

# GAPS LEGAL, PLLC NEWS & NOTES

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## ABOUT US

We focus our practice on Guardianship, Advocacy, Probate, Planning, and Special Needs. We actively listen to your needs to recommend an effective and efficient solution.

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## SUPPORTED DECISION MAKING TO AVOID GUARDIANSHIP

### What is supported decision making?

As adults, we use supported decision making on a regular basis. We don't think about it or use those terms, but we reach out to ask questions and get input from those we trust before making decisions. We need to encourage the use of supported decision making for our children whenever possible based upon his or her level of understanding. This may be a solution to avoid the need for a guardian or guardian advocate in the future.

Let's start with the fact that under Florida law, when your child turns 18 he or she is deemed an adult with the legal capacity to make decisions about personal and financial matters. Good or bad decisions. Many well-meaning people may tell you that your child needs a guardian or guardian advocate at age 18 because he is on the autism spectrum, she has cerebral palsy, he has Down syndrome, or she has an intellectual disability. That may not be appropriate advice if you have least restrictive alternatives and use supported decision making.

### What is guardianship or guardian advocacy?

Guardianship or a Guardian Advocacy is only appropriate if a person cannot manage property or meet essential requirements for health or safety. Guardianship results in a legal determination of the person's incapacity, the removal of the right to make decisions, and gives those rights to a guardian. A Guardian Advocacy is only for individuals with specific developmental disabilities. The person keeps all legal rights except those that have been specifically given to the Guardian Advocate. Neither should to be your first option to protect your child with a disability.

Why do you want to avoid a guardianship or guardian advocacy? The simple reason is to allow your child to keep the right to make decisions for himself or herself. If a guardian or guardian advocate is appointed, a judge will oversee many aspects of your child's life.

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*"If you don't plan, the court will plan for you."*

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## How can you use supported decision making?

Start engaging your child in decision making when they are young. Every day decisions such as picking out what to wear, recreational options or choosing among items for a snack, help to develop the child's decision-making skills. As the parent, your child trusts you to guide him or her with reaching a decision. Of course, there may be times you need to step in to prevent injury, but we should otherwise empower him or her as early as possible to voice preferences and choices. It will serve them later in life when the decisions are more challenging in meeting daily needs. This will be especially important for children with a disability to avoid guardianship. A disability should not automatically lead to the conclusion that an individual lacks legal capacity and needs a guardian.

## What is a supported decision-making agreement?

Texas adopted the Supported Decision-Making Act which allows an individual to enter into a voluntary agreement for decision making. The agreement names a supporter who will assist with life decisions. The individual can ask for support in making life decisions about obtaining food, clothing and a place to live; physical health; mental health; managing money or property; getting an education or other training; choosing and maintaining services and supports; finding a job; or anything else written in the agreement. The agreement clearly states the supporter does not make the decision, only assists with providing information, explaining choices, and communicating the decisions to others. It can be revoked by either the individual or supporter.

This concept is implicit in Florida law which requires consideration of least restrictive alternatives before removing rights and appointing a guardian or guardian advocate.

## How do I create a Supported Decision-Making Plan?

- Implement a voluntary Supported Decision-Making Plan when your child becomes 18.
- Make it an important event that allows your child to have input about their adult life.
- Let them voice preferences in what should be in the Plan.
- Let them tell you where they need support and where they want to try to make decisions without assistance. That doesn't mean he or she can't ask for help. It just means your child has decided he or she wants to try it without support. Don't we often learn from making our own mistakes?
- Change the Plan as needed.
- Compliment the Plan with a health care surrogate designation, living will, and durable power of attorney. While you're at it, think about your own decision-making documents.
- **Contact GAPS Legal, PLLC for help with creating a plan!**

Michelle is an attorney, mediator and former professional guardian. Prior to obtaining her JD from NSU Shepard Broad College of Law in 2016, Michelle served vulnerable and disabled individuals in South Florida in various roles since 1994, with over 19 years in the guardianship community.

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Alexandra is an attorney with over 30 years' experience. Alexandra obtained her JD from NSU Shepard Broad College of Law in 1986. After obtaining her JD, Alexandra was in private practice focusing on family law, commercial litigation, guardianship, and probate. Alexandra is also former General Counsel and Probate Counsel for the 17th Judicial Circuit.



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