

LEGISLATIVE COMMITTEE MINUTES

# **HB540**

Bill as  
Introduced

HB 540 - AS AMENDED BY THE HOUSE

7Apr2021... 0565h

2021 SESSION

21-0716  
05/04

HOUSE BILL **540**

AN ACT relative to supported decision-making as an alternative to guardianship.

SPONSORS: Rep. Chase, Straf. 18; Rep. Langley, Hills. 8; Rep. Marsh, Carr. 8; Rep. Weber, Ches. 1; Rep. Cannon, Straf. 18; Rep. Gordon, Graf. 9; Rep. M. Pearson, Rock. 34; Rep. Berch, Ches. 1; Sen. Whitley, Dist 15; Rep. McMahon, Rock. 7; Sen. Rosenwald, Dist 13

COMMITTEE: Judiciary

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ANALYSIS

This bill establishes supported decision making as an alternative to guardianship.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struckthrough.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT relative to supported decision-making as an alternative to guardianship.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 Statement of Findings. The general court hereby finds that:

2 I. Whenever possible, New Hampshire adults should make their own decisions about how to  
3 live their lives.

4 II. The imposition of guardianship necessarily involves the loss of authority over one's own  
5 life. Adults with disabilities have a range of strengths and capacities, and guardianship is  
6 unnecessarily restrictive in many of those circumstances.

7 III. Guardianship may be necessary in some cases, but when it is imposed upon a person  
8 with a disability that could utilize less restrictive alternatives, it can cause negative impacts to  
9 mental and physical health and the ability to function independently.

10 IV. Supported decision-making is a process which preserves the self-determination of adults  
11 with disabilities by providing them with accommodations and supports to enable them to make life  
12 decisions.

13 V. Supported decision-making has in recent years gained recognition and acceptance. It has  
14 been promoted as an alternative to guardianship by the National Guardianship Association and the  
15 American Bar Association. Nine states have recently adopted statutes which formally establish  
16 supported decision-making agreements.

17 VI. The legal recognition of supported decision-making will promote understanding and  
18 acceptance of the decisions of people with disabilities. This will assist in effective relationships  
19 between people with disabilities and their caregivers, health care providers, and other third parties.

20 2 Guardians and Conservators; Available Alternative Resource. RSA 464-A:2, II is repealed and  
21 reenacted to read as follows:

22 II. "Available alternative resource" means alternatives to guardianship including, but not  
23 limited to, services such as visiting nurses, homemakers, home health aides, adult day care and  
24 multipurpose senior citizen centers; powers of attorney, supported decision-making agreements such  
25 as those authorized by RSA 464-D, representative and protective payees; and board and care  
26 residential care facilities.

27 3 Guardians and Conservators; Termination of Guardianship. RSA 464-A:40, I is repealed and  
28 reenacted to read as follows:

29 I. A guardianship of the person or of the estate shall terminate upon order of the court, the  
30 death of the ward, or upon a finding by the court either that the ward is no longer incapacitated or  
31 that the ward's needs are met by available alternative resources.



1           III. Execution of a supported decision-making agreement may not be used as evidence of  
2 incapacity in any proceeding.

3           IV. The execution of a supported decision-making agreement does not preclude the adult  
4 who has entered into such an agreement from acting independently of the agreement.

5           464-D:4 Definitions.

6           I. "Adult" means an individual who is 18 years of age or older.

7           II. "Disability" means a physical or mental impairment that substantially limits one or more  
8 major life activities of a person.

9           III. "Immediate family member" means a spouse, child, sibling, parent, grandparent,  
10 grandchild, stepparent, stepchild, or stepsibling.

11           IV. "Person" means an adult; health-care institution; health-care provider; corporation;  
12 partnership; limited liability company; association; joint venture; government; governmental  
13 subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity

14           V. "Principal" means an adult who enters into a supported decision-making agreement  
15 under this chapter to receive decision-making assistance.

16           VI. "Supported decision-making" means a process of supporting and accommodating an  
17 adult with a disability to enable the adult to make life decisions, including, without limitation,  
18 decisions related to where the adult wants to live, the services, supports, and medical care the adult  
19 wants to receive, whom the adult wants to live with, education, and where the adult wants to work,  
20 without impeding the self-determination of the adult.

21           VII. "Supporter" means an adult who enters into an agreement with an adult with a  
22 disability to provide supported decision-making.

23           VIII. "Support services" means a system of social and other services supplied by private,  
24 state, institutional, or community providers designed to help maintain the independence of an adult,  
25 including any of the following:

26           (a) Homemaker-type services, including house repair, home cleaning, laundry, shopping,  
27 and the provision of meals.

28           (b) Companion-type services, including transportation, escort, and facilitation of written,  
29 oral, and electronic communication.

30           (c) Visiting nurse and attendant care.

31           (d) The provision of health care.

32           (e) Physical and psychosocial assessments.

33           (f) Legal assessments and advice.

34           (g) Education and educational assessment and advice.

35           (h) Personal treatment or care, including assistance with activities of daily living such  
36 as bathing, dressing, eating, range of motion, toileting, transferring, and ambulation.

37           (i) Care planning.

1 (j) Other services needed to maintain the independence of an adult.

2 464-D:5 Subject Matter of Agreement. A principal may identify any type of decision to be the  
3 subject of an agreement under this chapter. Such matters may include, but are not limited to:

4 I. Physical and mental health care.

5 II. Managing and using income and assets.

6 III. Support services.

7 IV. Employment.

8 V. Food and shelter.

9 VI. Assistance with public benefits.

10 VII. Education.

11 464-D:6 Limitations of Agreement.

12 I. An agreement under this chapter may coexist with, but not conflict with, a guardianship  
13 or other court order.

14 II. An agreement under this chapter may be for a definite term. In the absence of a  
15 provision setting a definite term of the agreement, the agreement shall remain in effect until  
16 terminated pursuant to RSA 464-D:16.

17 464-D:7 Form and Content of Valid Agreement.

18 I. In order to be valid under this chapter, a supported decision-making agreement shall  
19 include all of the following:

20 (a) Designation of at least one supporter.

21 (b) A description of the types of decisions for which the supporter is authorized to assist.

22 (c) A description of the types of decisions, if any, for which the supporter may not assist.

23 II. A supported decision-making agreement may include any of the following:

24 (a) Designation of more than one supporter.

25 (b) Provision for an alternate supporter to act in place of a supporter in circumstances  
26 specified in the agreement.

27 (c) Authorization for a supporter to share information with any other person, including  
28 another supporter.

29 III. A supported decision-making agreement is only valid if all of the following occur:

30 (a) The agreement is in a writing that contains the elements of the form contained in  
31 RSA 464-D:16.

32 (c) The agreement is dated.

33 (d) The agreement is signed in the presence of 2 adult witnesses, or before a notary  
34 public, justice of the peace, or commissioner of deeds.

35 (e) Each party to the agreement has signed the agreement voluntarily and with an  
36 understanding of the nature and effect of the agreement.

37 IV. The 2 adult witnesses required by subparagraph III(d) may not be any of the following:

- 1 (a) A supporter named in the agreement.  
2 (b) An employee or agent of a supporter named in the agreement.  
3 (c) A paid provider of services to the principal, unless the person is an immediate family  
4 member.  
5 (d) Any person who does not understand the type of communication the principal uses,  
6 unless an individual who understands the principal's means of communication is present to assist  
7 during the execution of the supported decision-making agreement.

8 V. A supported decision-making agreement shall contain a separate declaration signed by  
9 each supporter named in the agreement indicating all of the following:

- 10 (a) The supporter's relationship to the principal.  
11 (b) The supporter's willingness to act as a supporter.  
12 (c) The supporter's acknowledgment of the role of a supporter under this chapter.

13 464-D:8 Termination of Agreement.

14 I. A principal may terminate a supported decision-making agreement at any time. Such  
15 termination may be accomplished by any of the following actions by the principal:

- 16 (a) Providing written notice to all of the supporters named in the agreement.  
17 (b) Verbally expressing the intent to terminate the agreement in the presence of 2 adult  
18 witnesses.

19 II. A supporter may withdraw from a supported decision-making agreement by providing  
20 written notice to the principal. If the principal does not use a written form of communication, actual  
21 notice of the supporter's withdrawal shall be provided using the type of communication used by the  
22 principal. When a supporter withdraws from a supported decision-making agreement and there is  
23 no remaining supporter, the agreement is automatically terminated.

24 III. A supported decision-making agreement is automatically terminated upon the death of  
25 the principal.

26 IV. Subject to paragraph V, a supported decision-making agreement is automatically  
27 terminated if any of the following events occur:

28 (a) There is a finding by a court or a state or federal agency that the principal has been  
29 abused, neglected, or exploited by a supporter named in the agreement.

30 (b) There is a criminal conviction of a supporter for any of the following offenses under  
31 New Hampshire law or their equivalent in another jurisdiction:

- 32 (1) Any offense or attempted offense under RSA 630 (homicide).  
33 (2) Any felony offense or attempted felony offense under RSA 631 (assault and  
34 related offenses).  
35 (3) Any offense or attempted offense under RSA 632-A (sexual assault and related  
36 offenses).  
37 (4) Any offense or attempted offense under RSA 636 (robbery).



1 (5) Any offense or attempted offense under RSA 637 (theft).

2 (6) Any offense or attempted offense under RSA 638 (fraud).

3 (7) Any offense or attempted offense under RSA 641 (falsification in official matters).

4 V. When a supporter is the subject of a criminal conviction or a finding of misconduct under  
5 paragraph IV, and there is one or more other supporters named in the agreement who are not the  
6 subjects of convictions or findings of misconduct under that paragraph, the agreement does not  
7 automatically terminate; however, any supporter who is the subject of a criminal conviction or a  
8 finding of misconduct under paragraph IV is disqualified from further actions as a supporter under  
9 the agreement.

10 464-D:9 Duties of Supporters. A supporter is in a fiduciary relationship with the principal and  
11 is subject to the following requirements:

12 I. To act loyally, without self-interest, and in good faith.

13 II. To act within the authority granted in the agreement and by this chapter.

14 III. To avoid conflicts of interest.

15 IV. To disclose to the principal all facts known to the supporter relevant to making a  
16 decision.

17 V. To act with the care, competence, and diligence ordinarily exercised by individuals in  
18 similar circumstances, with due regard either to the possession of, or lack of, special skills or  
19 expertise.

20 VI. To provide sufficient information to a monitor for financial matters designated pursuant  
21 to RSA 464-D:13 to allow the monitor to fulfill his or her responsibilities pursuant to this chapter.

22 464-D:10 Authority of Supporters.

23 I. A supporter may only exercise the authority granted to the supporter in the agreement.

24 II. A supporter is not a surrogate decision maker for the principal and is not authorized to  
25 sign legal or other documents on behalf of the principal or to bind the principal to a legal agreement.

26 III. A supporter may only access protected information if expressly authorized to do so by  
27 the principal in the agreement or other written document.

28 IV. A supporter may not do any of the following:

29 (a) Exert undue influence upon or make decisions on behalf of the principal.

30 (b) Obtain, without consent of the principal, information that is not reasonably related  
31 to matters with which the supporter is authorized to assist under the supported decision-making  
32 agreement.

33 (c) Use or disclose information, without the principal's consent, for a purpose other than  
34 assisting the principal to make decisions under the supported decision-making agreement.

35 464-D:11 Recognition of Supporters. A decision or request made or communicated with the  
36 assistance of a supporter in conformity with this chapter shall be recognized for the purposes of any

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1 provision of law as the decision or request of the principal and may be enforced in law or equity on  
2 the same basis as a decision or request of the principal.

3 464-D:12 Persons Ineligible to be Supporters. Any of the following are prohibited from acting as  
4 supporters.

5 I. A person who is an employer or employee of the principal, unless the person is an  
6 immediate family member of the principal.

7 II. A person providing paid support services, unless the person is an immediate family  
8 member of the principal.

9 III. A person against whom the principal has obtained an order of protection from abuse or a  
10 person who is the subject of a civil or criminal order prohibiting contact with the principal.

11 IV. A person who has been convicted of any of the following New Hampshire offenses or  
12 their equivalent in another jurisdiction, if the offense has not been annulled:

13 (a) Any offense or attempted offense under RSA 630 (homicide).

14 (b) Any felony offense or attempted felony offense under RSA 631 (assault and related  
15 offenses).

16 (c) Any offense or attempted offense under RSA 632-A (sexual assault and related  
17 offenses).

18 (d) Any offense or attempted offense under RSA 636 (robbery).

19 (e) Any felony offense or attempted felony offense under RSA 637 (theft).

20 (f) Any offense or attempted offense under RSA 638 (fraud).

21 (g) Any offense or attempted offense under RSA 641 (falsification in official matters).

22 464-D:13 Monitors for Financial Matters.

23 I. If a supporter is authorized in a supported decision-making agreement to assist a  
24 principal with his or her financial affairs, a principal may designate a monitor.

25 II. A monitor designated under this section shall ensure that the supporter is complying  
26 with RSA 464-D:9 and 464-D:10.

27 464-D:14 Reporting of Abuse and Neglect.

28 I. If a person who receives a copy of a supported decision-making agreement or is aware of  
29 the existence of a supported decision-making agreement has cause to believe that the principal has  
30 been abused, neglected, or financially exploited by the supporter, the person shall promptly report  
31 the alleged abuse, neglect, or exploitation to the commissioner of health and human services or the  
32 commissioner's authorized representative in accordance with RSA 161-F.

33 II. Nothing in this section shall be construed as eliminating or limiting a person's  
34 requirement to report under any other statute or regulation.

35 464-D:15 Access to Information.

36 I. A supporter may assist the principal with obtaining any information to which the  
37 principal is entitled, including, with a dated specific consent executed by the principal, protected

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1 health information under the Health Insurance Portability and Accountability Act of 1996, Public  
2 Law 104-191, educational records under the Family Educational Rights and Privacy Act of 1974, 20  
3 U.S.C. section 1232g, or information related to a substance use disorder protected by 42 U.S.C.  
4 section 290dd-2 and 42 C.F.R. Part 2.

5 II. The supporter shall ensure all information collected on behalf of the principal under this  
6 section is kept privileged and confidential, as applicable; is not subject to unauthorized access, use,  
7 or disclosure; and is properly disposed of when appropriate.

8 464-D:16 Form of Supported decision-making Agreement. A supported decision-making  
9 agreement may be in any form not inconsistent with the following form and the other requirements  
10 of this chapter. Use of the following form is presumed to meet statutory provisions.

11 SUPPORTED DECISION-MAKING AGREEMENT

12 This agreement must be communicated to all parties to the agreement in the presence of either a  
13 notary or 2 witnesses. The form of communication must be appropriate to the needs and preferences  
14 of the person with a disability. Reading the agreement out loud or using a sign language interpreter  
15 may be necessary.

16

17 My name is \_\_\_\_\_.

18

19 I want to have people I trust help me make decisions. The people who will help me are called  
20 supporters. My supporters are not allowed to make the decisions for me. I will make my own  
21 choices, with their support. I am called the principal.

22

23 This agreement can be changed at any time. I can change it by crossing out words and writing my  
24 initials next to the change. I can also end this agreement at any time by  
25 \_\_\_\_\_.

26

27 Signature of Principal

28

29 I am making this supportive decision-making agreement because I want people to help me make  
30 choices. I know that I do not have to make this agreement. I know that I can change this agreement  
31 at any time.

32

33 My printed name: \_\_\_\_\_.

34 My address: \_\_\_\_\_.

35 My phone number: \_\_\_\_\_.

36 My email address: \_\_\_\_\_.

37 Today's date: \_\_\_\_\_.

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Supporters

Supporter #1

I agree that \_\_\_\_\_ (name) will be my supporter. Their contact information is:

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

My supporter may help me with making everyday life decisions relating to the following:

Obtaining food, clothing, and shelter: Yes \_\_\_ No \_\_\_

Taking care of my physical health: Yes \_\_\_ No \_\_\_

Taking care of my mental health: Yes \_\_\_ No \_\_\_

Managing my financial affairs: Yes \_\_\_ No \_\_\_

Applying for and managing public benefits: Yes \_\_\_ No \_\_\_

My education: Yes \_\_\_ No \_\_\_

Applying for and managing employment: Yes \_\_\_ No \_\_\_

The following are other decisions that I have specifically identified that I would like assistance with:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Supporter #2.

I do not have to have more than one supporter. I choose to have \_\_\_\_\_ (name) also be my supporter. Their contact information is:

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

is my supporter. My supporter may help me with making everyday life decisions relating to the following:

Obtaining food, clothing, and shelter: Yes \_\_\_ No \_\_\_

Taking care of my physical health: Yes \_\_\_ No \_\_\_

Taking care of my mental health: Yes \_\_\_ No \_\_\_

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1 Managing my financial affairs: Yes \_\_\_ No \_\_\_

2 Applying for and managing public benefits: Yes \_\_\_ No \_\_\_

3 My education: Yes \_\_\_ No \_\_\_

4 Applying for and managing employment: Yes \_\_\_ No \_\_\_

5 The following are other decisions that I have specifically identified that I would like assistance with:

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12

13 To help me with my decisions, my supporter(s) may do the following things (check all that apply):

14 ( ) Help me access, collect, or obtain information that is relevant to a decision, including medical,  
15 psychological, educational, or treatment records;

16 ( ) Help me gather and complete appropriate authorizations and releases;

17 ( ) Help me understand my options so I can make an informed decision; and

18 ( ) Help me communicate my decision to appropriate persons.

19

20 Monitor for Financial Matters

21

22 If I want someone to help me make choices about money, I may also choose someone to make sure  
23 my supporters are being honest and using good judgment in helping me with my money. This person  
24 is called a monitor. A monitor cannot also be a supporter.

25

26 I agree that \_\_\_\_\_ (name) will be my monitor. Their contact information  
27 is:

28 Address: \_\_\_\_\_

29 Phone Number: \_\_\_\_\_

30 E-mail Address: \_\_\_\_\_

31

32 Effective Date of Supported decision-making Agreement.

33

34 This supported decision-making agreement is effective immediately and will continue  
35 until \_\_\_\_\_ (insert date) or until the agreement is terminated by my supporter or me or  
36 by operation of law.

37

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1 The date of this agreement is \_\_\_\_\_.

2

3 Consent of Supporter(s)

4

5 Supporter #1: I, \_\_\_\_\_ (name of supporter), consent to act as a supporter under this  
6 agreement, and acknowledge my responsibilities under RSA 464-D.

7

8 \_\_\_\_\_.

9 (Signature of supporter) (Printed name of supporter).

10

11 My relationship to the principal is: \_\_\_\_\_.

12

13 Supporter #2: I, \_\_\_\_\_ (name of supporter), consent to act as a supporter under this  
14 agreement, and acknowledge my responsibilities under RSA 464-D.

15

16 \_\_\_\_\_.

17 (Signature of supporter) (Printed name of supporter).

18

19 My relationship to the principal is: \_\_\_\_\_.

20

21 Additional supporters may be added below as necessary.

22

23 Consent of Monitor

24

25 I, \_\_\_\_\_ (name of monitor), consent to act as a monitor under this agreement, and  
26 acknowledge my responsibilities under RSA 464-D.

27

28 \_\_\_\_\_.

29 (Signature of monitor) (Printed name of monitor).

30

31 My relationship to the principal is: \_\_\_\_\_.

32

33 Consent of the Principal

34

35 Wait until a notary or 2 witnesses are there to watch you sign.

36

37 \_\_\_\_\_.

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1 (My signature) (My printed name).

2

3 Witnesses or Notary.

4

5 \_\_\_\_\_

6 (Witness signature) (Printed name of witness ).

7

8 \_\_\_\_\_

9 (Witness signature) (Printed name of witness )

10 6 Effective Date.

11 I. Section 4 of this act shall take effect January 1, 2022.

12 II. The remainder of this act shall take effect 60 days after its passage.

# Committee Minutes



# SENATE CALENDAR NOTICE

## Judiciary

Sen Sharon Carson, Chair  
Sen Bill Gannon, Vice Chair  
Sen Harold French, Member  
Sen Rebecca Whitley, Member  
Sen Jay Kahn, Member

Date: April 7, 2021

### HEARINGS

Wednesday

04/14/2021

(Day)

(Date)

Judiciary	REMOTE 000	1:00 p.m.
(Name of Committee)	(Place)	(Time)
1:00 p.m. <b>HB 83</b>	prohibiting non-disparagement clauses in settlement agreements involving a governmental unit.	
1:15 p.m. <b>HB 360</b>	relative to the rental of shared living facilities.	
1:30 p.m. <b>HB 436</b>	relative to eyewitness identification procedures.	
1:45 p.m. <b>HB 474</b>	prohibiting surveillance by the state on public ways or sidewalks.	
2:00 p.m. <b>HB 540</b>	relative to supported decision-making as an alternative to guardianship.	
2:15 p.m. <b>HB 630</b>	authorizing certain procedures for rulemaking.	

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/98477564267>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: US: +13126266799,,98477564267# or +16465588656,,98477564267#
4. Webinar ID: [984 7756 4267](https://www.zoom.us/j/98477564267)
5. To view/listen to this hearing on YouTube, use this link: <https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link: <http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: [remotesenate@leg.state.nh.us](mailto:remotesenate@leg.state.nh.us) or call (603-271-6931).

### EXECUTIVE SESSION MAY FOLLOW

#### Sponsors:

**HB 83**

Rep. Berch

Rep. Schultz

Rep. M. Smith

Rep. Sylvia

Rep. Meuse  
Rep. DiLorenzo  
**HB 360**  
Rep. Frost  
**HB 436**  
Rep. Cushing  
**HB 474**  
Rep. Erf  
**HB 540**  
Rep. Chase  
Rep. Cannon  
Sen. Whitley  
**HB 630**  
Rep. McGuire  
Sen. Reagan

Rep. McGuire

Rep. Amanda Bouldin

Rep. Stevens

Rep. Harriott-Gathright

Rep. Welch

Rep. Warden

Rep. Langley

Rep. Marsh

Rep. Weber

Rep. Gordon

Rep. M. Pearson

Rep. Berch

Rep. McMahon

Sen. Rosenwald

Rep. P. Schmidt

Rep. Hatch

Rep. Schuett

Jennifer Horgan 271-7875

Sharon M Carson  
Chairman

## Senate Judiciary Committee

*Sonja Caldwell 271-2117*

HB 540, relative to supported decision-making as an alternative to guardianship.

**Hearing Date:** April 14, 2021

**Time Opened:** 2:51 p.m.

**Time Closed:** 3:29 p.m.

**Members of the Committee Present:** Senators Carson, Gannon, French and Whitley

**Members of the Committee Absent :** Senator Kahn

**Bill Analysis:** This bill establishes supported decision making as an alternative to guardianship.

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**Sponsors:**

Rep. Chase

Rep. Langley

Rep. Marsh

Rep. Weber

Rep. Cannon

Rep. Gordon

Rep. M. Pearson

Rep. Berch

Sen. Whitley

Rep. McMahon

Sen. Rosenwald

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**Who supports the bill:** 65 people signed up in support of the bill. Full sign in sheet available upon request.

**Who opposes the bill:** No one

**Who is neutral on the bill:** No one

**Summary of testimony presented in support:**

**Rep Wendy Chase**

- This bill creates an alternative to guardianship for adults with disabilities and families who wish to establish a way to provide support without taking away self-determination.
- Few options currently exist for families to provide support to loved ones with a disability. This often comes up when one turns 18 and families want to continue supportive roles.
- Right now, there are no meaningful, recognized alternatives to guardianship which removes decision making power from the person and gives it to the guardian. Powers of attorney can also be used for financial or healthcare decisions, but this typically involves the full takeover of decisions for someone and are often only available when someone becomes completely unable to make a decision for themselves.
- This bill would create a legally recognized alternative so people in a range of circumstances can get support they need without the court removing their freedom of choice when it is unnecessary to meet their needs.

- People with disabilities often need help with finances or complex information or health decisions. This bill would make that support available for adults with disabilities.
- The bill would not disturb the ability of guardianship for those who need it. The standards for creating guardianship will remain same.
- She became guardian of her daughter at age 27 until she passed away on her 34<sup>th</sup> birthday. Her daughter became disabled by cancer at age 3. Treatments left her reasoning and emotional levels immature. She sought guardianship after many trips to the emergency room where she could not be in the room or help make decisions for medical care. She had to explain to a judge why her daughter could not make decisions while she listened to that. If supported decision-making had been a choice at that time instead of guardianship it would have made a huge difference in her daughter's life and in her relationship with her daughter.
- Rep. Lucy Webber supports the bill but could not be here today.

**Rep. William Marsh**

- He supports the bill and has personal experience.
- His younger sister had stroke in her 30s. She was legally competent but had issues.
- His parents left her a trust to provide for her. It was being mismanaged. He was able to guide her through managing her affairs.
- Consequently, he is supportive of guided decision-making as a less expensive alternative to guardianship.

Sen. French asked if this must be codified in law or if it can be done with a contract.

Rep. Marsh said that in his case they were able to do it without law or contracts, but he cannot answer that.

**Rep. Rebecca McBeath**

- She is a NH attorney for guardianships.
- Supported decision-making is an additional tool for the citizens of NH. She strongly supports our guardian statutes and thinks they are well written, but this would allow people not to go through guardianship process.
- During the pandemic she had an auditorily impaired client who could not talk on the phone or meet with agencies to get benefits and their needs met. This required a guardianship during the pandemic to have someone else talk and share their information. The reason they needed a guardianship was because agencies would not accept a contract, or anything written by hand. Codifying this brings it up to the notch where state and federal agencies can rely on it.

**Michael Skibbie – Disability Rights Center**

- He supports the bill. It is the result of a collaborative effort over last the year working with input from lawyers and national experts and other organizations. Supported decision-making (SDM) has received attention nationally in recent years and in the last five years, ten states have adopted SDM statutes. The National Bar Association and National Guardianship Association have supported its use.
- To appreciate value of the bill, it is important to understand guardianship, which is the complete removal of decision-making ability through the court. It can be tailored to certain areas such as finance or housing. Those decisions would no longer be made by the individual with the disability but by the guardian. When broadly imposed, it is similar to the complete

responsibility and authority parents have over a child. It is an important option for those who truly need that level of intervention.

- This bill creates a legally recognized alternative for people that might only need support and advice when making important decisions not removal of their freedom to make their own decision.
- This bill recognizes that many of us can retain our freedom of choice as long as we have the advice and support we need to make those choices. Decision-making is a learned skill. People who maintain self-determination are more independent, healthier, and better able to recognize and resist abuse. They also tend to be more integrated in their communities.
- Sections 2 and 3 of the bill make minor changes to the guardianship statute to identify the availability of SDM as one of the things a court can consider in determining if guardianship is the only way to support and protect a person with disabilities and as the basis for determining if a guardianship is no longer needed.
- Section 4 deals with the transition of a special education student. This is an area of current responsibility of special educators to help prepare a child with a disability for adult life. Sometimes this includes discussions of whether guardianship should be pursued once a child turns 18. Families often pursue guardianship because they do not know of alternative ways to remain involved in their child's life into early adulthood. Once guardianship is in place, it is unlikely to be undone. This bill would require special educators to include information about the SDM alternative if they have discussions with a family about pursuing guardianship. The bill directs the Dept. of Education to prepare materials to be used in such discussions.
- The remainder of the bill sets up the new chapter establishing SDM as a formal alternative to guardianship. NH uses guardianship more than the average state. The national rate is 56% and the rate in NH is 76%. This is a strong indicator that we may have people under guardianship today that could be successful under alternatives.
- The availability of this being in a statute and including this recommended form agreement makes it more likely that it will become known to families as an alternative. Another aspect is, to the extent there is a question on the part of a health care provider or financial advisor, that they will be more likely to accept it as an alternative.

Sen. French said he does not see anywhere in the contract where it authorizes anyone to communicate with the supporter.

Mr. Skibbie said that on the bottom of page 7, line 35, it says that a supporter can assist in the gathering of information, including healthcare information with a HIPAA release. The intent is not to require someone to communicate with anyone.

Sen. French said the reason for doing this is so a supporter could make calls for an individual and get information from banks or doctors but this does not allow anyone to talk to the supporter. When he has tried to help people before he has had to get notarized letters allowing people to talk to him on behalf of someone else.

Mr. Skibbie said you would need to use otherwise recognized releases of information. Simply being a supporter does not give you open access to private information because the principal is still in charge.

Sen. French asked if you still need a release, why this bill is needed.

Mr. Skibbie said the entire law identifies responsibilities of supporters; it disqualifies certain people from being supporters who may have acted inappropriately. It identifies for third parties that this is a legally recognized arrangement.

Sen. Carson noted that in the section of the contract concerning supporters, a person can decide what they want a supporter to do by checking things. She asked if this is where someone can designate another person to gather information and give them permission.

Mr. Skibbie said that is intended to be used if there was a subject area that was not listed above. It is not an area to give a release of information.

### **Christine Parshall**

- She is the parent of a young adult with autism. When she was 18 and they went through the transition process with the school district, they considered guardianship but decided it was not appropriate; it seemed intimidating and excessive for their needs.
- Recently, they reconsidered, particularly because of healthcare. Then she learned about this bill. SDM would be a more appropriate tool for her family. There are times when the lack of guardianship slows down her attempts to work on her daughter's behalf.
- Having something in place like SDM would expedite that process and break down barriers without full guardianship. She does not want to take decision making rights away from her daughter; she thinks she is capable.

### **Judith Jones**

- She is an attorney in NH of elder and disability law.
- She has brought guardianships on behalf of families but also represented proposed wards.
- This would give us a legally recognized mechanism for personal decision-making. In many cases, parents are concerned about the stigma of a court order determining an adult child is incapacitated. The process can be traumatizing.
- The other benefit of SDM is some guardianships were necessary at time they were sought but this could be a good tool for terminating guardianships. Over the years, one client took life skill courses that advanced her decision-making capabilities.
- Another client was very educated but unable to communicate and has a complex medical condition. SDM would give the authority to the parent in this case to serve in the role of supporter to assist with communication.
- In serving as a caregiver for her mother, when powers of attorney were not activated, she served in the role of a supporter, however, providers were looking to her for decision making even though mother had capacity. SDM would emphasize for providers that the supporter is not the decision maker; it is the patient.
- This is based on core NH values and the fundamental right of individuals to make choices.

### **Lisa Beaudoin – ABLE NH**

- Their members support the bill.
- RSA171A established NH's community-based system of supports and services for people with developmental disabilities. A key element is the ability to be self-determining. SDM is an important alternative to guardianship, which advances the development of skills for self-determination
- NH closed its state institution 30 years ago, in an effort to advance the civil and human rights of individuals with disabilities, and to make real, the opportunity for these folks to access the American Dream. SDM is yet another tool in the quest to fully include disabled Americans in the dream.
- SDM is a process that facilitates people to become more integrated in community. This model increases protection against abuse and exploitation.

- This model empowers those with disabilities and the aging to remain at the center of decision-making processes in their lives. Maximizing choice and control increases positive health outcomes, happiness, and safety.
- SDM is normal. Most of us use informal supports in seeking advice from friends. This is an important structure for people with disabilities to have what is typical. The ADA talks about modifications and having this legal structure is like a modification on what is normal with supported decision-making. This bill enhances dignity for people with disabilities.

**Cheryl Steinberg – Attorney NH Legal Assistance.**

- She supports the bill and agrees with previous testimony about why this is a good bill.
- She speaks with many older people with some diminished capacity. Capacity is not an all or nothing thing; there is a range.
- This tool is a good alternative to guardianship, as taking away someone's independence is significant.

sc

Date Hearing Report completed: April 15, 2021

# Speakers



## Senate Remote Testify

### Judiciary Committee Testify List for Bill HB540 on 2021-04-14

Support: 65   Oppose: 0   Neutral: 0   Total to Testify: 9

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Marsh, William	wmarshmd@gmail.com	603.569.6382	An Elected Official	Carroll 8	Support	Yes	4/10/2021 10:05 AM
Parshall, Christine	christineparshall@gmail.com	(603) 876-36	A Member of the Public	Myself	Support	Yes	4/12/2021 10:47 PM
McBeath, Rebecca	BMcB@comcast.net	603.834.3281	An Elected Official	Myself	Support	Yes	4/13/2021 8:14 AM
Chase, Wendy	Wendy.Chase@leg.state.nh.us	603-319-7259	An Elected Official	Myself	Support	Yes	4/13/2021 9:57 AM
skibbie, michael	mikes@drcnh.org	603.568.5093	A Lobbyist	Disability Rights Center -- NH	Support	Yes	4/13/2021 5:11 PM
kona, Johnson	trevscarman@gmail.com	603.969.0947	A Member of the Public	Myself	Support	Yes	4/13/2021 7:46 PM
Beaudoin, Lisa	lisab@ablenh.org	603.878.0459	A Member of the Public	ABLE NH	Support	Yes	4/13/2021 10:34 PM
Steinberg, Cheryl	csteinberg@nhla.org	603-206-2210	A Lobbyist	New Hampshire Legal Assistance and New Hampshire Alliance for Healthy Aging	Support	Yes	4/13/2021 11:10 PM
Jones, Judith	jjones@butenhofbomster.com	603.296.0428	A Member of the Public	Myself	Support	Yes	4/14/2021 8:43 AM
Falk, Cheri	Falk.cj@gmail.com	603.801.4651	A Member of the Public	Myself	Support	No	4/13/2021 7:05 PM
Bergeron, Jane	jbergeron@nhasea.org	603 494 1149	A Lobbyist	NH Association of Spec. Education Administrators	Support	No	4/13/2021 8:14 PM
Damon, Claudia	cordsdamon@gmail.com	603.226.4561	A Member of the Public	Myself	Support	No	4/13/2021 8:36 PM
Perencevich, Ruth	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/13/2021 8:40 PM
Weber, Lucy	lwmcv@comcast.net	603 499 0282	An Elected Official	Cheshire 01	Support	No	4/13/2021 8:52 PM
Richman, Susan	susan7richman@gmail.com	603.868.2758	A Member of the Public	Myself	Support	No	4/13/2021 8:53 PM
Tanguay, Kristal	kristalf82@yahoo.com	603.490.3973	A Member of the Public	Myself	Support	No	4/14/2021 12:51 PM
Norton, Kenneth	knorton@naminh.org	603.496.5748	A Lobbyist	NAMI NH The National Alliance On Mental Illness	Support	No	4/14/2021 12:54 PM
Oakes, Danielle	danielleoakes1121@gmail.com	603.631.6950	A Member of the Public	Myself	Support	No	4/14/2021 1:16 PM
rettew, ann	abrettew@gmail.com	Not Given	A Member of the Public	Myself	Support	No	4/14/2021 4:17 PM
Covert, Susan	scovert@comcast.net	603.746.4486	A Member of the Public	Myself	Support	No	4/14/2021 9:08 AM
Goff, Jessica	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/14/2021 9:13 AM
Hayes, Randy	rcompostr@gmail.com	Not Given	A Member of the Public	Myself	Support	No	4/14/2021 9:15 AM
Edgerly, Ellen	Ellenedge@comcast.net	603.332.9891	A Member of the Public	Myself	Support	No	4/14/2021 1:58 PM
Horrigan, State Rep. Timothy	timothy.horrigan@leg.state.nh.us	603.969.3823	An Elected Official	Strafford 6	Support	No	4/14/2021 2:51 PM

Rakoski, Ronnieann	Ronnieann.l.Rakoski@ddc.nh.gov	603-271-3236	State Agency Staff	Council members	Support	No	4/14/2021 2:56 PM
DAllesandro, Christina	cdallesandro@gmail.com	603.203.6001	A Member of the Public	Myself	Support	No	4/14/2021 10:55 AM
LaCasse, Chloe	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/14/2021 1:41 PM
Lamphier, Regan	reganburkelamphier@gmail.com	603 264-9391	A Member of the Public	Myself	Support	No	4/14/2021 2:27 PM
Platt, Elizabeth-Anne	lizanneplatt09@gmail.com	Not Given	A Member of the Public	Myself	Support	No	4/14/2021 6:59 AM
Ellermann, Maureen	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/14/2021 7:32 AM
Larson, Ruth	ruthlarson@msn.com	Not Given	A Member of the Public	Myself	Support	No	4/14/2021 7:34 AM
Gordon, Ned	44towne@gmail.com	603.393.8760	An Elected Official	Myself	Support	No	4/13/2021 3:18 PM
Walbridge, Tracy	tracywalbridge@gmail.com	603.312.1283	A Member of the Public	Myself	Support	No	4/13/2021 3:27 PM
Termini, Marcella	marcellatermini@gmail.com	603.767.0115	A Member of the Public	Myself	Support	No	4/13/2021 3:59 PM
Irwin, Virginia	biddy.irwin@gmail.com	603.863.3582	A Member of the Public	Myself	Support	No	4/13/2021 4:03 PM
Levesque, Jadine	chongjl@comcast.net	603.566.8382	A Member of the Public	Myself	Support	No	4/13/2021 4:16 PM
Prakop, Jill	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/13/2021 4:32 PM
Cranage, Amy	cranhan@comcast.net	603.252.8531	A Member of the Public	Myself	Support	No	4/13/2021 4:51 PM
Curnow, Wendy	Wendy.curnow@gmail.com	Not Given	A Member of the Public	Myself	Support	No	4/13/2021 5:32 PM
Kroll, Heidi	kroll@gcglaw.com	603-496-2345	A Lobbyist	National Academy of Elder Law Attorneys (NAELA)	Support	No	4/13/2021 11:49 PM
Hinebauch, Mel	Not Given	603.224.4866	A Member of the Public	Myself	Support	No	4/13/2021 11:52 PM
Brunelle, Leigh	lbrunelle@me.com	603.674.9263	A Member of the Public	Myself	Support	No	4/14/2021 7:55 AM
Roy, Leo B	Not Given	603.486.5060	A Member of the Public	Myself	Support	No	4/14/2021 7:55 AM
Osborne, Mary	mjolenc574@gmail.com	603.767.5771	A Member of the Public	Myself	Support	No	4/14/2021 8:33 AM
Laker-Phelps, Gail	lpsart@tds.net	603.798.5394	A Member of the Public	Myself	Support	No	4/13/2021 10:26 AM
Paige, Mark	Not Given	Not Given	An Elected Official	Myself	Support	No	4/13/2021 3:13 PM
Spielman, Kathy	jspielman@comcast.net	603.397.7879	A Member of the Public	Myself	Support	No	4/13/2021 8:25 AM
Bessey, Diane	dbessey@monarchschoolne.org	603-332-2848	A Member of the Public	Myself	Support	No	4/13/2021 9:41 AM
Brookmeyer, Janet	brookmeyermusic@gmail.com	603.667.1356	A Member of the Public	Myself	Support	No	4/13/2021 7:10 AM
Dolkart, Vivian	viviandolkart@comcast.net	603.865.5117	A Member of the Public	Myself	Support	No	4/13/2021 7:33 AM
DeMark, Richard	demarknh114@gmail.com	603.520.5582	A Member of the Public	Myself	Support	No	4/13/2021 7:54 AM
Simpson, Alexis	Alexis.simpson@leg.state.nh.us	603-303-4722	An Elected Official	Myself	Support	No	4/13/2021 7:58 AM
Clark, Denise	denise.m.clark03055@gmail.com	603.213.1692	A Member of the Public	Myself	Support	No	4/13/2021 8:00 AM
Douville, Linda	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/13/2021 8:07 AM
Berch, Paul	pberch@myfairpoint.net	603.399.4960	An Elected Official	Myself	Support	No	4/10/2021 9:59 AM
Rosenwald, Cindy	cindy.rosenwald@leg.state.nh.us	603.566.0586	An Elected Official	SD 13	Support	No	4/11/2021 5:00 PM
Lucas, Janet	janluca1953@gmail.com	16037267614	A Member of the Public	Myself	Support	No	4/12/2021 7:56 AM
Pearson, Mark	canonpearson@yahoo.com	603.571.0205	An Elected Official	Myself	Support	No	4/12/2021 4:49 PM
Reed, Barbara D.	BDRreed74@gmail.com.com	Not Given	A Member of the Public	Myself	Support	No	4/12/2021 9:12 PM
Dewey, Karen	pkdewey@comcast.net	603.504.2813	A Member of the Public	Myself	Support	No	4/12/2021 8:18 PM

Torpey, Jeanne	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/12/2021 8:27 PM
Garland, Ann	annhgarland@gmail.com	603.678.8143	A Member of the Public	Myself	Support	No	4/12/2021 9:42 PM
Istel, Claudia	claudia@sover.net	Not Given	A Member of the Public	Myself	Support	No	4/12/2021 11:42 PM
Goldwater, Catherine	cathy.goldwater@gmail.com	603.860.3756	A Member of the Public	Myself	Support	No	4/13/2021 6:33 AM
Cannon, Gerri	gerri.cannon@gmail.com	603.841.5410	An Elected Official	Myself	Support	No	4/13/2021 6:59 AM

# Testimony

## Jennifer Horgan

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**From:** Christine Parshall <christineparshall@gmail.com>  
**Sent:** Monday, April 12, 2021 11:08 PM  
**To:** Jennifer Horgan  
**Subject:** HB 540 Testimony  
**Attachments:** HB 540 Testimony.docx

Dear Ms. Horgan,

Please see the attached testimony in support of HB 540, which will be reviewed by the Senate Judiciary Committee on Wednesday, April 14<sup>th</sup> at 2:00pm

Thank you,

Christine Parshall

March 13, 2021.

Sent via email  
New Hampshire Senate Judiciary Committee  
Sharon M. Carson, Chairperson

RE: HB 540 (Establishing Supported Decision Making as an Alternative to Guardianship)

Dear Senator Carson and Judiciary Committee Members,

As the executive director of the Monarch School of New England, an approved private special education school for students with severe disabilities located in Rochester, I am writing in support of HB 540 and the concept of Supported Decision Making as an alternative to Guardianship.

Over the past 23 years I have had the pleasure of working with many parents and students preparing for the transition to adulthood. It is a stressful and busy time for all when parents and students face the many decisions ahead. Since we work with students and their families for a number of years, we develop trusting relationships over time.

As a school, we work hard to instill independence at every level of function, teaching our students to self-advocate whenever possible. We presume competence, and concentrate on what a student CAN do, on their ABILITIES, rather than their disabilities. It is simply joyous to facilitate a student's development from complete dependence to self-confidence. People in the mainstream may be very quick to judge a person by how he presents. I offer Steven Hawkins, that brilliant scientist who clearly had significant disabilities, but went on to achieve greatness. When students learn to communicate their thoughts, feelings, and understanding, the possibilities are endless.

While guardianship is appropriate for some students, for others who are able to self-determine their path ahead with or without the guidance of a trusted individual, Supported Decision Making allows them the freedom and independence they should have in making choices in how to live their lives.

Because we want families to be fully informed as students reach the age of majority, the Monarch School of New England looks forward to sharing materials developed by the NH Department of Education that will **clearly** outline all options along the continuum (Power of Attorney, Conservatorship, Guardianship, and SDM). While it is true that IEP teams have the most contact with students with disabilities and their parents, making the IEP team appear to be the ideal entity to share these options, in our experience, parents sometimes select to work outside of the IEP team with the Area Agencies or caregivers from Community Mental Health Centers to carry out this critical step forward, due to the sensitive nature of this decision. These entities will follow the student beyond age 21, while school districts will not. Would it not make sense to hold them responsible as well for presenting and discussing the options available?

I do not want to see any individual with a disability fall through the cracks, yet as a school administrator, I fear consequences should a school inadvertently fail to inform the family of choices other than guardianship because so much is going on at this juncture in a student's life.

Thank you for the opportunity to testify in support of HB540. I look forward to watching this Bill continue to develop and bring greater opportunity to young adults with disabilities.

Diane Bessey, M.Ed., PT  
Executive Director  
Monarch School of New England  
[dbessey@monarchschoolne.org](mailto:dbessey@monarchschoolne.org)  
603-332-2848



# N.H Association of Special Education Administrators

Jane Bergeron-Beaulieu, Executive Director

Denise Lavoie, Administrative Assistant

Amanda Horrocks, Clerical Assistant

April 13, 2021

Sent Via email

Sharon Carson  
Chair, New Hampshire House Judiciary Committee  
NH State House, Room 100  
107 Main Street  
Concord, NH 03301

RE: HB 540 (Establishing Supported Decision Making as an Alternative to Guardianship)

Dear Senator Carson and Committee Members,

I am writing on behalf of the NH Association of Special Education Administrators (NHASEA) in support of HB 540. NHASEA is a non-profit, non-partisan professional organization representing over 150 leaders of special education administrators employed by school districts and approved private special education schools throughout the state.

NHASEA supports HB 540 and would encourage the House Judiciary Committee to vote in favor of this bill. In many ways, supported decision making is nothing new, yet all too often a young person with a disability approaching the age of 18 feels the pressure to establish guardianship. NHASEA recognizes that there are many formal and informal ways that young adults with disabilities can get support and advice in making decisions; one of which is seeking advice from family members and trusted friends who can build a team who will support and provide guidance in making decisions. As this bill moves forward NHASEA does recommend that there be guidance developed for IEP teams to share with young adults and their families during transition planning and related discussions.



As noted, the NHASEA supports HB 540 and would encourage the House Judiciary Committee to support the bill brought forward by its sponsors. Thank you for considering this testimony; if you have questions, please do not hesitate to contact me.

Very Truly Yours,

*Jane Bergeron-Beaulieu*

Jane Bergeron-Beaulieu, Executive Director

NHASEA

[jbergeron@nhasea.org](mailto:jbergeron@nhasea.org)

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## Jennifer Horgan

---

**From:** Gerri Cannon <gerri.cannon@gmail.com>  
**Sent:** Tuesday, April 13, 2021 7:05 AM  
**To:** Jennifer Horgan  
**Subject:** HB 540 Testimony

Mr Chair and Committee members,

Here is my written testimony for HB 540

As we get older we watch the health of our family members and even ourselves change over time. Each of them (and us) will have different medical conditions that require the assistance of others to help them live with dignity. And it's not just medical needs. They could need help with paying the bills, keeping track of meetings, scheduled appointments and transportation needs. If someone wants to continue living in their own home or be self-sufficient in other ways they may have to decide to move out of their homes and into assisted living, or other managed living facilities where their lives are being managed by others. Or they may even end up with a guardian who takes entire control of their lives and affairs.

For many people this transition is devastating. The life they knew and their autonomy has been taken away, along with their self esteem. What they really need is someone to support and help them do the things they still want to do.

Supported Decision Making as defined in HB 540 is an alternative to the traditional assisted care options. The person in need of help can specify the level of help they need and establish a contract with a supporter. They can decide where they want to live. They can make decisions about what they want to do. As their needs change, so can the contract. The beauty of this option is that the person remains in control of their life, while getting the help they need.

HB540 standardizes a contractual form that can be used by family members, independent supporters and even support service offerings. This makes it clear what the person needs and who will be providing those needs.

I urge you to support HB540 and give NH's adults another option to help them Live Free. Who knows, maybe we'll need help to make those decisions in the future.

Please vote HB540 Ought To Pass

Thank you,

Representative Gerri Cannon

Strafford County District 18  
*Somersworth, NH - - Proud Past, Bright Future*  
(603) 841-5410

Richard T. Mulryan  
33 Watson Hill Road  
Raymond, NH 03077

May 10, 2021

Attn: NH Judiciary Committee

RE: Public Testimony in Support of House Bill 540

Dear Chair Sharon Carson, Vice Chair Bill Gannon, Harold French, Rebecca Whitley, Jay Kahn, and Jennifer Horgan thank you for allowing me an opportunity to provide written testimony in support of House Bill 540 – Relative to supported decision-making as an alternative to guardianship. The fact that this bill has both Democrat and Republican sponsors signifies an acknowledgment that this issue is not a political party issue but an issue that impacts the rights of our community members, their quality of life, dignity, and most of all their safety. There are several lenses that I used to research this legislative proposal and am very encouraged to see that you are giving this very important issue its due diligence and I hope that this will be approved in the near future.

As you balance the safety of the person needing assistance versus their capacity to care for self, please see that our current one size fits all system of guardianship or nothing is insufficient. From a pragmatic perspective, adding the legal opportunity for supported decision-making agreements increases the effectiveness of the services this state provides and allows for a tailored approach to support, much like what is already strived for through the Assertive Community Treatment Teams in our Community Mental Health Centers. Although New Hampshire offers two types of guardianship appointments, there are many situations where support to make decisions in particular category(ies) is more beneficial to the person's quality of life and empowers them to be engaged with their support or care.

There are some cost benefit analyses, but supported decision making agreement legislation is not researched enough to deliver accurate qualitative or quantitative measurements. At the same time there is research that does show supported decision-making does improve social inclusion versus social disturbance and independent living versus state aid dependent. Both are non-monetary benefits to the member but financially beneficial to our communities.

From a distributive justice perspective, we owe those who are disadvantaged the resources necessary to achieve their full potential, whatever they determine that to be. The American Bar Association has been supporting this initiative since 2013, and the New Hampshire Guardianship Association writes in their position statement on the matter:

The National Resource Center for Supported Decision Making describes supported decision making as: ...where people use trusted friends, family members, and professionals to help them understand the situations and choices they face, so they may

make their own decisions - is a means for increasing self-determination by encouraging and empowering people to make their own decisions about their lives to the maximum extent possible.

I believe the encouragement and empowerment mentioned are exactly what HB 540 is trying to achieve.

I fully acknowledge that there is literature that suggests eliminating all forms of guardianship (aka substitute decision maker). I do not support this perspective as there are difficult situations where guardianship is appropriate because all lesser forms of assistance are insufficient. Supported decision-making is a supplement, a lesser oppressive means to help our community members with specific support needed.

My only recommended change to this legislation is in section 464-D:6(I) where it states, "An agreement under this chapter may coexist with, but not conflict with, a guardianship or other court order". I believe this should read "...may not coexist with a guardianship or other court order". Supported decision-making is a private arrangement made outside of the courtroom. It is a form of lesser restriction, oppression, or control that government should resist using unless it is proven absolutely necessary. Guardianship appointment is a court ordered appointment that would supersede the supported decision-making agreement should it fail. This is the benefit of having this lesser form in place. The coexistence of two decision makers creates the scenario for providers to receive conflicting demands for service or levels of service. This in turn could lead to a refusal of a needed service.

When considering the worth and dignity of the person, what more undignified feeling can a person have when they have no control over the decisions of their life. The application of guardianship appointment is overkill when the person only needs support with housing, employment, medication or any of the other submitted topics in section D5 of the bill. Allowing an opportunity to assist rather than control is essential in the person achieving a quality of life they will be motivated to maintain. What motivation is there to live as a ward of someone who does not know you? None to very little at best, adversarial at worst.

Thank you for your service to our communities and allowing me the opportunity to share these comments.

Respectfully,

*Richard T Mulryan*

Richard T Mulryan

## Jennifer Horgan

---

**From:** jbergeron@nhasea.org  
**Sent:** Tuesday, April 13, 2021 8:11 PM  
**To:** Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan  
**Cc:** Wendy Chase  
**Subject:** Testimony HB 540 April 13  
**Attachments:** Testimony HB 540 April 13.docx

Good Evening Members of the House Judiciary Committee,

Attached please find written testimony relative to HB 540 for your consideration. Please know that the NH Association of Special Education Administrators fully supports this bill and would welcome any questions that you might want to send our way. If you need further clarification, please do not hesitate to reach out to me; I would welcome the opportunity to talk further. Unfortunately I am not able to attend the public hearing scheduled for Wednesday. Thanks in advance for your consideration.

My Best,  
Jane

Jane Bergeron-Beaulieu  
Executive Director  
NHASEA  
[jbergeron@nhasea.org](mailto:jbergeron@nhasea.org)  
cell: 603 494-1149

**Thank you, Senator Carson and members of the Judicial Committee,**

**My name is Wendy Chase, I am a NH state representative for Strafford county D-18.**

**I am also a member of the House Judiciary Committee.**

- HB 540 would create an alternative to guardianship for adults with disabilities and their families who wish to establish a way of providing support without taking away self-determination.**
- Under current law, there are few options when a family is looking for ways to provide support to their loved one with a disability. This issue often comes up when a young person is about to turn 18, and a family wants to continue a supportive role in areas like education, health care, and publicly funded services. Right now, there are no recognized meaningful alternatives to guardianship, which involves the removal of decision-making power from a person and gives it to a guardian appointed by the court.**
- Powers of attorney can be used for financial or health care decisions, but these alternatives typically involve the full takeover of decisions for someone and are often only available when someone becomes completely unable to make decisions for themselves.**
- HB 540 would create a legally recognized alternative so that people in a range of circumstances can be provided the support they need without the court removing their freedom of choice when that is unnecessary to meet their needs.**
- People with disabilities often simply need what we all utilize from time to time. We all need support at various stages of life and in various subject areas. Many of you on this committee may look for help understanding important and complex information when**

making important financial decisions, for example. You may also seek advice from trusted friends and relatives when facing challenging or momentous decisions involving your health. This bill recognizes this reality and makes that kind of support formally available to adults with disabilities.

- This bill will not disturb the availability of guardianship for people with the need for someone to make their decisions for them. If the bill becomes law, the standard for creating a guardianship will remain the same as it is today. The bill merely creates an alternative for those common circumstances where support is needed, but not the removal of self-determination.

\* I became the legal guardian for my beloved daughter, Erin, at the age of 27, until her passing at the age of 34 in 2018.

Erin became physically disabled at three when she was diagnosed with rare and aggressive childhood cancer leaving her with many known and unknown medical issues. The side effects from treatments also left her reasoning and emotional levels a bit immature in certain situations, causing her to think with her *BIG* heart and not always with her head! I sought guardianship due to her many trips to the emergency room, where I was no longer able to be a voice, help make decisions with her care, and sometimes not even able to stay in the room during her consult. Usually, I was met with the same social worker who told me that I needed full guardianship of Erin to legally continue being part of her care. So, I did. It was not at all what either of us expected and tended to drive stakes in our loving relationship. She felt she lost so much of her independence and self-worth, and I just wanted to be her MOM. If Supported Decision Making had been an option as an alternative to guardianship, I can't begin to tell you what a difference that would have made in my daughters' life, my life, and most of all, our relationship.



**Thank you again for this opportunity to bring HB 540 before all of you today. I hope you listen well, and read the testimonies from NH residence where this legislation could make a positive impact on their lives or the life of a dearly loved one.**

- **Mike Skibbie of the DRC will be testifying after me and can respond to your questions about technical aspects of the bill and the current law.**



***Wings and Wheels***

CONSULTING SERVICES

To: Senator Carson and members of the Judiciary Committee

From: Kathy Bates, Owner of Wings and Wheels consulting services

Re: **HB 540, An act relative to supported decision-making as an alternative to guardianship.**

April 13, 2021

Hello, my name is Kathy Bates. I would like to extend my gratitude to the members of the Judicial Committee for the ability to testify in favor of HB 540.

Despite my disabilities and the fact that I need assistance with things like personal care I have always cherished my independent spirit, and I can thank my parents for that. Supported decision making is a necessary alternative to guardianship, although guardianship might be necessary for some people, and HB 540 does not interfere with any part of guardianship laws. I don't know anyone personally who has a disability who would not be able to make decisions regarding their own lives if they had the necessary supports in place. I think in most cases guardianship is too restrictive and the responsibility of the need for guardianship is placed on a judge who may or may not know anything about a specific disability and often doesn't have the ability to get to know the individual.

Most people take for granted being their own guardian and making their own life decisions, but for a person with an intellectual disability it's a matter of pride and confidence. I have worked with several adults who have an intellectual disability as the facilitator/member of SALT (Self Advocacy Leadership Team) and we have regular conversations about goals and dreams, and someone always proudly declares "I am my own guardian".

Supported decision making happens quite naturally for most of us anytime we make a big life decision, ex. Buying a house, a car, having a child, moving etc. We consult with our friends and family to help us decide without the fancy title, but for people with disabilities sometimes competence is not always presumed. Presuming competence is a key component of supported decision making. To be honest this is my favorite part of supported decision making, as someone with Cerebral Palsy who can be somewhat difficult to understand at times, it really

bothers me when people don't assume that I am competent, but I enjoy it when I prove them wrong.

I urge you to vote in favor of HB 540 because supported decision making is much more than a concept or an idea, I see it as a right for everyone, especially people with disabilities.

Thank you for your time and consideration,

Sincerely,

Kathy Bates

Wings and Wheels Consulting Services

42 Cornfield Drive

Somersworth, NH 03878

603-841-5700

[wngsandwheels@comcast.net](mailto:wngsandwheels@comcast.net)

April 14, 2021

Written Testimony in support of HB 540:

Relative to supported decision- making as an alternative to guardianship

Honorable Members of the Senate Judiciary Committee,

Thank you for taking the time to read my testimony. My name is Jessica Goff and I am a resident of Concord, NH. I'm currently a Master of Social Work Student at UNH and a policy intern at the New Hampshire Council on Developmental Disabilities. The purpose of my letter is to voice my strong support for HB 540; members of the disability community and their families who live in our great state deserve a less restrictive alternative to Guardianship.

The practice of Guardianship inherently removes the given rights of adults with disabilities to make decisions and engage equally in the world around us. Often, this legal transfer of choice-making power from the "ward" to the guardian is done in totality and encompasses everything from control of money to making decisions around healthcare, education, employment, housing, and marriage. For some, this even means removing the right to vote and to testify in court. Given these severe limitations to an individual's autonomy, guardianship must be viewed as the last resort.

In order to reduce the rates of guardianship and allow for adults with disabilities to take a leading role in their lives, less restrictive legal options must be available that assist individuals to make informed choices with the support of those who they trust. Supported Decision Making has been hailed as a balanced alternative, as seen in the momentum that it has gained in advocacy and legislation across the country. A number of well-respected organizations have come out in support of this practice, including the American Association on Intellectual and Developmental Disabilities, the American Bar Association, and the National Guardianship Association. The message is clear: Supported Decision Making is a viable and less restrictive alternative to the substituted decision- making that describes guardianship and the limited application of Powers of Attorney.

The stated purpose of appointing a guardian under current NH law is to "protect the wellbeing of 'incapacitated persons' who are unable to provide for their own personal needs due to functional limitations." We must recognize that wellbeing is a concept that should encompass not only safety, but quality of life and access to the full rights to citizenship. In both the course of my graduate education and my previous work at a direct support professional with adults with ID/DD, I have seen both the detrimental effects of forced control and the amazing benefits in the capabilities of individuals who are given the opportunity to sit at the head of the table in making the decisions that affect their life.

Right now, parents of youth who are transitioning into adulthood are given a seemingly impossible choice: to take their child's right to choose away (guardianship) or allow the young adult to preserve their legal rights but eliminate their ability as parents to support their child in what they need to be successful. This bill would allow a comprehensive third option to be put on the table, which would enable adults with disabilities to keep their right to make their own choices but ensure that they have access to needed supports via the guidance and assistance of their supporters. I urge you to vote Ought to Pass on HB 540.

Please reach out with any questions; I have attached relevant literature that may be of use in this important decision.

Thank you,  
Jessica Goff  
Jessica.goff14@gmail.com

Resources:

ACLU. (2020). *Supported decision-making: Frequently asked questions.*

[https://www.aclu.org/sites/default/files/field\\_document/faq\\_about\\_supported\\_decision\\_making.pdf](https://www.aclu.org/sites/default/files/field_document/faq_about_supported_decision_making.pdf)

American Association of Intellectual and Developmental Disabilities & The ARC. (2016).

*Autonomy, decision making, and guardianship.* <https://www.aaid.org/news-policy/policy/position-statements/autonomy-decision-making-supports-and-guardianship>

American Bar Association. (2017). *Resolution 113.*

[https://www.americanbar.org/groups/law\\_aging/publications/bifocal/vol\\_38/issue-6--august-2017-/aba-urges-supported-decision-making-as-less-restrictive-alternat/](https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_38/issue-6--august-2017-/aba-urges-supported-decision-making-as-less-restrictive-alternat/)

Disability Rights Center- NH. (2021, February 22). *Guardianship and substituted decision-making.* <https://drcnh.org/issue-areas/guardianship/>

National Guardianship Association. (2017). *Position statement on guardianship, surrogate*

*decision making, and supported decision making.* [https://www.guardianship.org/wp-content/uploads/2017/07/SDM-Position-Statement-9-20-](https://www.guardianship.org/wp-content/uploads/2017/07/SDM-Position-Statement-9-20-17.pdf#:~:text=The%20National%20Guardianship%20Association%20supports%20ongoing%20research%20to,only%20when%20lesser%20restrictive%20supports%20are%20not%20available)

[17.pdf#:~:text=The%20National%20Guardianship%20Association%20supports%20ongoing%20research%20to,only%20when%20lesser%20restrictive%20supports%20are%20not%20available](https://www.guardianship.org/wp-content/uploads/2017/07/SDM-Position-Statement-9-20-17.pdf#:~:text=The%20National%20Guardianship%20Association%20supports%20ongoing%20research%20to,only%20when%20lesser%20restrictive%20supports%20are%20not%20available)

New Hampshire Judicial Branch. (2021, February 8). *Questions and answers about New*

*Hampshire guardianship.* <https://www.courts.state.nh.us/probate/guardianshipfaq.pdf>

J E N N I F E R J B E R T R A N D

**RE: Support HB 540 – Allow Supported Decision-Making as an Alternative to Guardianship**

April 14, 2021

Dear Chairwoman Carson and Members of the Senate Judiciary Committee,

As a parent of an adult daughter who experiences an intellectual and developmental disability (I/DD), longtime professional working within our developmental service system in New Hampshire, and as a dedicated disability advocate, I know there are individuals who would benefit from a supported-decision making option. For individuals that do not require guardianship, it is vital that New Hampshire provides an alternative for adults who experience intellectual and developmental disabilities (I/DD) and other disabilities to exercise self-determination and foster independence. Supported decision making is a tool that allows people with disabilities to retain their decision-making capacity by choosing supports to help them make choices. **House Bill 540 will help ensure the personal autonomy, liberty, freedom, and dignity for people with intellectual and developmental and other disabilities. Please support HB 540.**

The appointment of a guardian is a serious matter and must be reserved only for situations where it is absolutely necessary and appropriate. First, guardianship can limit an individual's autonomy, that is, the individual's agency over how to live and from whom to receive supports to carry out that choice. Second, it also transfers the individual's rights of autonomy to another individual or entity, a guardian. Many individuals with I/DD experience guardianship as stigmatizing and inconsistent with their exercise of adult roles and responsibilities. Our state needs to provide a less restrictive alternative to guardianship. You can feel good about supporting HB 540 because individuals with I/DD and other cognitive disabilities should be afforded opportunities to participate to the maximum extent possible in making and executing decisions about themselves. **Please vote yes to HB 540.**

Sincerely,



Jennifer Bertrand  
[jennifer.j.bertrand@gmail.com](mailto:jennifer.j.bertrand@gmail.com)  
(603)673-4215

5 0 S O U T H M A I N S T R E E T  
M O N T V E R N O N , N H 0 3 0 5 7



National Alliance on Mental Illness

# NAMI New Hampshire

April 14, 2021

Honorable Senator Sharon Carson Chair  
Senate Judiciary Committee  
North Main Street  
Concord, New Hampshire 03301

Dear Madam Chair and Committee members,

My name is Kenneth Norton and I am the Executive Director of NAMI NH, the National Alliance on Mental Illness. I am a licensed Independent Clinical Social Worker in the State of New Hampshire with extensive experience in working in community mental health. During the 17 years I worked in Community Mental Health, many of the clients on my caseloads had guardians who I frequently interfaced with and I also participated in numerous guardianship hearings. On behalf of NAMI NH, I am here to testify in support of HB 540. My testimony is specifically related to individuals with severe mental illness.

For some individuals with severe mental illness who also experience significant functional impairment, guardianship is an important safeguard, albeit one which necessarily restricts their civil liberties. The legal standards and court process for guardianship includes protections and legal representation for the individual for whom guardianship is proposed. Despite these protections and the confidential proceedings of probate court guardianship hearings, the process of having a guardian appointed can be incredibly demoralizing and even traumatizing to the individual involved and their self esteem/perception of themselves and their own sense of agency and may inadvertently decrease rather than increase their independence.

In the event guardianship petitions fail to be granted, it can result in individuals whose acute symptoms may impair their judgement and decision-making capacity being very vulnerable. It can also leave family and loved ones of the individual feeling hopeless and helpless.

HB 540 provides for supported decision making as an alternative to guardianship for some individuals. Supported decision making is a strength based model which promotes thoughtful and informed decisions. It encourages the engagement of family, friends and natural support systems which can sometimes become distanced or even estranged as a result of mental illness. Supported decision making will offer an important option that has the potential to increase the capacity of an individual for to manage their own affairs and is much more consistent with a model of promoting individual responsibility, recovery and independence than a traditional guardianship model. While traditional guardianship will continue to be a necessary consideration in some circumstances, NAMI NH encourages you to vote HB 540 as ought to pass. Thank you for your consideration.

Respectfully,

Kenneth Norton, LICSW  
Executive Director

*Find Help, Find Hope.*

NAMI New Hampshire • 85 North State Street • Concord, NH 03301  
InfoLine: 800-242-6264 • Tel. 603-225-5359 • Fax 603-228-8848 • [info@naminh.org](mailto:info@naminh.org) / [www.NAMINH.org](http://www.NAMINH.org)

## Jennifer Horgan

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**From:** Leigh Brunelle <lbrunelle@me.com>  
**Sent:** Wednesday, April 14, 2021 8:09 AM  
**To:** Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan  
**Cc:** Kevin Cavanaugh  
**Subject:** Message from NH Constituent - Support HB 540

To Members of the Committee,

As a registered voter in Manchester, NH, I urge you to support HB 540 as Ought To Pass.

Passing Supported Decision-Making would greatly improve my family's quality of life. My younger brother, a 28-year-old with a qualified disability who is currently under state guardianship, would benefit incredibly from this new model of support system.

Please support HB 540.

If you have any further questions please don't hesitate to reach out to me via email or mobile phone.

Thank you,  
Leigh Brunelle

Registered Voter  
[lbrunelle@me.com](mailto:lbrunelle@me.com)  
603-674-9263  
Manchester, NH

Leigh Brunelle





March 14, 2021

NH Senate Judiciary Committee  
Honorable Senator Sharon Carson, Chair and Committee members

Re: Support HB 540, Supported Decision-Making

Dear Chairperson Carson and members of the Judiciary Committee,

My name is Lisa Beaudoin. I appreciate your time this morning and attention on HB 540, a bill to create and establish the supported decision-making model here in NH as an alternative to guardianship. On behalf of ABLE NH, its Board and members across our beautiful Granite State, I'm asking you to support HB 540.

As you know, RSA 171A established NH's community-based system of supports and services for people with developmental disabilities. A key element of having a community-based life is the ability to be self-determining. Supported decision-making is an important, viable alternative to guardianship which advances the development of skills for self-determination. NH closed its state institution 30 years ago in the effort to advance civil and human rights for people with disabilities--to make real the opportunity for these citizens to access the American dream, too. Supported decision-making is yet another tool in the quest to fully include these Americans in the dream.

Supportive decision making is a process that facilitates people to become and remain more integrated in the community. More importantly, research shows that this model increases protection against abuse and exploitation.

Why is Supported Decision-Making important?

- Supported Decision-Making is a means to empower people with disabilities, and the aging, to remain at the center of decision-making processes in their lives.
- Research shows that maximizing choice and control (self-determination) in a person's life increases positive health outcomes, happiness, and safety through stronger relationships and better ability to recognize and resist abuse.
- Supported Decision-Making is normal. Most people use informal supports in making personal decisions. Just like you and I, we seek the advice of trusted friends and/or family on medical, financial, personal, professional and other issues, let's create a structure for people with disabilities to have what's typical.

Please support HB 540, supported decision-making will enhance dignity for people with disabilities.

Thank you,

**Lisa D. Beaudoin**

Lisa D. Beaudoin, Executive Director

# DISABILITY RIGHTS CENTER - NH

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64 North Main Street, Suite 2, Concord, NH 03301-4913 • mail@drcnh.org • drcnh.org

(603) 228-0432 • (800) 834-1721 voice or TTY • FAX: (603) 225-2077

April 13, 2021

New Hampshire Senate  
Judiciary Committee  
State House, Room 100  
107 North Main Street  
Concord, NH 03301

RE: House Bill 540, relative to supported decision-making as an alternative to guardianship

Dear Chairman Carson and Members of the Committee:

On behalf of Disability Rights Center -- NH, I am writing in support of House Bill 540, a bill that would formally recognize supported decision-making as an alternative to guardianship for adults with disabilities. Passage of this bill would further the recognition of the capacity of people with disabilities to exercise self-determination. This will in turn help many people to become more independent, more integrated in the community, and better able to resist abuse and exploitation. The bill would also provide an alternative for families who wish to remain involved in the lives of loved ones with disabilities without diminishing their freedom to make choices about their own lives.

Although guardianship is an essential alternative for providing support to some people with significant disabilities, and will remain so after HB 540 becomes law, it is important to recognize that it is a way to provide *substituted* decision making. By its nature, guardianship involves decisions being made by someone other than the person who will be affected by them. It is essentially the process of having a court-appointed individual have care and custody over a person who has been determined by the court to have an inability to provide for his or her own personal needs or an inability to manage his or her property or financial affairs. The decisions made by a guardian are not required to reflect the wishes of the affected person, and they often do not.

Supported decision making, on the other hand, involves no removal of the freedom to make choices or transfer of decision-making authority by a court or anyone else. The person retains their freedom to choose and has an established relationship with one or more trusted supporters to help them exercise that freedom with supports in areas like gathering and understanding information and making and communicating decisions.

The range of supported decision-making methods is as wide as the range of people with disabilities and their networks of trusted family, friends, and service providers. The methods used in a supported decision-making relationship might include the use of plain-language materials, the presence of a supporter in important appointments with service providers to take notes and help the person remember and understand their options, and the discussion of options and creation of lists of pros and cons to help the person choose from among a range of alternatives.

For many people, supported decision-making will have advantages over guardianship. Guardianship is a structure that is imposed by a court and is complete in its removal of decision making from the ward for as long as the order remains in effect. Supported decision-making, however, can be flexible in how it is applied from one person to the next, and in how it is applied to the same person over time, both in terms of how intensive the supports are applied and who provides them. Further, a supported decision-making agreement will only exist if the person with the disability chooses to enter into it and is comfortable with the persons who will be their designated supporters.

The benefit of retaining the freedom to make one’s own decisions is obvious to most of us and a sufficient reason to utilize supported decision-making whenever it is a safe alternative to guardianship. What is less obvious is the benefit to the well-being of people with disabilities when they continue to exercise self-determination without the constraints of a guardianship. People with greater self-determination are more independent, healthier, and better able to recognize and resist abuse. They also tend to be more integrated in their communities; that is, they are more likely to live and work with others who are not also people with disabilities.

In contrast, when people cannot exercise self-determination, they are more likely to feel helpless, hopeless, and passive. They are also more likely to experience decreased life outcomes, meaning that they are more likely to be physically and mentally unhealthy, reducing their longevity and ability to function.

The principal substantive provisions of HB 540 are summarized in the following table:

<b>Sec.</b>	<b>Page/ Line</b>	<b>Provision</b>	<b>Comment</b>
2	1/20	Addition of supported decision making agreements to the definition of “available alternative resource.”	The guardianship statute requires the court to consider “available alternative resources” before ordering a guardianship.

Sec.	Page/ Line	Provision	Comment
3	1/27	Addition of "available alternative resource" as a basis for terminating a guardianship.	Current law only allows for terminating a guardianship "upon order of the court, the death of the ward, or upon a finding . . . that the ward is no longer incapacitated."
4	2/1	When a special education IEP team is discussing adult guardianship as an option with the family of a student with a disability, the IEP team must advise the family of the supported decision making alternative and make resources available to the family.	IEP teams are required to engage in transition planning for children with disabilities, a process of planning for life after the completion of school, and includes such things as vocational planning and training, the need for assistive technology, and assistance with decision-making.
	2/10	The NH Department of Education will be required to prepare materials regarding alternatives to guardianship and make them available to local IEP teams so that they can provide them to families during the transition process.	Centralized development of resource materials for the use of local school districts will facilitate the process of making information about alternatives to guardianship available to families.
5	4/2	Any type of decision may be the subject of a supported decision-making agreement.	
	4/11	A supported decision-making agreement may co-exist with but not conflict with a guardianship.  An agreement may be for a definite term or may last for until the agreement is terminated by the principal or by operation of law.	
	4/17	The necessary components of an agreement are:  -at least one supporter.	

Sec.	Page/ Line	Provision	Comment
		<p>-a description of the subject matter.</p> <p>-a description of any subject matter which may not be the subject of a supporter's assistance.</p> <p>In addition, the agreement must be in writing, dated, and witnessed.</p> <p>Supporters signing an agreement must declare their relationship to the principal and acknowledge their willingness to act and responsibilities as a supporter.</p>	
	5/13	<p>The principal may terminate the agreement at any time by following certain procedures.</p> <p>A supporter may withdraw from an agreement at any time with proper notice to the principal, and such withdrawal may result in termination of the agreement.</p> <p>An agreement will automatically terminate upon the death of the principal or upon findings of abuse or neglect by a supporter or certain criminal convictions of a supporter.</p>	
	6/10	<p>Supporters have certain fiduciary duties to the principal and may only exercise the authority granted to them by the agreement.</p>	
	6/35	<p>Third parties are required to recognize the decisions of a principal which are made or communicated with the participation of a supporter in conformity with the statute.</p>	

Sec.	Page/ Line	Provision	Comment
	7/3	Certain persons may not be supporters, including: -employers or employees of the principal. -paid service providers. -persons who have been convicted of certain offenses or against whom orders of protection have been issued.	
	7/22	A principal may designate a monitor to ensure compliance with the law by a supporter helping with financial matters.	
	7/27	Persons who become aware of abuse or exploitation by a supporter are required to report such information in accordance with existing law regarding reports of adult abuse.	
	7/35	With properly completed releases of information, supporters may assist with the gathering of information the principal is entitled to access. Supporters are required to maintain the confidentiality of such information.	
	8/8	Written supported decision-making agreements may be in any form consistent with the form in the statute.	

Supported decision-making has been supported as an alternative to guardianship when appropriate by the American Bar Association, the National Guardianship Association, the Autistic Self-Advocacy Network, the National Disability Rights Network, and the National Council on Disability. The promotion of supported decision-making

has been supported by the U.S. Administration for Community Living, a component of the Department of Health and Human Services.

Please contact me if you have questions about House Bill 540 or supported decision-making in general. You may also find it useful to refer to the following helpful websites: <http://supporteddecisionmaking.org/> and <http://supportmydecision.org/> .

Thank you for considering the views of the Disability Rights Center.

Sincerely,

/S/

Michael Skibbie  
Policy Director  
[mikes@drcnh.org](mailto:mikes@drcnh.org)  
603.568.5093





# Voting Sheets

**Senate Judiciary Committee**  
**EXECUTIVE SESSION RECORD**  
*2021-2022 Session*

Bill # HB 540

Hearing date: \_\_\_\_\_

Executive Session date: \_\_\_\_\_

Motion of: IS Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. <del>Kahn</del> <u>Sherman</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: Consent Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. <del>Kahn</del> <u>Sherman</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: \_\_\_\_\_ Vote: \_\_\_\_\_

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Sherman

Notes: held wanted time → omnibus bill passed  
current law

**Senate Judiciary Committee**  
**EXECUTIVE SESSION RECORD**  
*2021-2022 Session*

Bill # HB540

Hearing date: \_\_\_\_\_

Executive Session date: \_\_\_\_\_

Motion of: OTP Vote: 2-3

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: ReRefer Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: Consent Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reported out by: Carson

Notes: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

# Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE  
FOR THE CONSENT CALENDAR

Wednesday, April 21, 2021

THE COMMITTEE ON Judiciary

to which was referred **HB 540**

AN ACT

relative to supported decision-making as an  
alternative to guardianship.

Having considered the same, the committee recommends that the Bill

**BE RE-REFERRED TO COMMITTEE**

BY A VOTE OF: 5-0

Senator Sharon Carson  
For the Committee

This bill establishes supported decision making as an alternative to guardianship. The language is the result of a collaborative effort to create a legally recognized alternative for people that only need support and advice when making important decisions and not the full removal of their decision-making as is done under guardianship. The Committee needs more time to review this language before moving forward and therefore, asks for support on the Re-Refer motion.

Jennifer Horgan 271-7875

FOR THE CONSENT CALENDAR

**JUDICIARY**

**HB 540**, relative to supported decision-making as an alternative to guardianship.

Re-refer to Committee, Vote 5-0.

Senator Sharon Carson for the committee.

This bill establishes supported decision making as an alternative to guardianship. The language is the result of a collaborative effort to create a legally recognized alternative for people that only need support and advice when making important decisions and not the full removal of their decision-making as is done under guardianship. The Committee needs more time to review this language before moving forward and therefore, asks for support on the Re-Refer motion.

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE  
FOR THE CONSENT CALENDAR

Wednesday, December 15, 2021

THE COMMITTEE ON Judiciary

to which was referred **HB 540**

AN ACT

relative to supported decision-making as an  
alternative to guardianship.

Having considered the same, the committee recommends that the Bill

BE REFERRED TO INTERIM STUDY

BY A VOTE OF: 5-0

Senator Tom Sherman  
For the Committee

This bill would establish supported decision making as an alternative to guardianship. The language of this bill was ultimately included in an omnibus bill that passed earlier this year, and therefore there is no need to move forward with the language.

Jennifer Horgan 271-7875

FOR THE CONSENT CALENDAR

**JUDICIARY**

**HB 540**, relative to supported decision-making as an alternative to guardianship.

Interim Study, Vote 5-0.

Senator Tom Sherman for the committee.

This bill would establish supported decision making as an alternative to guardianship. The language of this bill was ultimately included in an omnibus bill that passed earlier this year, and therefore there is no need to move forward with the language.



# HB540

## Bill Details

**Title:** relative to supported decision-making as an alternative to guardianship.

**Sponsors:** (Prime) Chase (D), Langley (D), Marsh (D), Weber (D), Cannon (D), Gordon (R), Mark Pearson (R), Berch (D), Whitley (D), McMahon (R), Rosenwald (D)

**LSR Number:** 21-0716

**General Status:** SENATE

**House:**

**Committee:** Judiciary

**Due Out:** 4/1/2021

**Status:** PASSED/ADOPTED WITH AMENDMENT

**Senate:**

**Committee:** Judiciary

**Floor Date:** 1/5/2022

**Status:** INTERIM STUDY

### Bill Docket

Body	Description
H	Introduced (in recess of) 01/06/2021 and referred to Judiciary <u>HJ 2</u> P. 53
H	Public Hearing: 02/26/2021 11:00 am Members of the public may attend using the following link: To join the webinar: <a href="https://www.zoom.us/j/91679735236">https://www.zoom.us/j/91679735236</a> / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
H	--CANCELLED-- Executive Session: 03/02/2021 09:00 am Members of the public may attend using the following link: To join the webinar: <a href="https://www.zoom.us/j/95501229688">https://www.zoom.us/j/95501229688</a>
H	Executive Session: 03/10/2021 09:00 am Members of the public may attend using the following link: To join the webinar: <a href="https://www.zoom.us/j/95164452682">https://www.zoom.us/j/95164452682</a>
H	Committee Report: Ought to Pass with Amendment # 2021-0565h (Vote 21-0; CC) <u>HC 18</u> P. 18
H	Amendment # 2021-0565h: AA VV 04/07/2021 <u>HJ 5</u> P. 38
H	Ought to Pass with Amendment 2021-0565h: MA VV 04/07/2021 <u>HJ 5</u> P. 38
H	Reconsider (Rep. Osborne): MF VV 04/07/2021 <u>HJ 5</u> P. 50
S	Introduced 04/01/2021 and Referred to Judiciary: <u>SJ 11</u>
S	Remote Hearing: 04/14/2021, 02:00 pm; Links to join the hearing can be found in the Senate Calendar: <u>SC 19</u>
S	Committee Report: Rereferred to Committee, 04/29/2021; Vote 5-0; CC: <u>SC 21</u>
S	Rereferred to Committee, RC 24Y-0N, MA; 04/29/2021; <u>SJ 13</u>
S	Committee Report: Referred to Interim Study, 01/05/2022; Vote 5-0; CC: <u>SC 49</u>
S	Refer to Interim Study, MA, VV; 01/05/2022; <u>SJ 1</u>

# Other Referrals

# Senate Inventory Checklist for Archives

Bill Number: HB540

Senate Committee: Jud

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

### Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

### Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

\_\_\_ - amendment # \_\_\_      \_\_\_ - amendment # \_\_\_

\_\_\_ - amendment # \_\_\_      \_\_\_ - amendment # \_\_\_

Executive Session Sheet

Committee Report

### Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

\_\_\_ - amendment # \_\_\_      \_\_\_ - amendment # \_\_\_

\_\_\_ - amendment # \_\_\_      \_\_\_ - amendment # \_\_\_

### Post Floor Action: (if applicable) {Clerk's Office}

\_\_\_ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

\_\_\_ Enrolled Bill Amendment(s)

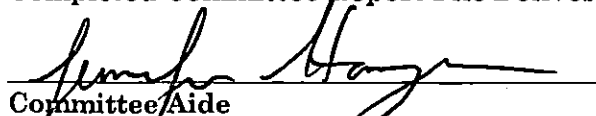
\_\_\_ Governor's Veto Message

### All available versions of the bill: {Clerk's Office}

\_\_\_ as amended by the senate      \_\_\_ as amended by the house

\_\_\_ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

  
Committee Aide

3/12/22  
Date

Senate Clerk's Office AK