



MEMORANDUM IN SUPPORT OF
ASSEMBLY BILL A8586A

New York Lawyers for the Public Interest (NYLPI) strongly endorses Assembly Bill A8586-A, which promotes the rights of persons with intellectual and developmental disabilities by spelling out in extensive detail the parameters for supported decision-making, and at long last codifying in New York this well-recognized practice¹.

Individuals with intellectual and developmental disabilities are among the most discriminated against in the country, due in large part to unfounded assumptions that they lack capacity to make decisions. In fact, many persons with intellectual and developmental disabilities are capable of making critical decisions in the way most others make decisions – with the support of trusted individuals. As the legislative findings for A8586A note, “[e]veryone uses supports” and people with disabilities “may just need more or different kinds of supports.”

A8586A critically sets forth that all individuals are presumed to have the capacity to enter into a supported decision-making agreement, and that persons with disabilities are entitled to choose the person(s) who will provide decision-making support, as well as the types of support they want. The bill also clearly delineates the role of the “supporters,” including ensuring that they do not make the actual decisions, but rather merely support the “decision-makers” in making *the decision-makers’* decisions. Another safeguard is the obligation of supporters to keep all information obtained confidential.

The bill also provides guidelines for designing surrogate decision-making agreements, and perhaps most importantly, mandates that third parties recognize such agreements.

Giving additional ballast to the supported decision-making process is the provision that the presence of a supporter in a conversation otherwise covered by evidentiary privilege, will not waive that privilege for the decision-maker.

¹ See, e.g., New York State Office for People with Developmental Disabilities Supported Decision-Making Pilot Program (2016), <https://opwdd.ny.gov/news/supported-decision-making-pilot-program>; National Conference of Commissioners on Uniform State Laws, Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, Uniform Guardianship (2017), <https://www.uniformlaws.org/committees/community-home?CommunityKey=2eba8654-8871-4905-ad38-aabbd573911c>.

By outlining how to report abuse, coercion, undue influence and other exploitation, the bill protects individuals with developmental and intellectual disabilities, while at the same time promoting their rights to autonomy.

Notably, A8586A is in keeping with the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act², as well as Article 81 of New York's Mental Hygiene Law, which require that courts consider supported decision-making before imposing guardianships. A8586A will therefore reduce the number of individuals who are placed under restrictive guardianship by simply making parents, caregivers, other advocates, and the court aware of the right to supported decision-making.

By helping individuals with disabilities to maintain their independence via establishment of the means to support their ability to make decisions about all aspects of their lives, A8586A will also greatly reduce discrimination against persons with disabilities.

For all of the foregoing reasons, NYLPI urges passage of A8586-A.

May 6, 2022

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NYLPI is a community-driven civil rights organization with a Disability Justice Program that works to advance the civil rights of New Yorkers with disabilities. NYLPI's disability advocates have represented thousands of individuals and won campaigns improving the lives of hundreds of thousands of New Yorkers. We advocate extensively on behalf of individuals with intellectual and developmental disabilities, including as counsel for the plaintiff class in the landmark federal litigation serving the individuals with intellectual and developmental disabilities who were warehoused at the infamous Willowbrook State School, as counsel for the plaintiff class in a case against the New York City Administration for Children's Services and the New York State Office of Mental Retardation and Developmental Disabilities for their failure to appropriately serve children with developmental disabilities in ACS's foster care system, and as counsel for five children and their parents against a charter school which sought to expel students with developmental disabilities.

To learn more about NYLPI, please visit: <http://www.nylpi.org>. For more information, about these comments, please contact Ruth Lowenkron, Director, Disability Justice Program, at RLowenkron@NYLPI.org or call (917) 804-8209.

² National Conference of Commissioners on Uniform State Laws, Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, Uniform Guardianship (2017), <https://www.uniformlaws.org/committees/community-home?CommunityKey=2eba8654-8871-4905-ad38-aabbd573911c>.