

To: Senator Patrick Testin, Chair, Senate Committee on Workforce Development, Military Affairs, and Senior Issues

Senate Committee on Workforce Development, Military Affairs, and Senior Issues

From: Disability Rights Wisconsin, Mitchell Hagopian, Supervising Attorney

Date: January 10, 2018

Re: Testimony in Support of SB 552, supported decision-making agreements

As the Protection & Advocacy system for people with disabilities in Wisconsin, DRW strongly supports SB 552. This bill provides the means by which people with disabilities can formally engage the people they trust to help them make decisions about important issues in their lives.

Unfortunately, it is a sad reality that people with disabilities, particularly intellectual disabilities, are presumed by many in society to be incompetent and presumed to need a guardian. All too often, a young person with a mild cognitive disability gets a date with the probate court for her 18th birthday present. Rather than celebrating the independence that comes with reaching the age of majority, she instead has all of her rights stripped by a court that is not equipped to understand her.

I recently talked to a 17-year-old woman with an autism spectrum disorder and her mother. They had been told by their school district that it was imperative that mom petition for guardianship before her daughter turned 18 or she would lose her right to make decisions for her daughter. There was nothing visibly disabled about this young woman. She was articulate and calm. I asked them if she had ever made any questionable decisions. The only thing either could think of was the purchase of somewhat pricey habitrail maze for her pet ferret. Had she made the purchase with someone else's money or credit card? No. Did she have enough of her own money to pay for it? Yes. Where did she get the money? She had gotten a job and earned the money she used to pay for it. Was it a somewhat extravagant purchase? Possibly—in retrospect she thought maybe she should have saved the money for college. If this young woman needs a guardian—we all do.

Yet somehow, because she was in special education, her school counselors assumed that she had to have one.

This bill goes a small, but very important, way, toward preventing the unnecessary imposition of guardianships on people with disabilities. It allows people to formally designate the people they want supporting them. It gives the supporter a seat at the table when decisions are being made and allows the individual to consult with their supporter when they need it. It creates the expectation that the supporter will be allowed to participate, explain, and, when asked by the individual, offer advice about what to consider when making the decision.

MADISON

131 W. Wilson St.
Suite 700
Madison, WI 53703

608 267-0214
608 267-0368 FAX

MILWAUKEE

6737 West Washington St.
Suite 3230
Milwaukee, WI 53214

414 773-4646
414 773-4647 FAX

RICE LAKE

217 West Knapp St.
Rice Lake, WI 54868

715 736-1232
715 736-1252 FAX

disabilityrightswi.org

800 928-8778 consumers & family

From a legal perspective it is important to understand what this bill does NOT do.

- Most important, it does NOT transfer any decision-making authority to the supporter. The decision-making authority is always retained by the individual.
- It does NOT abrogate HIPPA or other statutes relating to confidential information. An entity in possession of confidential information can still require the individual to sign a release before the entity has to release information to the supporter.
- It does NOT open a door to financial or other abuse. As the P&A we have thought long and hard about this. Because the bill does not transfer any decision-making authority to the supporter, it cannot be used to access funds in bank accounts, apply for credit, engage in contracts or admit someone to a facility. We have consulted with our colleagues at Disability Rights Texas to see if there had been any increase in abuse of people with disabilities there since Texas introduced a sanctioned supported decision-making process. There has not. SB 552 is modeled on the Texas law.

What it DOES do is give the entity that is being approached by the person with a disability and their supporter (bank, school district, landlord, etc.) confidence that this person has taken self-protective measures—by engaging a supporter—and is going to make a decision that will not be questioned later.

DRW believes that guardianship plays a necessary protective role in the lives of vulnerable people with disabilities who lack the competency to make decisions. But guardianship should be the last resort—not the first. Supported decision-making fills a void in the continuum of capacity that starts with complete capacity and ends with guardianship. The bill creates a less restrictive alternative to guardianship that courts may consider before considering guardianship.

Thank you for the opportunity to provide input on this very important legislation, which will allow people with cognitive impairments maintain their liberty and retain their right to make decisions for themselves. It will give them the confidence that the person they choose to help them make decisions will be accepted and respected by the agencies with whom they are negotiating. SB 552 will fill an important gap in our current system while respecting the rights of older adults and people with disabilities the ability to make decisions about their lives.

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