

2020 Regular Session

HOUSE BILL NO. 361

BY REPRESENTATIVE DAVIS AND SENATORS MCMATH AND FOIL

CIVIL/LAW: Provides relative to supported decisionmaking agreements as a less restrictive means to interdiction

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 4261.303, relative to supportive decisionmaking agreements for adults with
5 disabilities; to provide for the Supported Decisionmaking Agreement Act; to provide
6 for the purpose of the Act; to provide for certain definitions, terms, procedures,
7 conditions, requirements, and effects; to provide for access to personal information;
8 to provide for the authority of certain persons; to provide for the term of a supported
9 decisionmaking agreement; to provide for revocation; to provide for liability as
10 between the parties and third parties; and to provide 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:

1 (4) "Supported decisionmaking" means a process of supporting and
2 accommodating an adult with a disability to enable the adult to make life decisions,
3 including decisions related to where the adult wants to live, the services, supports,
4 and medical care the adult wants to receive, with whom the adult wants to live, and
5 where the adult wants to work, without impeding the self-determination of the adult.

6 (5) "Supported decisionmaking agreement" is an agreement between an adult
7 with a disability and a supporter entered into under this Chapter.

8 (6) "Supporter" means an adult who has entered into a supported
9 decisionmaking agreement with an adult with a disability.

10 §4261.103. Purpose

11 The purpose of this Chapter is to recognize a less restrictive decisionmaking
12 process and empowers supported decisionmaking as an option over interdiction for
13 adults with disabilities who need assistance with decisions regarding daily living.

14 PART II. SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS

15 §4261.201. Scope of supported decisionmaking agreement

16 An adult with a disability may voluntarily, without undue influence or
17 coercion, enter into a supported decisionmaking agreement with a supporter under
18 which the adult with a disability authorizes the supporter to do any of the following:

19 (1) Provide supported decisionmaking, including assistance in understanding
20 the options, responsibilities, and consequences of the adult's life decisions, without
21 making those decisions on behalf of the adult with a disability.

22 (2) Assist the adult in accessing, collecting, and obtaining information that
23 is relevant to a given life decision, including medical, psychological, financial,
24 educational, or treatment records.

25 (3) Assist the adult with a disability in understanding the information
26 described by Paragraph (2) of this Subsection.

27 (4) Assist the adult in communicating the adult's decisions to the appropriate
28 parties.

29 §4261.202. Authority of supporter

1 A supporter may exercise the authority granted to the supporter in the
2 supported decisionmaking agreement.

3 §4261.203. Requirements of supporter

4 A supporter shall do all of the following:

5 (1) Support the will and preference of the adult and not the supporter's
6 opinion of the adult's best interests.

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

8 (3) Act within the scope set forth in the adult's supported decisionmaking
9 agreement.

10 (4) Avoid conflicts of interest.

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

13 §4261.204. Prohibitions

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

15 (1) Exerting undue influence upon the adult.

16 (2) Obtaining, without the consent of the adult, information acquired for a
17 purpose other than assisting the adult in making a specific decision authorized by the
18 supported decisionmaking agreement.

19 (3) Acting outside the scope of authority provided in the supported
20 decisionmaking agreement.

21 (4) Obtaining, without the consent of the adult, nonpublic personal
22 information as defined in 15 U.S.C. 6809(4)(A).

23 §4261.205. Requirements of a supported decisionmaking agreement

24 A. A supported decisionmaking agreement shall contain all of the following
25 information:

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

27 (2) A description of the decisionmaking assistance that a supporter shall
28 provide to the adult and, if multiple supporters, how they shall work together.

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

1 (1) Appoint more than one supporter.

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

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

6 C. A supported decisionmaking agreement shall be in the form of an
7 authentic act, dated, and signed by the adult or by the adult's guardian if the adult
8 lacks capacity under Civil Code Article 1918.

9 D. A supported decisionmaking agreement shall contain a separate
10 declaration signed by each supporter named in the agreement indicating the
11 supporter's relationship to the adult, willingness to act as a supporter, and
12 acknowledgment of the duties of a supporter.

13 §4261.206. Revocation

14 A. An adult may revoke a supported decisionmaking agreement at any time.
15 A revocation shall be in the form of an authentic act, dated, and signed by the adult
16 or the adult's guardian if the adult lacks capacity under Civil Code Article 1918, and
17 a copy of the revocation shall be provided to each supporter.

18 B. A supporter may revoke a supported decisionmaking agreement at any
19 time. A revocation shall be in the form of an authentic act, dated, and signed by the
20 supporter, and a copy of the revocation shall be provided to the adult subject of the
21 supported decisionmaking agreement, the adult's guardian, if applicable, and any
22 other supporters.

23 §4261.207. Term of agreement

24 A. A supported decisionmaking agreement terminates under any of the
25 following circumstances:

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

27 (2) The adult subject of the supported decisionmaking agreement revokes the
28 agreement under R.S. 13:4261.207.

1 (3) The named supporter revokes his participation in writing without naming
2 successor supporters.

3 (4) A court of competent jurisdiction determines that the adult does not have
4 capacity to execute or consent to a supported decisionmaking agreement.

5 (5) A court of competent jurisdiction determines that a supporter has used
6 the supported decisionmaking agreement to commit financial exploitation, abuse, or
7 neglect of the adult.

8 (6) A court of competent jurisdiction appoints a temporary or permanent
9 guardian for the person or property of the adult, unless the court's order of
10 appointment does all of the following:

11 (a) Expressly modifies but continues the supported decisionmaking
12 agreement.

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

14 (7) The adult signs a valid durable power of attorney, except to the extent
15 that the power of attorney expressly continues, in whole or in part, the supported
16 decisionmaking agreement.

17 B. The court may only enter an order under Paragraph(A)(4), (5), or (6) of
18 this Section after notice and a hearing to the adult and all supporters named in the
19 agreement.

20 §4261.208. Access to personal information

21 A. A supporter is only authorized to assist the adult with a disability in
22 accessing, collecting, or obtaining information that is relevant to a decision
23 authorized under the supported decisionmaking agreement.

24 B. If a supporter assists an adult with a disability in accessing, collecting, or
25 obtaining personal information, including protected health information under the
26 Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) or
27 educational records under the Family Educational Rights and Privacy Act of 1974
28 (20 U.S.C. 1232g), the supporter shall ensure the information is kept privileged and

1 confidential, as applicable, and is not subject to unauthorized access, use, or
2 disclosure.

3 C. The existence of a supported decisionmaking agreement does not preclude
4 an adult with a disability from seeking personal information without the assistance
5 of a supporter.

6 PART III. MISCELLANEOUS PROVISIONS

7 §4261.301. Reliance

8 A supported decisionmaking agreement that complies with Part II of this
9 Chapter is presumed valid. A party may rely on the presumption of validity unless
10 the party has actual knowledge that the supported decisionmaking agreement was not
11 validly executed.

12 §4261.302. Liability

13 A. Except as provided in Subsection C of this Section, a person who in good
14 faith, relies on an authorization in a supported decisionmaking agreement or who, in
15 good faith, declines to honor an authorization in a supported decisionmaking
16 agreement is not subject to civil or criminal liability or to discipline for
17 unprofessional conduct.

18 B. Except as provided in Subsection C of this Section, a supporter who
19 performs supported decisionmaking in good faith as specified in a supported
20 decisionmaking agreement is immune from civil or criminal liability resulting from
21 the adult's decision.

22 C. This Section does not apply to a person whose act or omission amounts
23 to fraud, misrepresentation, recklessness, or willful or wanton misconduct.

24 §4261.303. Reporting of suspected abuse, neglect, or exploitation

25 If a person who receives a copy of a supported decisionmaking agreement or
26 is aware of the existence of a supported decisionmaking agreement and has cause to
27 believe that the adult is being abused, neglected, or exploited by a supporter, the
28 person shall report the alleged abuse, neglect, or exploitation.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 361 Original

2020 Regular Session

Davis

Abstract: Enacts the Supportive Decisionmaking Agreements Act, provides for the purpose of the Act, and establishes the procedures and requirements for persons subject to this Act.

Present law provides for the procedures and requirements for a petition for interdiction.

Proposed law enacts an additional requirement of certification of consideration of less restrictive means prior to seeking interdiction.

Proposed law provides for a supportive decisionmaking agreement between an adult with a disability and a supporter, whereby the supporter advises the adult with a disability on issues outlined within the agreement without impeding the self-determination of the adult.

Proposed law provides that supportive decisionmaking agreements are recognized as less restrictive means in regards to the management of adults with disabilities.

Proposed law provides that the authority of the supporter is granted by the supported decisionmaking agreement.

Proposed law provides for the various requirements and prohibitions of actions taken by the supporter.

Proposed law provides for the requirements, revocation, and term of a supported decisionmaking agreement.

Proposed law authorizes a supporter to assist with obtaining personal information that is relevant to decisions authorized under the agreement.

Proposed law provides that supporters who act in good faith and third parties who rely in good faith on the supported decisionmaking agreement are not subject to civil or criminal liability or to discipline for unprofessional conduct.

(Adds C.C.P. Art. 4541(A)(11) and R.S. 13:4261.101-4261.303)