

House Judiciary Engrossed Substitute for HB105



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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 I DO _____ / DO NOT _____ (check one)
75 want help with health care. I want the following people to be
76 my supporters and help me with my health care decisions:

77 Name of Supporter:

78 _____

79 Relationship to Principal:

80 _____

81 Repeat as needed for each supporter.

82 I, _____ (Name of Principal), allow these
83 supporters to help me make decisions about my physical and
84 mental health. These people do not make decisions for me -

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85 they help me make decisions myself.

86 These supporters can help me in these ways:

87 _____

88 These supporters MAY NOT do these things:

89 _____

90 FINANCIAL DECISION-MAKING

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

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

95 Name of Supporter:

96 _____

97 Relationship to Principal:

98 _____

99 Repeat as needed for each supporter.

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

104 These supporters can help me in these ways:

105 _____

106 These supporters MAY NOT do these things:

107 _____

108 WHERE I LIVE AND COMMUNITY LIVING

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

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



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113 Name of Supporter:

114 _____

115 Relationship to Principal:

116 _____

117 Repeat as needed for each supporter.

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

122 These supporters can help me in these ways:

123 _____

124 These supporters MAY NOT do these things:

125 _____

126 EDUCATION

127
128 I DO _____ / DO NOT _____ (check one)

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

132 Name of Supporter:

133 _____

134 Relationship to Principal:

135 _____

136 Repeat as needed for each supporter.

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



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141 These supporters can help me in these ways:

142 [Redacted]

143 These supporters MAY NOT do these things:

144 [Redacted]

145 OTHER DECISIONS

146

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

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

150 Name of Supporter:

151 [Redacted]

152 Relationship to Principal:

153 [Redacted]

154 Repeat as needed for each supporter.

155 I, _____ (Name of Principal), allow these
156 supporters to help me make certain decisions. These people do
157 not make decisions for me - they help me make decisions
158 myself.

159 These supporters can help me in these ways:

160 [Redacted]

161 These supporters MAY NOT do these things:

162 [Redacted]

163 SIGNATURE AND ACKNOWLEDGEMENT

164 I agree to be a supporter under this agreement.

165 (Signature of Supporter)

166 [Redacted]

167 Signature Date:

168 [Redacted]



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169 Supporter Name Printed:
170 _____
171 Supporter Address:
172 _____
173 Supporter Telephone Number:
174 _____
175 Supporter E-mail Address:
176 _____
177 Repeat as needed for each supporter listed in the
178 supported decision-making agreement.
179 (Signature of Principal)
180 _____
181 Your Signature Date:
182 _____
183 Your Name Printed:
184 _____
185 Your Address:
186 _____
187 Your Telephone Number:
188 _____
189
190
191 State of:
192 _____
193 [County] of:
194 _____
195
196



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197 I, _____, a Notary Public, in and for the County
198 in this State, hereby certify that _____, whose name is
199 signed to the foregoing document, and who is known to me,
200 acknowledged before me on this day that, being informed of the
201 contents of the document, he or she executed the same
202 voluntarily on the day the same bears date.

203 Given under my hand this the _____ day of
204 _____, 2_____.

205 _____

206 (Seal, if any)

207 Signature of Notary

208

209 My commission expires:

210 _____

211 [This document prepared by:

212 _____]

213

214 ~~Section 4.~~Section 5. (a) A supporter shall do all of
215 the following:

216 (1) Support the will and preference of the adult and
217 not the supporter's opinion of the adult's best interest.

218 (2) Act honestly, diligently, and in good faith.

219 (3) Act within the scope set forth in the adult's
220 supported decision-making agreement.

221 (4) Avoid conflicts of interest.

222 (5) Timely notify the adult in writing, in the adult's
223 preferred language and mode of communication, of his or her
224 intent to resign as a supporter.



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225 (b) A supporter is a fiduciary and shall make and
226 communicate decisions in cooperation with the adult and
227 preserve the adult's authority to make decisions.

228 (c) A supporter shall not do any of the following:

229 (1) Exert undue influence upon the adult.

230 (2) Receive a fee or compensation for services
231 performed in the role of supporter.

232 (3) Obtain, without the consent of the adult,
233 information for a purpose other than assisting the adult in
234 making a specific decision authorized by the supported
235 decision-making agreement.

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

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

240 (d) A supporter who is expressly given relevant
241 authority in a power of attorney may act within the scope of
242 that authority to sign instructions or other documents on
243 behalf of the adult, or to communicate or implement decisions
244 made by the adult.

245 (e) A request or decision made or communicated with the
246 assistance of a supporter in conformity with the supported
247 decision-making agreement shall be recognized as the request
248 or decision of the adult for the purposes of any provision of
249 law.

250 ~~Section 5.~~ **Section 6.** (a) A supported decision-making
251 agreement shall meet all of the following requirements:

252 (1) Name at least one supporter.



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253 (2) Describe the decision-making assistance that each
254 supporter may provide to the adult and how supporters may work
255 together.

256 (3) If the adult is subject to a limited guardianship
257 or conservatorship as provided by Section 6, be executed by
258 the adult's guardian or conservator.

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

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

- 263 a. The supporter's relationship to the adult.
264 b. The supporter's willingness to act as a supporter.
265 c. The supporter's acknowledgment of his or her duties
266 as a supporter.

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

269 (1) Appoint more than one supporter.

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

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

274 ~~Section 6.~~Section 7. (a) An adult may revoke a
275 supported decision-making agreement at any time. A revocation
276 under this section shall be in writing, and a copy of the
277 revocation shall be provided to each supporter.

278 (b) Except as provided in the supported decision-making
279 agreement, a supported decision-making agreement terminates in
280 each the following situations:



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

283 (2) The adult who is the subject of the supported
284 decision-making agreement revokes the agreement under
285 subsection (a).

286 (3) All of the named supporters withdraw their
287 participation without arranging for successor supporters
288 approved by the adult.

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

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

295 (6) A court of competent jurisdiction appoints a
296 temporary or permanent guardian or conservator for the person
297 or property of the adult, unless the court's order of
298 appointment does each of the following:

299 a. Expressly modifies, but continues, the supported
300 decision-making agreement alongside a partial guardianship or
301 conservatorship.

302 b. Limits the powers and duties of the guardian or
303 conservator.

304 (7) The adult signs a valid durable power of attorney,
305 except to the extent that the power of attorney expressly
306 continues, in whole or in part, the supported decision-making
307 agreement.

308 (c) The court may enter an order pursuant to

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309 subdivision (b) (4), (b) (5), or (b) (6) only after providing
310 notice and a hearing to the adult and all supporters named in
311 the agreement.

312 ~~Section 7.~~Section 8. A supported decision-making
313 agreement that complies with Section 5 is presumed valid. A
314 party may rely on the presumption of validity unless the party
315 has actual knowledge that the supported decision-making
316 agreement was not validly executed.

317 ~~Section 8.~~Section 9. (a) A person who in good faith
318 relies on an authorization in a supported decision-making
319 agreement is not subject to discipline for unprofessional
320 conduct.

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

324 ~~Section 9.~~Section 10. (a) The meaning and effect of a
325 supported decision-making agreement is determined by the law
326 of the jurisdiction in which the supported decision-making
327 agreement was executed, unless the supported decision-making
328 agreement provides otherwise.

329 (b) A person who receives a copy of a supported
330 decision-making agreement or is aware of the existence of a
331 supported decision-making agreement and reasonably believes
332 that an adult is being abused, neglected, or exploited shall
333 report the alleged abuse, neglect, or exploitation to an adult
334 protective services agency or an authorized law enforcement
335 agency.

336 ~~Section 10.~~Section 11. This act shall become effective

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337 on the first day of the third month following its passage and
338 approval by the Governor, or its otherwise becoming law.