

GUARDIANSHIP AND VOTING: How to Get Your Right to Vote Back

A Disability Rights Wisconsin Guide

disability**rights** | WISCONSIN

09/2022

DISCLAIMER

This guide is for educational purposes only. Nothing in this guide should be considered legal advice.

INTRODUCTION

This guide explains the steps you must take if you have lost your right to vote and want to get it back. It contains questions and answers about what you must do. It may be helpful to ask a friend, family member or guardian to read it with you. You may also have them help you follow all the steps.

USE THIS GUIDE IF YOU:

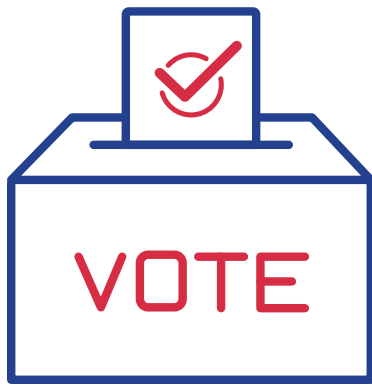
have a Guardian of the Person.

A **Guardian of the Person** is someone a court has named to make personal and healthcare decisions for you.

have lost the ability to vote.

If you are not sure if you have lost the ability to vote, see [Page 4](#).

This guide does not apply to individuals who have lost the right to vote because they were convicted of a felony and are still serving their sentence (“on paper”).



HOW IS MY RIGHT TO VOTE PROTECTED?

In Wisconsin, your right to vote is protected by the State Constitution. Any person who is age 18 or older and who has lived in Wisconsin for 28 days is eligible to vote. **But** Wisconsin also allows courts to remove your right to vote if the court decides that you do not know the purpose of an election.

HOW CAN I LOSE THE RIGHT TO VOTE?

There are only two ways you can lose the right to vote. The right to vote can be lost during a guardianship case. It can also be lost in a separate case that only deals with voting.

If you do not have a guardian or if a court has not removed your right to vote, you have the right to vote.

You can have a guardian and still have the right to vote. See [Page 5](#) to learn how the court decides whether you kept or lost your right to vote.

You have not lost the right to vote if you only have a guardian to make your financial decisions (called a Guardian of the Estate).

CAN I LOSE MY RIGHT TO VOTE WITHOUT AN ORDER FROM A COURT?

Only a court can take away your right to vote.

No. Your right to vote cannot be taken away without an order from a court. It cannot be taken away by a local election official, a family member, a service provider, or your guardian, even if they think you are not capable of voting. It cannot be taken away if you have a Power of Attorney for Health Care or for Finances that has been activated.

Your right to vote cannot be taken away just because you have a disability or a medical diagnosis.

HOW DO I KNOW IF I LOST THE RIGHT TO VOTE?

If a guardian was named by a court to make decisions for you, there is a written decision. It is called a “Determination and Order on Petition for Guardianship Due to Incompetency.” These are your guardianship papers. These papers show if you have the right to vote or if it was taken away.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

IN THE MATTER OF

Amended

Name _____

Determination and Order on Petition for Guardianship Due to Incompetency (Adult Guardianship)

Date of Birth _____

Case No. _____

A Petition for Guardianship Due to Incompetency was filed and a hearing was held on [Date] _____. After consideration of the reports and other documents on file, all factors required by the statutes, and such additional information presented;

THE COURT FINDS:

1. JURISDICTION, VENUE, NOTICE, APPEARANCES AND EVALUATIONS TO COURT

- A. This court does does not have jurisdiction over the subject matter and the individual.
 Wisconsin is not the individual's home state but the court has jurisdiction because: _____.
- B. This court is is not a proper venue.
- C. Notice was was not properly served.
- D. The individual is present.

Look for paragraph 3. A. (3).

If the box is checked, you cannot vote. Use this guide to help you get your right to vote back.

3. GUARDIAN OF THE PERSON

The individual is in need of a guardian of the person.

A. Rights to be removed in full. If removed, these rights may not be exercised by any person.

The individual has the incapacity to exercise the right to

- (1) execute a will.
 (2) serve on a jury.
 (3) register to vote or to vote in an election.

If the box is not checked, you can vote. You will not need to use this guide.

3. GUARDIAN OF THE PERSON

The individual is in need of a guardian of the person.

A. Rights to be removed in full. If removed, these rights may not be exercised by any person.

The individual has the incapacity to exercise the right to

- (1) execute a will.
 (2) serve on a jury.
 (3) register to vote or to vote in an election.

Be sure you are registered to vote and have a photo ID, if needed. Find out the dates of upcoming elections. Make a plan to vote. Call the [Disability Rights Wisconsin Voter Hotline](tel:1-844-347-8683) at 1-844-347-8683 if you need more information.

WHAT IF I DO NOT HAVE MY GUARDIANSHIP PAPERS?

Ask your guardian for a copy. Or ask the Register in Probate's office at the courthouse where your guardianship case was granted. It may cost a few dollars.

☐ **The Register in Probate is the person who handles guardianship papers.**

You can find a list of offices on the Wisconsin Register in Probate Association's website here: www.wripa.org/directory-of-wisconsin-probate-offices.html

HOW DOES A COURT DECIDE THAT I SHOULD LOSE THE RIGHT TO VOTE?

Wisconsin law says that a court must decide if you are “**incapable of understanding the objective of the elective process.**”

☐ **What do these words mean?**

- ⇒ **Not capable** is another word for incapable. When someone is not capable, they are not able to understand something.
- ⇒ **Know** is another word for understanding or understand.
- ⇒ **Purpose** is another word for objective.
- ⇒ **Election** is another word for elective process.



If you **do not know** the purpose of an election, you are considered incapable of understanding the objective of the elective process.

If you **know** the purpose of an election, you are considered **capable** of understanding the objective of the elective process.

What is the purpose of an election? It is to vote for a person (called the candidate) so that the candidate can win.

If you lost the right to vote in your guardianship case, the court decided that you did not know the purpose of an election. If you believe you do, you can ask the court to get your right to vote back.

Even if you cannot make other types of decisions in your life, you can be capable of understanding the objective of the elective process. Even if you did not understand the objective of the elective process when your guardian was appointed, you can be capable of understanding the objective of the elective process now.

See [Page 11](#) to learn what to tell the court about why you should get your right to vote back.

HOW DO I GET MY RIGHT TO VOTE BACK?

You must go back to the court that granted your guardianship and ask for your right to vote back. See [Pages 7-12](#) to learn what steps you must take.

WHAT SHOULD I DO BEFORE GOING TO COURT?

- 1. Get a notebook or pad of paper.** Get a folder to put papers in. Later, you should write down deadlines, the date you filed the Petition, when your hearing is, and what the court tells you. You can ask someone to help you write things down.
- 2. Decide whether you want an attorney to help you.** You can start the process and handle the entire case on your own. But it will be easier if you have an attorney. If you can afford it, you can find and pay for your own attorney. Your attorney will file the Petition. Or you can file the Petition on your own and then ask the court to appoint and pay for an attorney to help you (there is a place on the Petition to ask for an attorney).
- 3.** Some of the papers you need to fill in and file require that you sign and date them in front of a person called a notary or notary public. **You need to find a person who is a notary in your community.** Often a bank has a person who is a notary. Attorneys are also notaries. And county officials, such as the Register in Probate or the Clerk of Courts, are notaries.

HOW DO I START THE PROCESS TO GET MY RIGHT TO VOTE BACK?

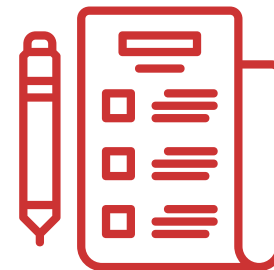
You start by filing a legal paper with the court that took away your right to vote. This paper is called a “Petition”. Two samples are on [Pages 14-19](#) of this guide. You can also find these samples at:
disabilityrightswi.org/resource-center/guardianship-and-voting.

There is no cost or fee to file the Petition.

You do not need to ask the county or anyone else to start. You decide when to file the Petition.

CAN I FILE THE PETITION AS PART OF THE ANNUAL (WATTS) REVIEW?

Some people who have a guardian also have an order from the court called protective placement. This means the court has said where you must live and what services the county must provide. A person who has a protective placement order is said to be protectively placed. Some people who have a guardian are also protectively placed, but many are not.



If you are not protectively placed, there is no review unless you ask for it. If you are protectively placed, a court will review your case once a year. You do not need to ask for this review.

The review is called an annual review. It is also called a Watts review. During this review, you can file the Petition to ask that your right to vote be given back. The court can consider the Petition as part of the annual review.

Or you can file the Petition at a time other than the annual review.

HOW DO I FILE THE PETITION?

You can file the Petition yourself. Or you can ask someone else to file it for you. This can be your guardian, a friend, or a family member. It should be someone who agrees that you should get your right to vote back. If you have an attorney, your attorney will file the Petition.



If you file the Petition yourself, use **Form 1**. It is attached to this guide. It is called “Ward’s Petition to Restore Ward’s Right to Register to Vote and to Vote”.

If someone else is filing the Petition for you, use **Form 2**. It is attached to this guide. It is called “Petition on Behalf of Ward to Restore Right to Register to Vote and to Vote”.

Be sure to read the instructions carefully or get help reading the instructions.

Copies of the forms can be found on the Disability Rights Wisconsin website: disabilityrightswi.org/resource-center/guardianship-and-voting.

There is a place on both forms to ask the court to find and pay for an attorney if you cannot afford to do so.

Keep a copy of the Petition.

If you are filing the Petition yourself, you can take it in person to the Register in Probate's office at the courthouse. Or you can mail it to the Register in Probate's office.

You can find the court in your area via the Wisconsin Register in Probate Directory by County here:

www.wripa.org/directory-of-wisconsin-probate-offices.html

If you mailed the Petition, call the Register in Probate's office a few days later to be sure it has been received. Write down the date it was received – that is the date your petition was “filed.”

THE COURT RECEIVED YOUR PETITION – WHAT HAPPENS NEXT?

There are several steps that will happen after you file your Petition. These are:

1. notice
2. appointment of a Guardian ad Litem (GAL)
3. court hearing
4. decision.

These steps are explained below.

I. NOTICE

The court will send you a form telling you when and where the hearing will be. The form is called the “Notice and Order for Hearing”.

It is very important that you remember the date and time and place of the hearing. It is very important that you come to the hearing. If you do not, the court may close your case and not make a decision.

The court will decide what other people should get the “Notice and Order for Hearing”. The court will want your guardian to get the Notice and Order. The court may want other people to get the Notice and Order. These people are known as “parties.”



The court will usually mail the Notice and Order to the parties. But the court might tell you to mail it. If the court wants you to send out the Notice and Order, it will call you. Ask them to mail it for you – this is called asking for an accommodation.

If at any time you have questions, call the Register in Probate office.

2. APPOINTMENT OF GUARDIAN AD LITEM (GAL)

The court will appoint an attorney called a **Guardian ad Litem or GAL** (pronounced G-A-L). You cannot choose who will be appointed as the GAL. The GAL is **not** your attorney. The GAL does not have to follow your wishes. The GAL will talk to you about whether you should get your right to vote back. Be sure to tell the GAL why you should get your right to vote back. The GAL will tell the court what the GAL thinks is best for you, even if it is not what you want. The GAL may decide that you should get your right to vote back and will tell that to the court. Even if the GAL says you should not get your right to vote back, you can still tell the court that you should. The court makes the decision.

3. THE HEARING

What is a Hearing?

The hearing is the formal meeting where the court hears the evidence and makes a decision.

The hearing is usually held in a courtroom. If you cannot get to the courthouse, ask to have the hearing held where you live. You, your attorney (if any), your witnesses, the GAL, your guardian, and the parties can attend. It is not open to the public.



WHAT IS EVIDENCE?

Evidence can be spoken in court or written in letters or on assistive devices. Evidence is what you tell the court about why you should vote. Evidence is what the people who support you tell the court about why you should vote.

How Do I Prepare for the Hearing?

Before the date of your hearing, you should do several things.

- 1. Think about what it means to vote.** Think about why you want to vote. Think about what you know about elections. Think about what news you read or listen to. Think about activities where you have voted – in school or for a club or group you belong to.
- 2. Say your thoughts out loud.** Practice what you want to tell the court about why you should get your right to vote back. Practice before someone who supports your right to vote. Write down or have someone help you write down your thoughts on voting.
- 3. Find someone who agrees that you should be given your right to vote back.** It can be a friend, family member, teacher, aide, caregiver, or your guardian. Ask them if they will come to the hearing.
- 4. Tell the GAL why you should be allowed to vote.**

Will I Need to be Seen by a Doctor or Psychologist?

Before a guardian was appointed for you, a medical doctor or psychologist talked to you and sent a written report to the court. For the Petition you are filing, the law does not require that you be seen by a doctor or psychologist. But some courts may want to have a doctor or psychologist talk to you about what you know about voting and will want a written report. You can also ask your own doctor or psychologist to write a letter that supports your right to vote.

Will I Need to Speak (Testify) at the Hearing?



Yes. The court needs to hear from you about why you should get your right to vote back. When you communicate to the court, you are testifying. This is also called giving testimony. It is also called giving evidence.

You must give evidence to the court to show that you should get your right to vote back. Your testimony is the most important evidence you can provide. The court must be convinced that you understand the purpose of voting.

If you have difficulty speaking or hearing, the court must provide you with an accommodation such as a sign language interpreter or an assistive device.

Can I Bring Someone with Me to the Hearing?

Yes. You may want a friend, family member, teacher, aide, care giver, or your guardian to come with you to support you. And you may want this person to speak to the court (testify) about why you are capable of voting. Your testimony and the testimony of at least one other person will help the court decide in your favor. You can also ask supporters to write letters to give to the court, explaining why you should get your right to vote back.



What Do I Do If Someone Opposes my Petition?

Someone may not agree that you should get your right to vote back. This could be the GAL, your guardian, or someone else. They may want to tell the court that you should not get your right to vote back.

You may want to talk to them about why they don't agree with you. This may help you present stronger evidence to the court about why you should get your right to vote back.

You can still go ahead with your case. The court will listen to you. The court will listen to your supporters. The court will listen to anyone who disagrees with you. The court will listen to everyone and then make a decision.

What Should I Tell the Court?



The court is deciding if you can understand the objective of the elective process. What does that mean? Know is another word for understand. Purpose is another word for objective. Election is another word for elective process.

You have to explain that you know the purpose of an election. The purpose of an election is to vote for a person (called the candidate) so that the candidate can win.

The law only requires a basic understanding of why there are elections. At the hearing, tell the court why you should be allowed to vote. A simple way to explain is to tell the court you want to vote so that the candidate you vote for can win the election.

But some courts may want to know more. That's why it's a good idea to think and talk about these issues before the hearing.

You can explain the process for voting, such as using an absentee ballot or going to your polling place. You can talk about the different offices that are on the ballot, such as state-wide offices like Governor, legislative offices, or local offices. Or national offices like President or U.S. Senator. You can explain that you have proof of residency (where you live) and have a photo ID (if needed). You can explain what news sources you read or listen to. You can explain that you have experience voting because of school activities or because you belong to a club or group.

You can mention the issue or issues you care about. You can even mention that you want a certain candidate to win because she or he supports an issue or issues you care about. But you do not need to say the name of the candidate you want to vote for. Voting is by secret ballot so who you want to vote for can remain your secret.

Again, it is not required that you do or know all these things. You just need to be ready if the court wants you to tell more than the basics of voting. You can tell the court that other people do not have to pass any tests or explain anything before they can vote.

Other people can vote based on a rational analysis of issues and candidates – or on a whim. They don't have to research platforms, or fact-check speeches, ads, or social media. They don't have to show why they are voting for a candidate. They don't have to show that they understand how the voting process works. The law does not require of you what is not required of other voters.

You want to vote so that the candidate you vote for can win the election.

4. THE DECISION

How will I know what the court decides?



The court may tell you the decision at the end of the hearing. Or the court may want to take more time to decide. Either way, the court will issue a written decision. The decision is called an “Order”. It will say if your right to vote has been given back. A sample (**Form 3**) is attached.

You can also find the sample at:

disabilityrightswi.org/resource-center/guardianship-and-voting

Bring a copy of this form to the hearing and ask the court to use it.

Keep a copy of the Order that the court signs with your guardianship papers.

If I Win, What Happens Next?

If you win, the court will also fill out a form that says you have the right to vote. This form is called “Notice of Voting Eligibility”. The court will send it to the office that runs elections. Keep a copy of the Notice with your guardianship papers. You may want to bring a copy to your polling place the first time you vote.

Then make a plan to vote. You will need proof of where you live (called proof of residency). You will need to register to vote. You will probably need to have a photo ID. Find out the dates of elections. Call the [Disability Rights Wisconsin Voter Hotline](https://disabilityrightswi.org/voter-hotline) at 1-844-347-8683 if you need more information.

If My Request is Denied, What Can I Do?

You can try again in six months. If you have an attorney, she or he can suggest other options, including your right to appeal the decision.

WHAT FORMS DO I NEED?

The following forms are provided as part of this guide:

- **Form 1:** Petition Filed by Individual Under Guardianship
- **Form 2:** Petition Filed by Supporter
- **Form 3:** Order Restoring the Right to Vote

FOR MORE INFORMATION, INCLUDING A SUMMARY OF THIS GUIDE:

- **Disability Rights WI Guardianship and Voting Resource Page:** disabilityrightswi.org/resource-center/guardianship-and-voting
- **Wisconsin Disability Vote Coalition:** disabilityvote.org
- **Wisconsin Guardianship Support Center**
For information and assistance on issues related to adult guardianship, protective placement, and advance directives.
 - ◇ **Website:** gwaar.org/guardianship-resource
 - ◇ **Toll-Free Helpline:** (855) 409-9410
 - ◇ **E-mail:** guardian@gwaar.org
- Sometimes legal assistance is available in your community at no cost through law firms, legal clinics, or law schools. This is called “pro bono” assistance.”

FOR VOTING QUESTIONS, CONTACT US YEAR-ROUND:

DISABILITY RIGHTS WISCONSIN VOTER HOTLINE



- **Phone Number:** 844-DIS-VOTE | 844-347-8683
- **E-mail:** info@disabilityvote.org

disabilityrights | WISCONSIN

1-800-928-8778 Toll-Free 1-833-635-1968 Fax info@drwi.org disabilityrightswi.org

Serving the state of Wisconsin with offices in Madison and Milwaukee

INSTRUCTIONS for USING THIS FORM

Read *Guardianship and Voting: How to Get Your Right to Vote Back* before filling out this form.

USE THIS FORM ONLY IF -

1. You have a Guardian of the Person.
2. Your right to vote was taken away as a result of the guardianship.
3. You have not been back in court about your guardianship in the last six months.
4. You are filing this on your own.

DO NOT USE THIS FORM IF -

1. You do not have a Guardian of the Person or your right to vote has not been taken away.
2. You have been back in court about the guardianship in the last six months.
3. Someone else is filing it on your behalf. Use Form 2 instead.

HOW TO USE THIS FORM

1. Print several copies so that you have extras in case you need to make changes.
2. Look for the blank lines in the form. They look like this _____. Add information using a pen, not a pencil.
3. Do not sign or date the form.
4. This form asks for the date of your guardianship papers. If you do not know the date, call the Register in Probate's office at the Courthouse.
5. This form includes the option to ask the Court to appoint an attorney to represent you if you want an attorney but cannot afford to pay an attorney. If you want an attorney appointed by the Court, put an X in the box in sentence 6 after "Under Oath, I State." And put an X in the box in sentence 2 after "I Request the Court." If you do not want an attorney to be appointed by the Court, do not put an X in either box. If you don't put an X in both boxes, you will have to represent yourself or you will have to find and pay for your own attorney.
6. You need to have a person called a "notary" or "notary public" watch you sign and date the form. You will need to find a person who is a notary in your community. Often a bank has a notary. Attorneys are also notaries. And county officials, such as the Register in Probate or the Clerk of Courts, are notaries. After you sign and date the form in front of the notary, the notary will sign and date the form.
7. Before you take or mail the Petition to the Court, make a few copies of the filled in and signed and dated form. Keep them in your folder.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

IN THE MATTER OF THE GUARDIANSHIP OF

Name

Date of Birth

Amended

**Ward's Petition to Restore
Ward's Right to Register
to Vote and to Vote**

Case No. _____

UNDER OATH, I STATE:

1. I am the ward and am 18 years of age or older.
2. This is a Petition to have my right to register to vote and to vote restored.
3. This Petition is filed more than 180 days after any previous hearing on the Petition for Guardianship or Petition for Receipt and Acceptance of a Foreign Guardianship.
4. By Order of this Court dated _____, I was determined to be incompetent and in need of a guardian. My right to register to vote and to vote were removed by that Order.
5. I believe I am capable of understanding the objective of the elective process and therefore the guardianship order should be modified and my right to register to vote and to vote should be restored in full.
6. I am indigent.

I REQUEST THE COURT:

1. Order a hearing on this Petition.
2. Appoint an attorney to represent me at the county's expense.
3. Designate the persons entitled to notice of hearing and the manner in which notice shall be given.
4. Limit the guardianship of the person and restore my right to register to vote and to vote in all elections.

State of _____
 County of _____
 Subscribed and sworn to before me on _____

 Notary Public/Court Official

 Name Printed or Typed

My commission/term expires: _____

This notarial act involved the use of communication technology.

▶ _____
 Signature

 Name Printed or Typed

 Address

 Email Address

 Telephone Number _____ Date _____

INSTRUCTIONS for USING THIS FORM

Read *Guardianship and Voting: How to Get Your Right to Vote Back* before filling out this form.

USE THIS FORM ONLY IF -

1. A Guardian of the Person has been appointed.
2. The right to vote was taken away as a result of the guardianship.
3. The individual has not been back in court about the guardianship in the last six months.
4. You are filing this on their behalf.

DO NOT USE THIS FORM IF -

1. A Guardian of the Person has not been appointed or the right to vote has not been taken away.
2. The individual has been back in court about the guardianship in the last six months.
3. They are filing the Petition on their own behalf. Use Sample Form 1 instead.

HOW TO USE THIS FORM

1. Print several copies so that you have extras in case you need to make changes.
2. Look for the blank lines in the form. They look like this _____. Add information using a pen, not a pencil.
3. Do not sign or date the form.
4. This form asks for the date of your guardianship papers. If you do not know the date, call the Register in Probate office at the Courthouse.
5. This form includes the option to ask the Court to appoint an attorney to represent the ward if they want an attorney but cannot afford to pay an attorney. If the ward wants an attorney appointed by the Court, put an X in the box in sentence 6 after "Under Oath, I State." And put an X in the box in sentence 2 after "I Request the Court." If the ward does not want an attorney to be appointed by the Court, do not put an X in either box. If you don't put an X in both boxes, the ward will have to represent him or herself or they will have to find and pay for their own attorney.
6. You need to have a person called a "notary" or "notary public" watch you sign and date the form. You will need to find a person who is a notary in your community. Often a bank has a notary. Attorneys are also notaries. And county officials, such as the Register in Probate or the Clerk of Courts, are notaries. After you sign and date the form in front of the notary, the notary will sign and date the form.
7. Before you take or mail the Petition to the Court, make a few copies of the filled in and signed and dated form. Keep them in your folder.

INSTRUCTIONS

1. Give a blank copy to the court.
2. Ask the court to fill in and sign.
3. Keep a copy.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

IN THE MATTER OF THE GUARDIANSHIP OF

Amended

Order to Restore Ward's Right to Register to Vote and to Vote

Name

Date of Birth

Case No. _____

A Petition to Restore Ward's Right to Vote was filed on _____ and a hearing held on _____. After consideration of the report filed by the Guardian ad litem, _____, the testimony of the ward, and _____, and argument;

THE COURT FINDS:

1. **NOTICE AND JURISDICTION**
 - A. Notice was properly served.
 - B. This court has jurisdiction over the subject matter and the ward.
2. **MODIFICATION TO DETERMINATION AND ORDER DATED _____.**
 - A. The ward has shown by clear and convincing evidence that s/he is capable of understanding the objective of the elective process;
 - B. The ward is competent to exercise the right to register to vote and to vote.

THE COURT ORDERS:

1. The ward's right to register to vote and vote in all elections are restored in full, effective immediately.
2. The Determination and Order of this Court dated _____ is hereby amended to restore the ward's right to register to vote and to vote.
3. In all other respects the Determination and Order of this Court dated _____ remains in effect.
4. Other: _____

THIS IS A FINAL ORDER FOR THE PURPOSE OF APPEAL IF SIGNED BY A CIRCUIT COURT JUDGE.