than assisting the adult in making a specific decision authorized by the supported decision-making agreement.



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253 (4) Obtain, without the consent of the adult, nonpublic
254 personal information, as defined by 15 U.S.C. § 6809(4).

255 (5) Act outside the scope of authority provided in the
256 supported decision-making agreement.

257 (d) A supporter who is expressly given relevant
258 authority in a power of attorney may act within the scope of
259 that authority to sign instructions or other documents on
260 behalf of the adult, or to communicate or implement decisions
261 made by the adult.

262 (e) A request or decision made or communicated with the
263 assistance of a supporter in conformity with the supported
264 decision-making agreement shall be recognized as the request
265 or decision of the adult for the purposes of any provision of
266 law.

267 Section 6. (a) A supported decision-making agreement
268 shall meet all of the following requirements:

269 (1) Name at least one supporter.

270 (2) Describe the decision-making assistance that each
271 supporter may provide to the adult and how supporters may work
272 together.

273 (3) If the adult is subject to a limited guardianship
274 or conservatorship as provided by Section 6 7, be executed by
275 the adult's guardian or conservator.

276 (4) Be in writing, dated, and signed by the adult in
277 the presence of a notary public.

278 (5) Contain a separate consent signed by each supporter
279 named in the agreement indicating each of the following:

280 a. The supporter's relationship to the adult.

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281 b. The supporter's willingness to act as a supporter.

282 c. The supporter's acknowledgment of his or her duties
283 as a supporter.

284 (b) A supported decision-making agreement may do any of
285 the following:

286 (1) Appoint more than one supporter.

287 (2) Appoint an alternate supporter to act in the place
288 of a supporter under circumstances specified in the agreement.

289 (3) Authorize a supporter to share information with any
290 other supporter or others named in the agreement.

291 Section 7. An adult may revoke a supported
292 decision-making agreement at any time. A revocation under this
293 section shall be in writing, and a copy of the revocation
294 shall be provided to each supporter.

295 (b) Except as provided in the supported decision-making
296 agreement, a supported decision-making agreement terminates in
297 each the following situations:

298 (1) The adult who is the subject of the supported
299 decision-making agreement dies.

300 (2) The adult who is the subject of the supported
301 decision-making agreement revokes the agreement under
302 subsection (a).

303 (3) All of the named supporters withdraw their
304 participation without arranging for successor supporters
305 approved by the adult.

306 (4) A court of competent jurisdiction determines that
307 the adult does not have the capacity to execute or consent to
308 a supported decision-making agreement.

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309 (5) A court of competent jurisdiction determines that a
310 supporter has used the supported decision-making agreement to
311 financially exploit, abuse, or neglect the adult.

312 (6) A court of competent jurisdiction appoints a
313 temporary or permanent guardian or conservator for the person
314 or property of the adult, unless the court's order of
315 appointment does each of the following:

316 a. Expressly modifies, but continues, the supported
317 decision-making agreement alongside a partial guardianship or
318 conservatorship.

319 b. Limits the powers and duties of the guardian or
320 conservator.

321 (7) The adult signs a valid durable power of attorney,
322 except to the extent that the power of attorney expressly
323 continues, in whole or in part, the supported decision-making
324 agreement.

325 (c) The court may enter an order pursuant to
326 subdivision (b) (4), (b) (5), or (b) (6) only after providing
327 notice and a hearing to the adult and all supporters named in
328 the agreement.

329 Section 8. A supported decision-making agreement that
330 complies with Section 34 is presumed valid. A party may rely
331 on the presumption of validity unless the party has actual
332 knowledge that the supported decision-making agreement was not
333 validly executed.

334 Section 9. (a) A person who in good faith relies on an
335 authorization in a supported decision-making agreement is not
336 subject to discipline for unprofessional conduct.

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337 (b) This section does not apply to a person whose act
338 or omission amounts to fraud, misrepresentation, recklessness,
339 or willful or wanton misconduct.

340 Section 10. (a) The meaning and effect of a supported
341 decision-making agreement is determined by the law of the
342 jurisdiction in which the supported decision-making agreement
343 was executed, unless the supported decision-making agreement
344 provides otherwise.

345 (b) A person who receives a copy of a supported
346 decision-making agreement or is aware of the existence of a
347 supported decision-making agreement and reasonably believes
348 that an adult is being abused, neglected, or exploited shall
349 report the alleged abuse, neglect, or exploitation to an adult
350 protective services agency or an authorized law enforcement
351 agency.

352 Section 11. This act shall become effective on the
353 first day of the third month following its passage and
354 approval by the Governor, or its otherwise becoming law.

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357 Senate

358 Read for the first time and referred07-Mar-23
359 to the Senate committee on Judiciary
360
361 Read for the second time and placed22-Mar-23
362 on the calendar:
363 2 amendments
364
365 Read for the third time and passed05-Apr-23
366 as amended
367 Yeas 31
368 Nays 0
369 Abstains 0
370
371

Patrick Harris,
Secretary.

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