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chestnut street sessions

DRMT

# Making Your Own Choices:

## Self-determination, alternatives to guardianship, and supported decision making

Tal M. Goldin

Attorney at Law

Director of Advocacy

Disability Rights Montana

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There are going to be questions for audience input throughout this presentation .

You can interact and answer these questions through a computer or mobile device.

If your are joining us remote and you want to see the video feed at the same time as the questions, you may want to use a second device (like a phone) or a second browser tab on your computer.

If you're in the room and don't have a device or need help, we've got extra devices and people to help around the room, just indicate that you need help. We'll pause here before we start in case anyone needs time to get set up.

# Instructions

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# What choices did you make for yourself today?

Food

Shopping

Food

My plans for the evening

What to eat, what to wear, what projects to work on and in what order...

What to wear, what to eat for breakfast, wheat time to leave for work, what to have for lunch

What wear. What to eat.

Exercise

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# What choices did you make for yourself today?

Walking

How to fet to work

What to wear today

What time I got up, what I ate, what I did with my time.

Work

What to wear

What I was going to eat for dinner.

Transportation

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# What choices did you make for yourself today?

what to wear, what to eat, where to go, how to get there, who to see and talk to

What I ate

Whether to work out

Dates

To learn from this webinar

Scrolling on my computer

What I bought at the grocery store

What to wear.

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# I need help making decisions about_____?

Fixing my car

finances

Investments

Life

What vehicle to buy, what medical procedures to undergo

What bills to pay.

Career, finances.

My finances

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# I need help making decisions about_____?

- Child pickup/dropoff coordination
- Legal
- What technology to purchase when old devices break
- Taxes, making large purchases, investing
- How to invest money
- How to deal with insurance
- Taxes
- Taxes

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# I need help making decisions about_____?

Career

Taxes!

Housing

Finances, vehicle repairs,

Taxes. Financial issues. Medical concerns.

My childrens future

Health related decisions

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# In what areas of your life do you feel comfortable making some decisions, but not others?

20 responses

1 13

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# Give us an example of an area where you are comfortable make some decisions alone but not others

- Finances
- Politics
- Career
- retirement
- Financial, investment/savings
- Household purchases
- Big issues at work
- Investing Taking out a loan

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# Give us an example of an area where you are comfortable make some decisions alone but not others

- Finances, purchasing a car
- responding to my children's needs/questions
- Medical
- Being a good parent
- Routine medical care alone but specialized testing and what to do next with results I want help
- Health issues
- Divorce

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# Who helps you make decisions in your life?

38 responses

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# When you need help making a decision, how do you communicate with your supporters?

- Talking in person or over the phone
- Speaking
- Face to face
- In person, by phone or text
- I ask if they have time to talk
- Text
- In person conversations
- I ask for help

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# When you need help making a decision, how do you communicate with your supporters?

- Verbally and through ongoing dialogue
- Text
- In person
- verbally request help
- Meet and discuss
- Call them
- Phone Email
- Phone, internet or in person meetings

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# When you need help making a decision, how do you communicate with your supporters?

Saying I need advice

Sitting with my support system and have them break things down for me

Email

Books

Coffee

Books

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# Name some things you **need** that you spend money on each month.

Food

Health insurance

medications, housing, heat

Food

Electricity

Gas

Groceries

Water

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# Name some things you **need** that you spend money on each month.

Rent, groceries, utilities,

Mortgage, healthcare, car payment

Gas for my car

Gas

Food

Food

Medicine

Gas. Groceries. Insurance.

1

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# Name some things you **need** that you spend money on each month.

Gas & utilities

mortgage

Cell phone

Gasoline

Rent, car insurance, car payment, food, phone bill

Gas, housing, power, food, insurance

Healthcare

Rent

1

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# Name some things you **<u>want</u>** that you spend money on each month.

- Food
- Yoga
- Candy
- mochas!
- Starbucks
- Playstation cards
- Books
- Travel

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# Name some things you **<u>want</u>** that you spend money on each month.

- Groceries
- Coffee
- Gym Membership
- Legos
- Eating out
- Therapy
- Clothing
- Tools

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# Name some things you **<u>want</u>** that you spend money on each month.

- Nice dinner
- Baked goods, shopping, books
- Eating out, clothing, entertainment, travel
- Legos
- Fast food.
- Clothes
- Antiques, clothes, coffee, jalapeño bagels
- Internet

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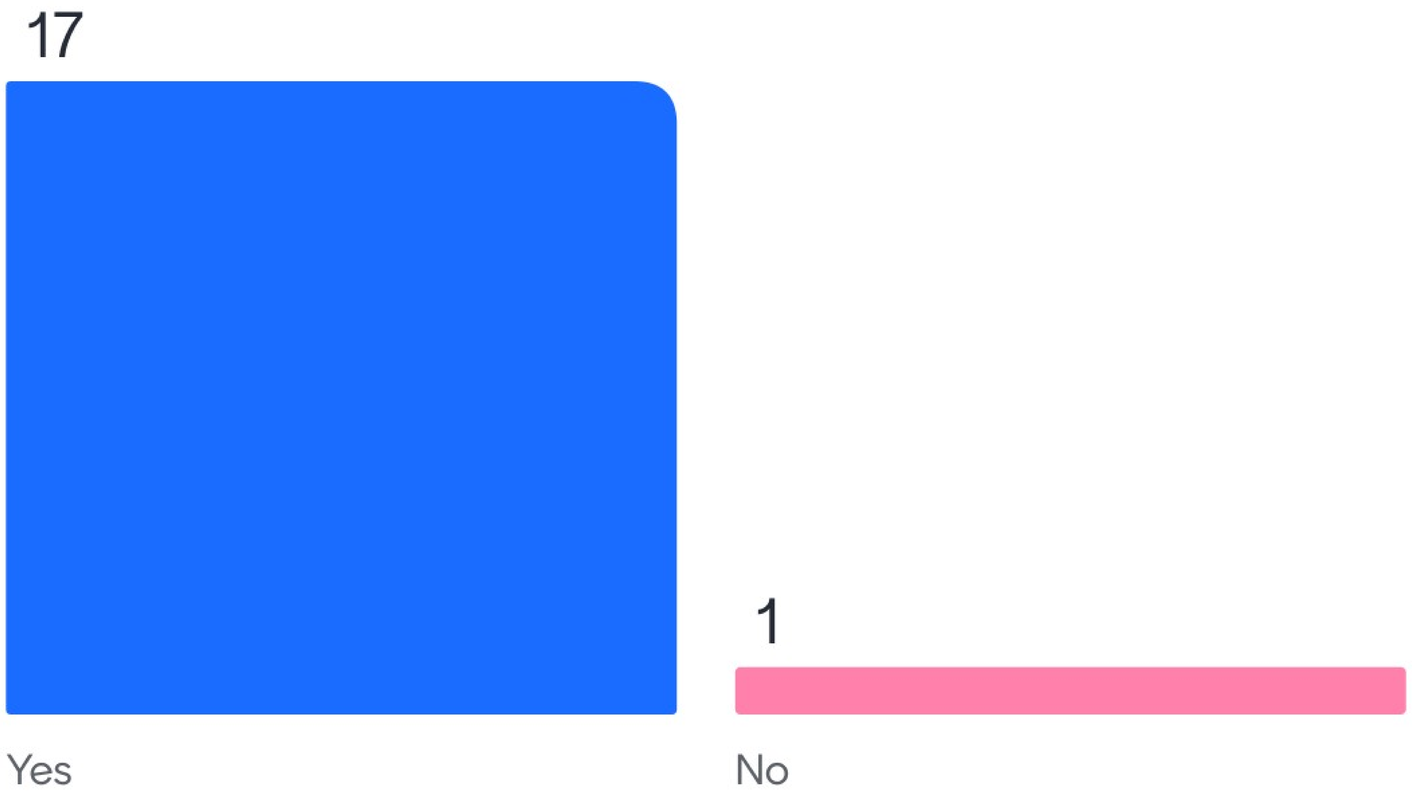
# Do you have access to spending money each month for things you don't need?

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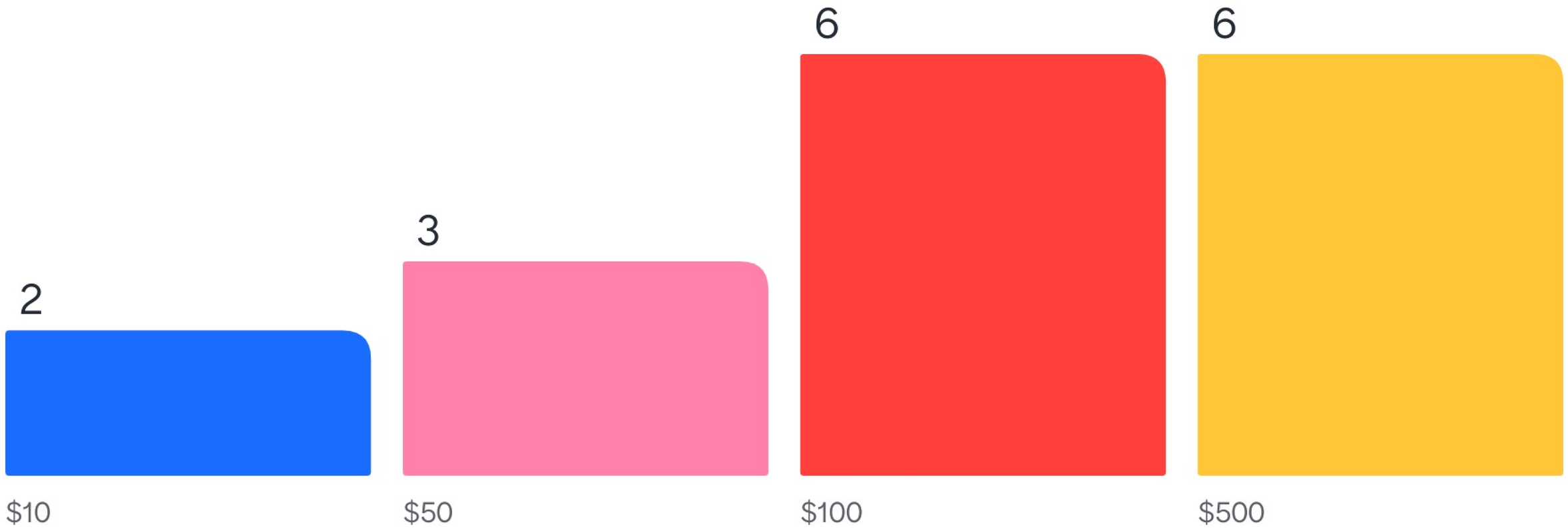
# How much money would you be ok spending *in a month* on things you don't need?

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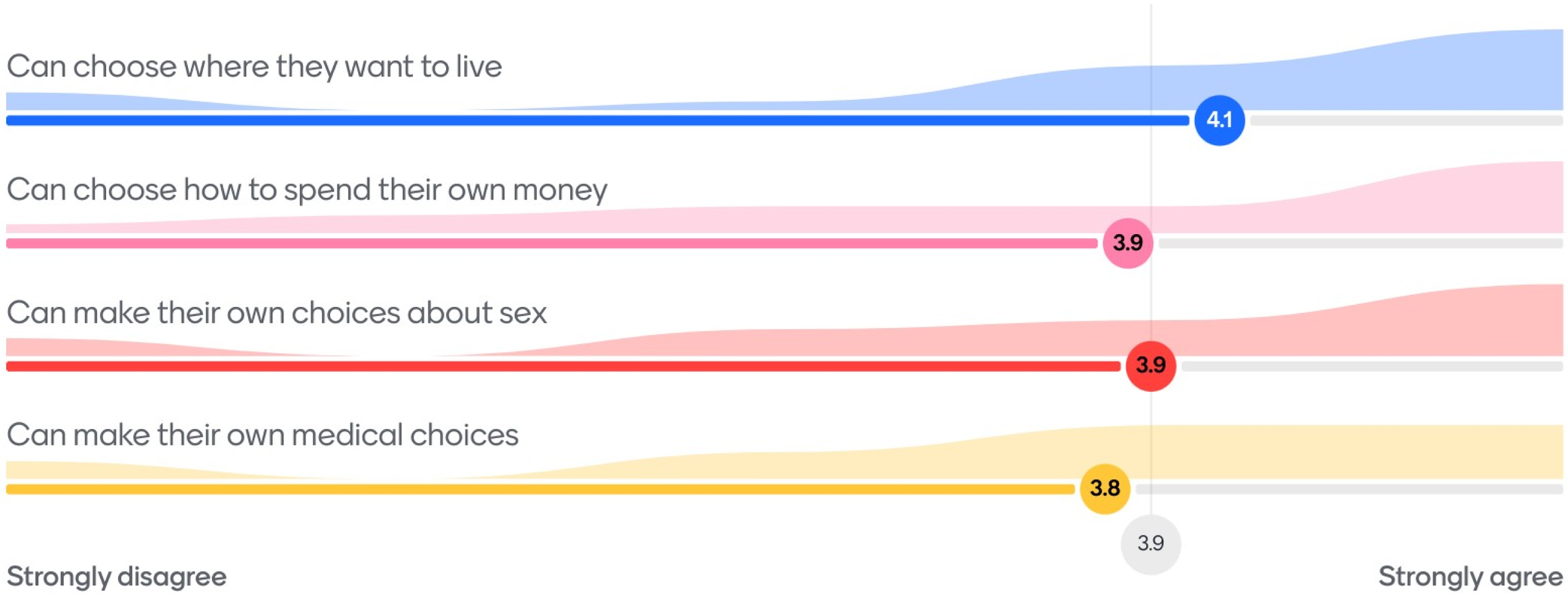
How strongly do you agree with the following statements? People **born with Intellectual Disabilities**:

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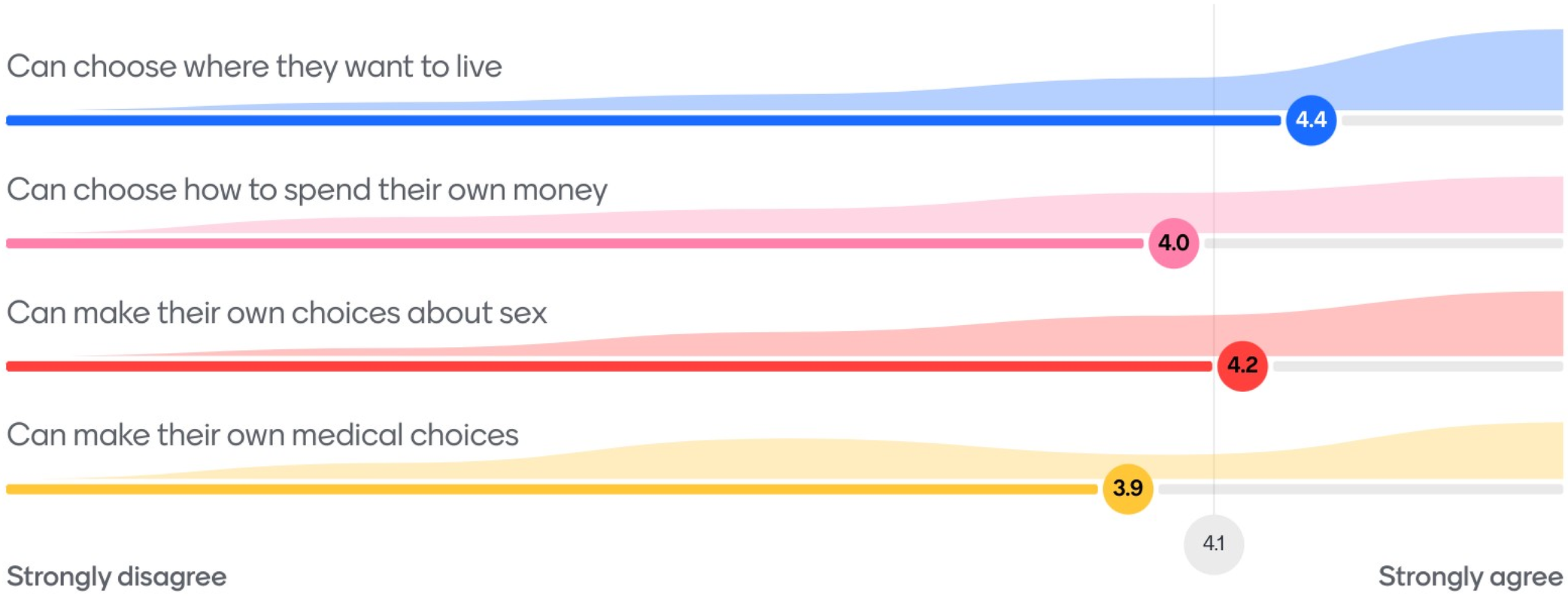
How strongly do you agree with the following statements? People **who acquire cognitive impairments later in life:**



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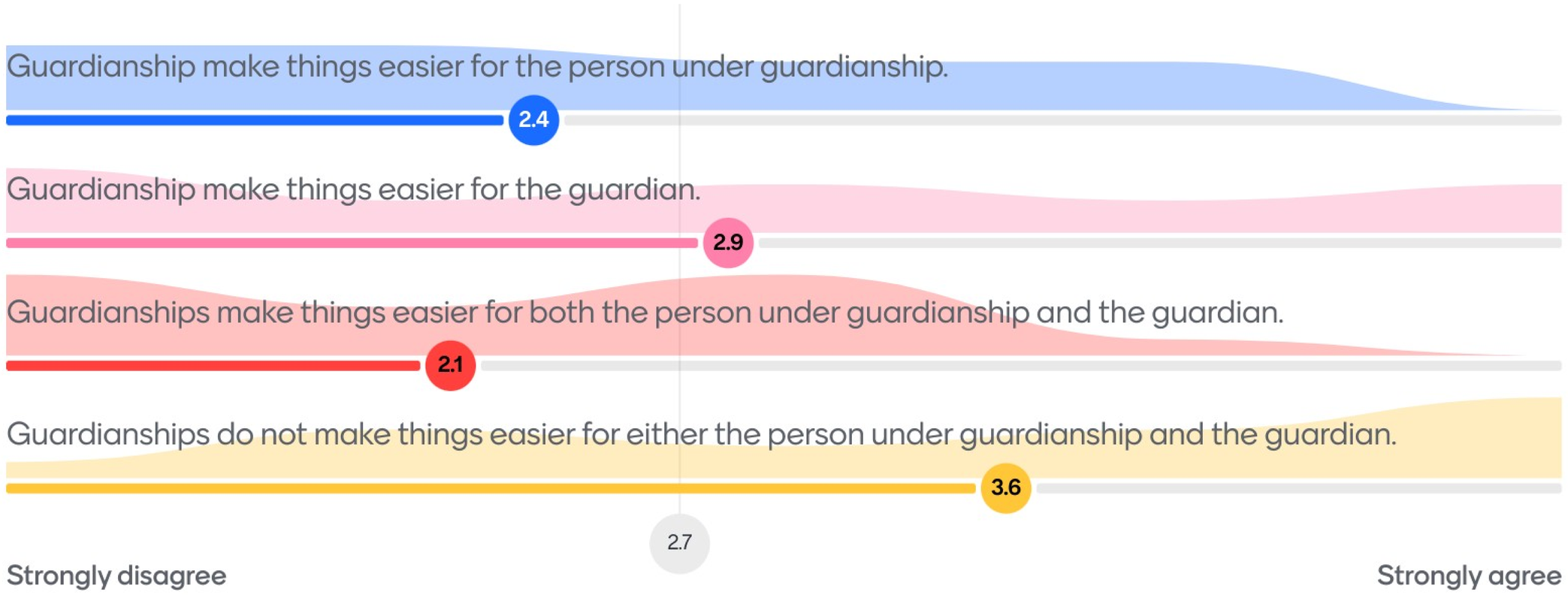
# How strongly do you agree with the following statements?

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# If my friend/child/family member **is not** under a guardianship, I am worried that:

They will be taken advantage of

They will be taken advantage of, or have their life ruined

Something might happen medically that they can't navigate on their own.

Nobody will be able to make a big decision

They will be taken advantage of.

Losing access to housing, medical support, basic needs

They won't be able to enroll in school

They won't have supports to help to them make decisions.

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# If my friend/child/family member **is not** under a guardianship, I am worried that:

They might be vulnerable for neglect or abuse.

they won't understand and no one will be there to help

10

# What would help address your concerns?

Knowing they have help

A plan before incapacitated

Access to a case manager,, similar professional

Decision making support tools

responsiveness from the guardian

Supported decision-making plan, Powers of Attorney

Education on all aspects of benefits and pros/cons of guardianships.

Being with them more often

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# What would help address your concerns?

More understanding and acceptance in the world

A plan they understand, set in place

A community support network

knowing there are other supports available to navigate medical and legal systems so they will not be taken advantage of

knowing the guardian is following what the individual wanted

Some measure of input regarding financial decisions.

Support network

knowing all options available for them

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# Which of the following choices can people under full guardianships legally make?

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# When can a person be placed under guardianship?

| Whenever someone has a diagnosed disability | If a person spends too much money | If a judge things its in the person's best interest |
|---|---|---|
| 0 | 0 | 0 |

# True of False: Guardianships can be easily undone?

| True | False |
| --- | --- |
| 0 | 0 |

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True of False: A Montana Court must consider less-restrictive alternatives to guardianship?

| True | False |
| --- | --- |
| 0 | 0 |

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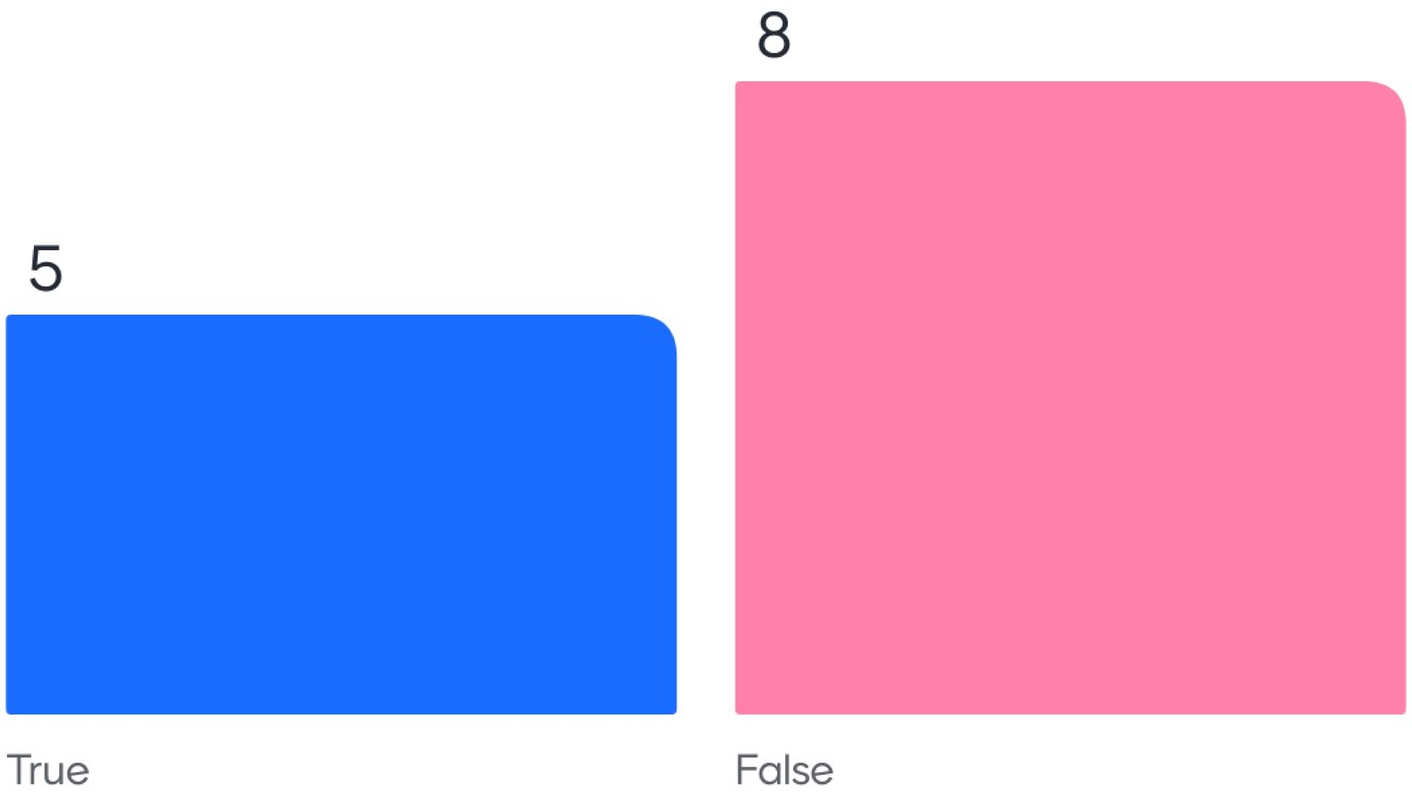
# True of False: A person under guardianship cannot vote.

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Establishing a guardianship requires a *judicial determination* that the person is "incapacitated and that judicial intervention in the person's personal freedom of action and decision is ***necessary to meet essential requirements for the person's physical health or safety***. . . ." Mont. Code Ann. § 72-5-316(1) (emphasis added).

Montana recognizes the significance of this rights deprivation, requiring a finding that "the identified needs of the person ***cannot be met by a less restrictive alternative***." *Id.* (Emphasis added).

"**Incapacitated person** means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, except minority, **to the extent** that the person ***lacks sufficient understanding or capacity to make or communicate responsible decisions*** concerning the person **or** which cause has **so impaired the person's judgment** that the person ***is incapable*** *of realizing and making* ***a rational decision*** *with respect to the person's need for treatment*."

Mont. Code Ann. § 72-5-101(1) (emphasis added).

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"Guardianship for an incapacitated person may be used only as is necessary to promote and protect **the well-being of the person**.

The guardianship must be **designed to encourage the development of maximum self-reliance and independence** in the person and may be ordered **only to the extent** that the person's **actual mental and physical limitations require it**."

Mont. Code Ann. § 72-5-306 (emphasis added).

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"An incapacitated person for whom a guardian has been appointed is **not presumed to be incompetent** and **retains all legal and civil rights except those that have been expressly limited** by court order or have been specifically granted to the guardian by the court." Mont. Code Ann. § 72-5-306 (emphasis added).

"An incapacitated person **may not be limited in the exercise of any civil or political rights except those that are clearly inconsistent with the exercise of the powers granted to the guardian** unless the court's order **specifically provides** for the limitations. The order must state that all rights not specifically limited **are retained** by the incapacitated person." Mont. Code Ann. § 72-5-316(3) (emphasis added).

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" **Less restrictive alternative** means an approach to meeting a person's needs that **restricts fewer rights** of the person than would the appointment of a guardian. The term includes supported decisionmaking, appropriate technological assistance, and appointment of a representative payee."

Mont. Code. Ann. § 72-5-305(3) (emphasis added)

" **Supported decisionmaking** means assistance from one or more persons **of a person's choosing** in:

(a) understanding the nature and consequences of potential personal and financial decisions, which enables the person to make the decisions; and

(b) communicating a decision, once made, if consistent with the person's wishes"

Mont. Code. Ann. § 72-5-305(5) (emphasis added)

# Decision-Making Support Options

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source:https://www.ncdhhs.gov/decision-making-support-options-nc-black-and-white-82521/download?attachment

## Supported Decision-Making

- Person makes their own decisions
- Person and team determine and document needed supports
- Person receives support from team when needed
- Can be completed formally or informally

## Advance Directive

- Person makes their own decisions
- Form documents medical/mental health wishes for others to make for them if incapacitated
- Legal document – can be completed with an attorney but not required

## Representative Payee

- Person makes their own decisions
- Person receives support to manage state and federal benefits (i.e. SSI, SSDI, etc.)
- Formal process of Representative Payee appointment completed by Social Security Administration

## Power of Attorney

- Person participates in as many decisions as possible
- Another person makes decisions defined in specific circumstances as documented
- Legal document – typically prepared with assistance from an attorney

## Guardianship

- Person's ability to make decisions may be limited
- Legal appointment of substitute decision-maker through court process
- Court ordered relationship to make personal decisions, financial decisions, or both
  - Anyone may file a motion to the court for a hearing to restore rights

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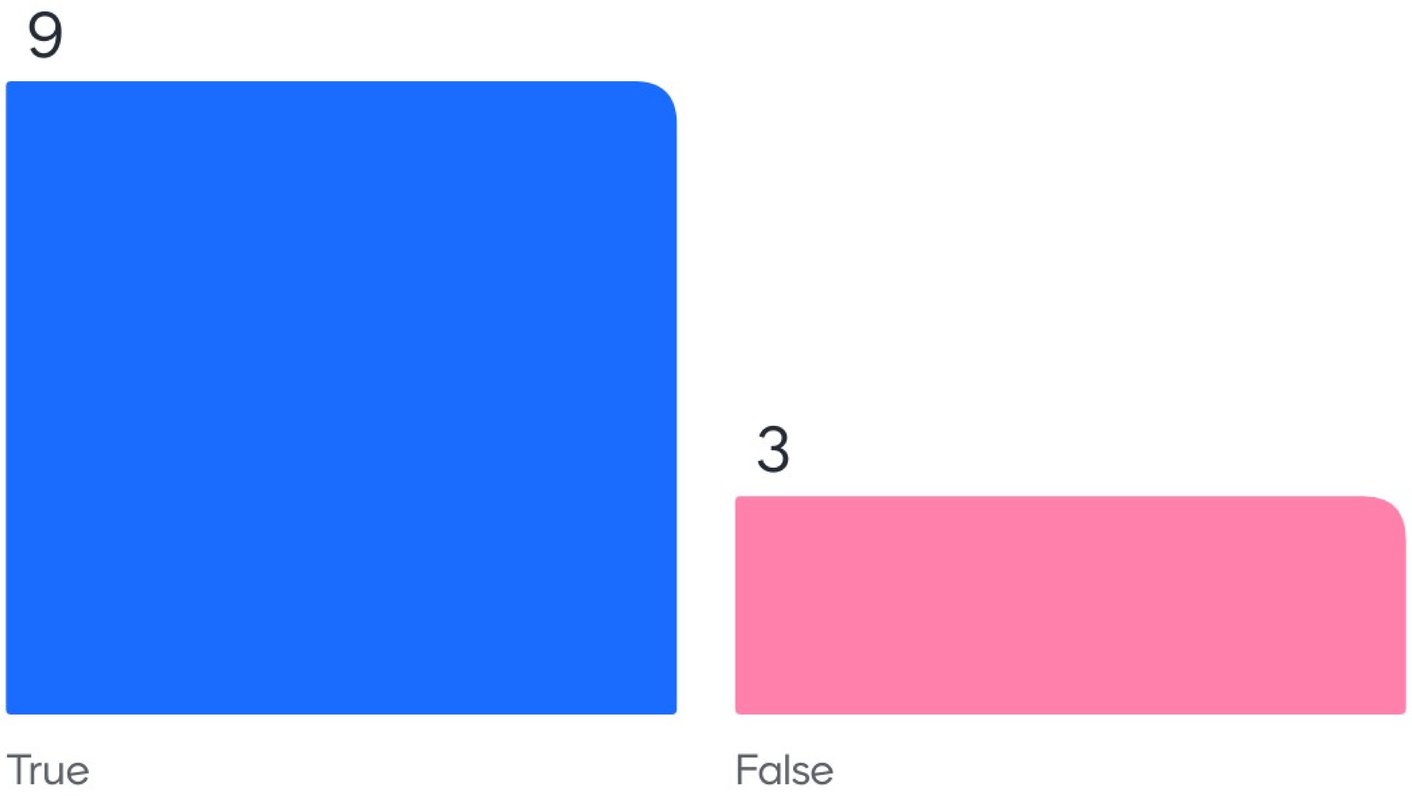
When a high school Student with a Disability turns 18, they can make their own choices about their IEP?

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For an adult high school Student with a Disability to get help making their own choices about their IEP, they must be placed under guardianship?

| True | False |
| --- | --- |
| 0 | 0 |

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**Federal** law allows an adult high school Student with a Disability to appoint someone to help them make decisions about their IEP?

| True | False |
| --- | --- |
| 0 | 0 |

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**Montana** law has **a process** for an adult high school Student with a Disability to appoint someone to help them make decisions about their IEP?

| True | False |
| --- | --- |
| 0 | 0 |

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Montana never "established procedures" to appoint an educational decision maker for an adult student on an IEP who is not under a guardianship.

*See In re C.S.*, 2014 MT 74, ¶ 24, 374 Mont. 289, 294, 320 P.3d 981, 985; see also *Guardianship Alternatives and Transfer of Rights* (UMass Boston), https://gator.communityinclusion.org/states/montana/ (last visited 1/16/25).

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A person **does not need** to be under guardianship to appoint an educational decision maker.

Other states accomplish this with a simple form!

“There is a powerful and unique abrogation of rights when a person's care is entrusted to another under a guardianship arrangement. The typical ward has fewer rights than the typical convicted felon—they can no longer receive money or pay their bills. They cannot marry or divorce. By appointing a guardian, the court entrusts to someone else the power to choose where they will live, what medical treatment they will get and, in rare cases, when they will die. It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen, with the exception, of course, of the death penalty.”

*Abuses in Guardianship of the Elderly and Infirm: A National Disgrace*. A Briefing by the Chairman of the Subcommittee on Health and Long-Term Care of the Select Committee on Aging, 100th Cong. (prepared statement of Chairman Claude Pepper), H.R. Select Comm. on Aging, Subcomm. on Health and Long Term Care, Publ’n No. 100-641 at 4 (Sep. 25, 1987) (emphasis supplied). Available at https://files.eric.ed.gov/fulltext/ED297241.pdf

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"The dignity of the human being is inviolable."

Mont. Const., Art. II, Sec. 4.

Every person has a right to "inherent dignity [and] individual autonomy including the freedom to make one's own choices . . . ."

Convention on the Rights of Persons with Disabilities, Art. 3(a), 2515 U.N.T.S. No. 44910 (entered into force May, 2008) (signed, 2009, by the U.S., but not ratified)

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# Where can I learn more about alternatives to guardianship?

https://supporteddecisions.org/

https://supporteddecisionmaking.org/

https://www.disbailityrightsmt.org

https://transition.ruralinstitute.umt.edu/alternatives-to-guardianship/

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1 question

1 upvote