2020 Regular Session

HOUSE BILL NO. 361

BY REPRESENTATIVES DAVIS, NELSON, AND CHARLES OWEN AND SENATORS
CLOUD, FOIL, AND MCMATH

1   AN ACT

2   To enact Code of Civil Procedure Article 4541(A)(11) and Chapter 24-A of Title 13 of the

3   Louisiana Revised Statutes of 1950, to be comprised of R.S. 13:4261.101 through

4   4261.302, relative to supportive decisionmaking agreements for certain adults; to

5   provide for the Supported Decisionmaking Agreement Act; to provide for the scope

6   of supported decisionmaking agreements; to provide for certain definitions, terms,

7   procedures, conditions, requirements, and effects; to provide for access to personal

8   information; to provide for the authority of certain persons; to provide for the term

9   of a supported decisionmaking agreement; to provide for revocation; and to provide

10   for related matters.

11   Be it enacted by the Legislature of Louisiana:

12   Section 1. Code of Civil Procedure Article 4541(A)(11) is hereby enacted to read

13   as follows:

14   Art. 4541. Petition for interdiction

15   A. Any person may petition for the interdiction of a natural person of the age

16   of majority or an emancipated minor. The petitioner shall verify the petition and, to

17   the extent known, shall set forth the following with particularity:

18   *   *   *

19   (11) A description with particularity of the petitioner's efforts to use less

20   restrictive means before seeking interdiction, including all of the following:

21   (a) The less restrictive means for meeting the defendant's needs that were

22   considered or implemented.

1   (b) If a less restrictive means was not considered or implemented, the reason

2   that the less restrictive means was not considered or implemented.

3   (c) The reason a less restrictive means is insufficient to meet the needs of the

4   defendant.

5   *   *   *

6   Section 2. Chapter 24-A of Title 13 of the Louisiana Revised Statutes of 1950,

7   comprised of R.S. 13:4261.101 through 4261.302, is hereby enacted to read as follows:

8   CHAPTER 24-A. SUPPORTED DECISIONMAKING AGREEMENT ACT

9   PART I. GENERAL PROVISIONS

10   §4261.101. Short title

11   This Chapter may be cited as the Supported Decisionmaking Agreement Act,

12   and may also be cited as the Dustin Gary Act.

13   §4261.102. Definitions

14   As used in this Chapter:

15   (1)   "Adult" means an individual with a disability as defined by the

16   Americans with Disabilities Act of 1990 (42 U.S.C. 12102) who has attained

17   eighteen years of age or who is an emancipated minor.

18   (2) "Guardian" means a guardian as defined by R.S. 13:4251.102.

19   (3)   "Supported decisionmaking" means a process of supporting and

20   accommodating an adult to enable the adult to make life decisions, including

21   decisions related to where the adult wants to live, the services, supports, and medical

22   care the adult wants to receive, with whom the adult wants to live, and where the

23   adult wants to work, without impeding the self-determination of the adult.

24   (4) "Supported decisionmaking agreement" is an agreement between an adult

25   and a supporter entered into under this Chapter.

26   (5) "Supporter means an individual who has attained the age of eighteen

27   years of age and entered into a supported decisionmaking agreement with an adult.

1   §4261.103. Purpose

2   The purpose of this Chapter is to recognize a less restrictive decisionmaking

3   process and empowers supported decisionmaking as an option over interdiction for

4   adults with disabilities who need assistance with decisions regarding daily living.

5   PART II. SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS

6   §4261.201. Scope of supported decisionmaking agreement

7   An adult may voluntarily, without undue influence or coercion, enter into a

8   supported decisionmaking agreement with a supporter under which the adult

9   authorizes the supporter to do any of the following:

10   (1) Provide supported decisionmaking, including assistance in understanding

11   the options, responsibilities, and consequences of the adult's life decisions, without

12   making those decisions on behalf of the adult.

13   (2) Assist the adult in accessing, collecting, and obtaining information that

14   is relevant to a given life decision, including medical, psychological, financial,

15   educational, or treatment records.

16   (3) Assist the adult in understanding the information described by Paragraph

17   (2) of this Subsection.

18   (4) Assist the adult in communicating the adult's decisions to the appropriate

19   parties.

20   §4261.202. Authority of supporter

21   A supporter may exercise the authority granted to the supporter in the

22   supported decisionmaking agreement.

23   §4261.203. Requirements of supporter

24   A supporter shall do all of the following:

25   (1) Support the will and preference of the adult and not the supporter's

26   opinion of the adult's best interests.

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

28   (3) Act within the scope set forth in the adult's supported decisionmaking

29   agreement.

30   (4) Avoid conflicts of interest.

1   (5)   Notify the adult in writing of the supporter's intent to resign as a

2   supporter.

3   §4261.204. Prohibitions

4   A supporter is prohibited from doing all of the following:

5   (1) Exerting undue influence upon the adult.

6   (2) Obtaining, without the consent of the adult, information relating to the

7   adult acquired for a purpose other than assisting the adult in making a specific

8   decision authorized by the supported decisionmaking agreement.

9   (3)   Acting outside the scope of authority provided in the supported

10   decisionmaking agreement.

11   (4)   Obtaining, without the consent of the adult, nonpublic personal

12   information relating to the adult as defined in 15 U.S.C. 6809(4)(A).

13   §4261.205. Requirements of a supported decisionmaking agreement

14   A. A supported decisionmaking agreement shall contain all of the following

15   information:

16   (1) The name, address, and phone number of at least one supporter.

17   (2) A description of the decisionmaking assistance that a supporter shall

18   provide to the adult and, if multiple supporters, how they shall work together.

19   B. A supported decisionmaking agreement may do any of the following:

20   (1) Appoint more than one supporter.

21   (2)   Appoint an alternate to act in the place of a supporter under

22   circumstances specified in the agreement.

23   (3) Authorize a supporter to share information with any other supporter or

24   others named in the agreement.

25   C.   A supported decisionmaking agreement shall be in the form of an

26   authentic act, dated, and signed by the adult or by the adult's guardian if the adult

27   lacks capacity under Civil Code Article 1918.

28   D.   A supported decisionmaking agreement shall contain a separate

29   declaration signed by each supporter named in the agreement indicating the

1   supporter's relationship to the adult, willingness to act as a supporter, and

2   acknowledgment of the duties of a supporter.

3   §4261.206. Revocation

4   A. An adult may revoke a supported decisionmaking agreement at any time.

5   A revocation shall be in the form of an authentic act, dated, and signed by the adult

6   or the adult's guardian if the adult lacks capacity under Civil Code Article 1918, and

7   a copy of the revocation shall be provided to each supporter.

8   B. A supporter may revoke a supported decisionmaking agreement at any

9   time. A revocation shall be in the form of an authentic act, dated, and signed by the

10   supporter, and a copy of the revocation shall be provided to the adult subject of the

11   supported decisionmaking agreement, the adult's guardian, if applicable, and any

12   other supporters.

13   §4261.207. Term of agreement

14   A. A supported decisionmaking agreement terminates under any of the

15   following circumstances:

16   (1) The adult subject of the supported decisionmaking agreement dies.

17   (2) The adult subject of the supported decisionmaking agreement revokes the

18   agreement under R.S. 13:4261.206.

19   (3) The named supporter revokes his participation in writing without naming

20   successor supporters.

21   (4) A court of competent jurisdiction determines that the adult does not have

22   capacity to execute or consent to a supported decisionmaking agreement.

23   (5) A court of competent jurisdiction determines that a supporter has used

24   the supported decisionmaking agreement to commit financial exploitation, abuse, or

25   neglect of the adult.

26   (6) A court of competent jurisdiction appoints a temporary or permanent

27   guardian for the person or property of the adult, unless the court's order of

28   appointment does all of the following:

29   (a) Expressly modifies but continues the supported decisionmaking

30   agreement.

1   (b) Limits the powers and duties of the guardian.

2   (7) The adult signs a valid durable power of attorney, except to the extent

3   that the power of attorney expressly continues, in whole or in part, the supported

4   decisionmaking agreement.

5   B. The court may enter an order under Paragraph (A)(4), (5), or (6) of this

6   Section only after notice is given to the adult and all supporters named in the

7   agreement and a hearing is conducted.

8   §4261.208. Access to personal information

9   A. A supporter is authorized to assist the adult only in accessing, collecting,

10   or obtaining information that is relevant to a decision authorized under the supported

11   decisionmaking agreement.

12   B. If a supporter assists an adult in accessing, collecting, or obtaining

13   personal information, including protected health information under the Health

14   Insurance Portability and Accountability Act of 1996 (P.L. 104-191) or educational

15   records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.

16   1232g), the supporter shall ensure the information is kept privileged and confidential,

17   as applicable, and is not subject to unauthorized access, use, or disclosure.

18   C. The existence of a supported decisionmaking agreement does not preclude

19   an adult from seeking personal information without the assistance of a supporter.

20   PART III. MISCELLANEOUS PROVISIONS

21   §4261.301. Reliance

22   A supported decisionmaking agreement that complies with Part II of this

23   Chapter is presumed valid. A party may rely on the presumption of validity unless

24   the party has actual knowledge that the supported decisionmaking agreement was not

25   validly executed.

26   §4261.302. Reporting of suspected abuse, neglect, or exploitation

27   If a person who receives a copy of a supported decisionmaking agreement or

28   is aware of the existence of a supported decisionmaking agreement and has cause to

29   believe that the adult is being abused, neglected, or exploited by a supporter, the

1   person shall report the alleged abuse, neglect, or exploitation to any adult protection

2   agency or any local or state law enforcement agency.

_____
SPEAKER OF THE HOUSE OF REPRESENTATIVES

_____
PRESIDENT OF THE SENATE

_____
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored
are additions.