

Considering Age of Majority, Transfer of Rights and Decision-Making Options

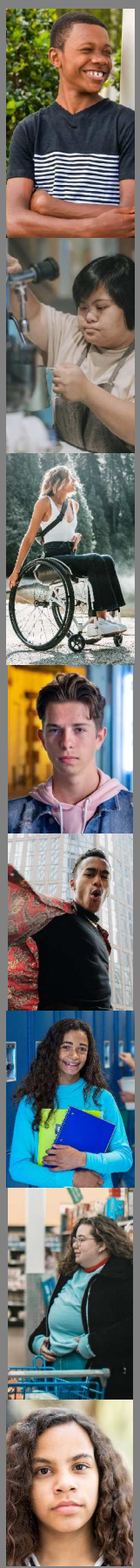
Age of Majority and Transfer of Rights

According to the Individuals with Disabilities Education Act (IDEA), the transfer of parental rights can take place "when a child with a disability reaches the age of majority under State law which applies to all children (except for a child with a disability who has been determined to be incompetent under State law)." In Florida, individuals reach the age of majority and receive the transfer of their rights at age 18 (Section 743.07, Florida Statutes (F.S.)).

Students Turning 18 - What to Expect

Preparing students for decision-making about their lives is a powerfully important process. Federal and state requirements include the following:

1. At the age of 18, students will have the right to make educational decisions.
 - At least one year prior to a student turning 18, the student and parents must be notified that the transfer of rights to the student will occur at age 18. This must be done no later than the student's 17th birthday and must be documented in the individual education plan (IEP).
 - A separate notice will be provided to the parents and student when the student reaches age 18.
 - Additionally, House Bill (HB) 19 (2023) amends section 1003.5716, F.S. to indicate the school district will provide "information and instruction to the student and his or her parent on self-determination and the legal rights and responsibilities regarding the educational decisions that transfer to the student upon attaining the age of 18. The information must include the ways in which the student may provide informed consent to allow his or her parent to continue to participate in educational decisions, including:
 - Informed consent to grant permission to access confidential records protected under the Family Educational Rights and Privacy Act (FERPA) as provided in section 1002.22, F.S.;
 - Powers of attorney as provided in Chapter 709, F.S.;
 - Guardian advocacy as provided in section 393.12, F.S.;
 - Guardianship as provided in Chapter 744, F.S.; and
 - Supported decision-making agreements as provided in section 709.2209, F.S."
2. Eligibility for Supplemental Security Income (SSI) benefits will be re-determined using an adult disability standard (usually in the month before the 18th birthday).
3. "Health insurance may change. Florida law requires dependent coverage to be offered until the dependent is age 30. Adults whose health insurance covers youth should check their policies" (Disability Rights Florida, n.d.).
4. Students receive the right to vote and must register by mail or online with the state. One must turn 18 by election day to be eligible to vote in that election, but registration can be completed at age 16 and after (Disability Rights Florida).
5. All males are required to register for military service within 30 days of turning 18. There is not a general exemption from registration based on mental or physical condition, but there are certain criteria that can provide exemption. Find out more - Exemption from Selective Service Registration at <https://www.sss.gov/faq/>.



Decision-Making Alternatives: Choosing the Best Option with My Child

Florida legislation provides a system that permits persons with disabilities to participate in decision-making to the fullest extent possible.



Supported Decision-Making

Supported decision-making (SDM) is when the power of attorney grants an "agent" or supporter(s) the authority to assist an individual with a developmental disability by receiving information and communicating on behalf of the individual within the areas identified in the supported decision-making agreement. In addition, the SDM agreement has been added to the list of documents by which a student may indicate that parental involvement in educational decision-making is desired (Section 709.2209, F.S.). Florida Statute recognizes that every individual has diverse needs and unique abilities. SDM allows individuals with developmental disabilities to participate in life decisions as fully as possible.

Banking Services

A power of attorney that specifies the agent has the authority to conduct **banking transactions** on behalf of the person includes the following: establish, continue, modify, or terminate a banking account; contract for services available from a financial institution; withdraw money or property of the principal deposited with or left in the custody of a financial institution. (Section 709.2208, F.S.)



Power of Attorney

A **Power of Attorney** is a legal document through which a person gives someone (agent) the authority to act on his/her behalf, and the individual maintains the right to act on behalf of himself/herself. A **Durable Power of Attorney** is when the authority to act on the person's behalf does not end if the person suffers mental incapacity at some point in the future. (Section 709.2102, F.S.)

Advance Directives

Advance Directives are witnessed, written documents or oral statements that express a person's desires concerning health care. A **Living Will** is an advanced directive that expresses a person's instructions regarding life-prolonging procedures. A **Health Care Surrogate** is an advanced directive in which a person designates someone to make health care decisions and apply for health care benefits. (Section 744.3115, F.S.)

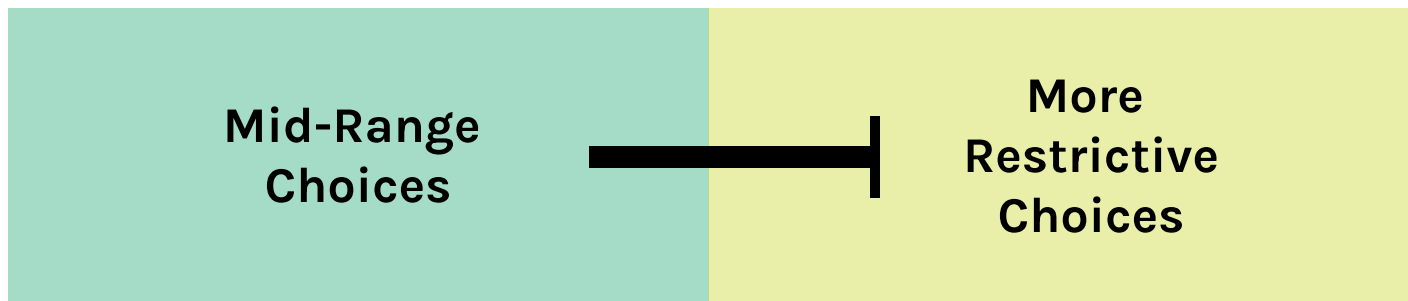
Trusts

A legal document called a **Trust** can be used to give someone the authority to manage the property of a person who needs or wants assistance. A **Special Needs Trust** assists a person with a disability to maintain needs-based benefits, such as Medicaid health insurance by excluding certain assets and income. See [Florida Medicaid.com](http://Florida.Medicaid.com) for more information.



State Secondary Transition
Interagency Committee, Florida
Department of Education, Bureau
of Exceptional Student Education

When selecting a decision-making alternative with your child, it is suggested that the best option is the one that will give the child who is becoming an adult the maximum amount of decision-making ability while also safeguarding his/her health and general welfare. Some of the options listed below can be combined in a way that matches the level of assistance that your young adult needs. Finding the right balance between assistance and autonomy is the key to ensuring your child has the opportunity to lead the most self-determined life possible.



Medical Proxy

A **Medical Proxy** is used when a person is or has become unable to make health care decisions and an advance directive has not been established. The patient's legal guardian could be assigned as the medical proxy by a judge or others could serve as the medical proxy, such as the patient's spouse, adult child, parent or adult sibling. (Section 765.401, F.S.)

Representative Payee

A **Representative Payee** is an entity selected by the Social Security Administration (SSA) (preferably family or friends, but could be an organization) to manage an individual's SSA benefits. This means the beneficiary's benefits will go to the Representative Payee for appropriate use. The Social Security Administration (SSA) benefits must be used to provide food, clothing, shelter, medical care and personal comfort items for the SSA beneficiary. All remaining funds must be saved in an interest-bearing account or savings bonds to be used for the SSA beneficiary's future needs. (Section 402.33, F.S.)

Guardian Advocacy

Guardian Advocacy is available for persons with a developmental disability (DD). Individuals cannot be determined as in need of a guardian based only on the fact that they have a DD. However, if a person with a DD lacks the capacity to make some (not all) decisions related to care for person or property, a Guardian Advocate may be appointed by a circuit court to assist with decision-making in the areas of the person's needs. (Section 393.12, F.S.)

Guardianship

Full Guardianship is used when a person has been found to lack all capacities to care for self and property. The court (circuit court) will appoint a guardian to exercise all of a person's rights and powers that can be legally delegated. **Limited Guardianship** is used when a person has been found to lack capacities to exercise some, but not all, of their rights. The court will appoint a guardian to exercise rights that can legally be delegated. (Section 744.102, F.S.)

Resources for the content of this chart include the following:

American Civil Liberties Union

https://www.aclu.org/sites/default/files/field_document/faq_about_supported_decision_making.pdf

Disability Rights Florida: What Are the Alternatives to Guardianship?

https://disabilityrightsflorida.org/disability-topics/disability_topic_info/what_are_the_alternatives_to_guardianship

Florida Developmental Disabilities Council - Developing Abilities and Restoring Rights: A Guide for Supporting Persons with Disabilities

<https://fddc.org/wp-content/uploads/2020/08/Developing-Abilities-Restoring-Rights-Guide.pdf>

The Florida Bar - Guidance Offered for Parents of Teens with Special Needs

<https://www.floridabar.org/the-florida-bar-news/guidance-offered-for-parents-of-teens-with-special-needs/>

Florida Statutes

<http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Search%20Statutes&Submenu=2&Tab=statutes>

The National Resource Center for Supported Decision-Making - <http://supporteddecisionmaking.org/>

Resources

Access the Vote - Inclusive Elections for ALL - Provides instructions to ensure voters with a disability have access to voting. <https://www.accessthevote.org/>

Brink - A nonpartisan, non-profit 501(c)(3) seeking to make the democratic process more accessible to people with disabilities using technology, design, and behavioral science. <https://www.brinkapp.co/>

Center for Parent Information and Resources - Getting Ready for When Your Teen Reaches the Age of Majority - A Parent's Guide - This online tip sheet covers many relevant topics related to the transfer of parental rights to the student. <https://www.parentcenterhub.org/age-of-majority-parentguide/#defs>

Cost for Guardianship - An infographic that explains the cost of establishing guardianship for a child with a developmental disability in Florida using the expedited guardian advocate application process. <https://www.guardianproject.us/what-does-getting-guardianship-cost-infographic/>

Florida Developmental Disabilities Council - Developing Abilities and Restoring Rights - A Guide for Persons with Disabilities: This guide provides educational materials in the area of legal rights. There is also an accompanying workbook. <https://fddc.org/wp-content/uploads/2020/08/Developing-Abilities-Restoring-Rights-Guide.pdf>

Florida Developmental Disabilities Council - Lighting the Way to Guardianship and Other Decision-Making Alternatives - A Manual for Individuals and Families: This resource provides information in English and Spanish. Additional FDDC Lighting the Way resources are available, including: fact sheets, an online training and a booklet on making life decisions designed for individuals with disabilities. <https://www.fddc.org/publications/>

Exemption from Selective Service Registration - Explains registration requirements for men with a disability turning 18. <https://www.sss.gov/faq/>

Exploring My Decision-Making Options - See the checklist on pages 7-8 that assists a person with a disability to determine the types of support needed for decision-making. http://flfcic.fmhi.usf.edu/docs/Florida_WINGS_DecisionMaking_FINAL_Digital.pdf

Florida Bar, Legal Survival Guide: Legal Survival Guide - Florida Laws You Should Know is described a newly developed website for individuals who have turned 18 years old and want to understand how the law will impact their lives. <https://www.legalsurvivalguide.org/>

Florida Bar, Pro Bono & Legal Aid - This web page provides information about legal services at reduced rates. <https://www.floridabar.org/public/probono/>

Guardianship Glossary - In addition to providing a definition for more than 40 terms, this resource also provides links to the 20 circuit court locations that serve Floridians. <https://www.guardianproject.us/florida-guardianship-glossary-list>

National Resource Center for Supported Decision-Making - Brings together varied partners to ensure that input is obtained from all relevant stakeholder groups including other adults, people with intellectual and developmental disabilities (I/DD), family members, advocates, professionals and providers and to ensure their interests are well-represented. <https://supporteddecisionmaking.org/about/>

PACER Center, Prepare Your Child for Age of Majority and Transfer of Rights - This resource explains how parents can prepare their child with a disability to prepare for the transfer of rights. <https://www.pacer.org/parent/php/PHP-c63.pdf>