

**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.