

**SB 681 A STAFF MEASURE SUMMARY****Carrier:** Sen. Gelser**Senate Committee On Judiciary****Action Date:** 04/05/19**Action:** Do pass with amendments and requesting subsequent referral to Human Services be rescinded. (Printed A-Eng.)**Vote:** 4-2-1-0**Yeas:** 4 - Fagan, Gelser, Manning Jr, Prozanski**Nays:** 2 - Bentz, Linthicum**Exc:** 1 - Thatcher**Fiscal:** Fiscal impact issued**Revenue:** No revenue impact**Prepared By:** Channa Newell, Counsel**Meeting Dates:** 2/5, 4/1, 4/5**WHAT THE MEASURE DOES:**

Provides process for establishing voluntary supported decision-making agreement. Specifies that supported decision-making is a process for supporting and accommodating a person to enable a person to make life decisions without impeding the self-determination of the person. Prohibits a supporter from: acting as a surrogate decision maker for the person, signing legal documents for the person, taking possession of the person's property, exerting undue influence upon the person, or binding the person in a legal agreement. Specifies supporter is not a fiduciary. Allows supporter to assist with understanding options, consequences, and responsibilities of person's decisions, assist with accessing or collecting information, and understanding and communicating decisions. Allows oral agreements. Provides statutory form with witnessing requirements and provides liability protections for third parties who rely upon statutory form. Continues requirements for separate releases and authorizations for access to health-protected information, educational records, and financial records. Provides that use of statutory form provides liability protection to persons who rely in good faith upon authority of supporter. Allows a person who receives a copy of a supported decision-making agreement, who suspects abuse, neglect, or financial exploitation, to report such suspicions and includes warning within statutory form. Requires information on supported decision-making and alternatives to guardianship be sent by school district to parents of child with a disability at least 36 months before a child reaches the age of majority. Allows Oregon Public Guardian and Conservator to provide supported decision-making services to individuals who do not have a friend or relative willing to act as a supporter and who do not have the financial means to hire a supporter. Requires court visitors in guardianship proceedings to investigate whether a supported decision-making agreement could assist the respondent in providing for the respondent's needs.

**ISSUES DISCUSSED:**

- Purpose of supported decision-making agreement
- Efforts of work group
- Concerns with potential abuses
- Respecting autonomy of persons with disabilities
- Encouraging alternatives to guardianship

**EFFECT OF AMENDMENT:**

Prohibits supporter from exerting undue influence on supported person. Defines term. Allows oral or written agreements. Provides model form for voluntary use. Provides civil liability immunity to those who use the model form or substantially similar form. Prohibits a supporter from entering into agreement or assisting with decision-making under an agreement relating to any decisions in which the supporter may directly benefit

## **SB 681 A STAFF MEASURE SUMMARY**

financially. Requires school districts to provide information on alternatives to guardianship to child with disability at least 36 months before the child reaches age 18. Makes technical modifications.

### **BACKGROUND:**

A supported decision-making agreement is an agreement made between two or more persons in which one person agrees to help the other with tasks like gathering documents, understanding the consequences of a decision, and communicating decisions. These agreements are becoming popular as an alternative to guardianship. A work group was convened in the 2017-2018 interim to develop recommendations for a supported decision-making statute in Oregon.

Senate Bill 681 A provides statutory parameters for use of supported decision-making agreements. Under the measure, supporters may not act as a fiduciary or decision maker for the supported person, but may provide services to help explain issues to the person, or to communicate the person's decision to others. The supporter may also assist in gathering documents for a person, but must have the proper releases to gather protected information, such as health records or financial documents. The measure provides a statutory form; use of the statutory form extends liability protections to those who rely upon it in good faith, but also allows non-statutory forms or oral agreements. The statutory form also carries a warning about elder abuse. Finally, the measure ties the supported decision-making process into guardianship and asks a court visitor to determine whether a respondent's needs could be met through supported decision-making prior to guardianship.