

GUARDIANSHIP & VOTING: Keeping and Restoring the Right to Vote

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Voting Rights & Guardianship Project

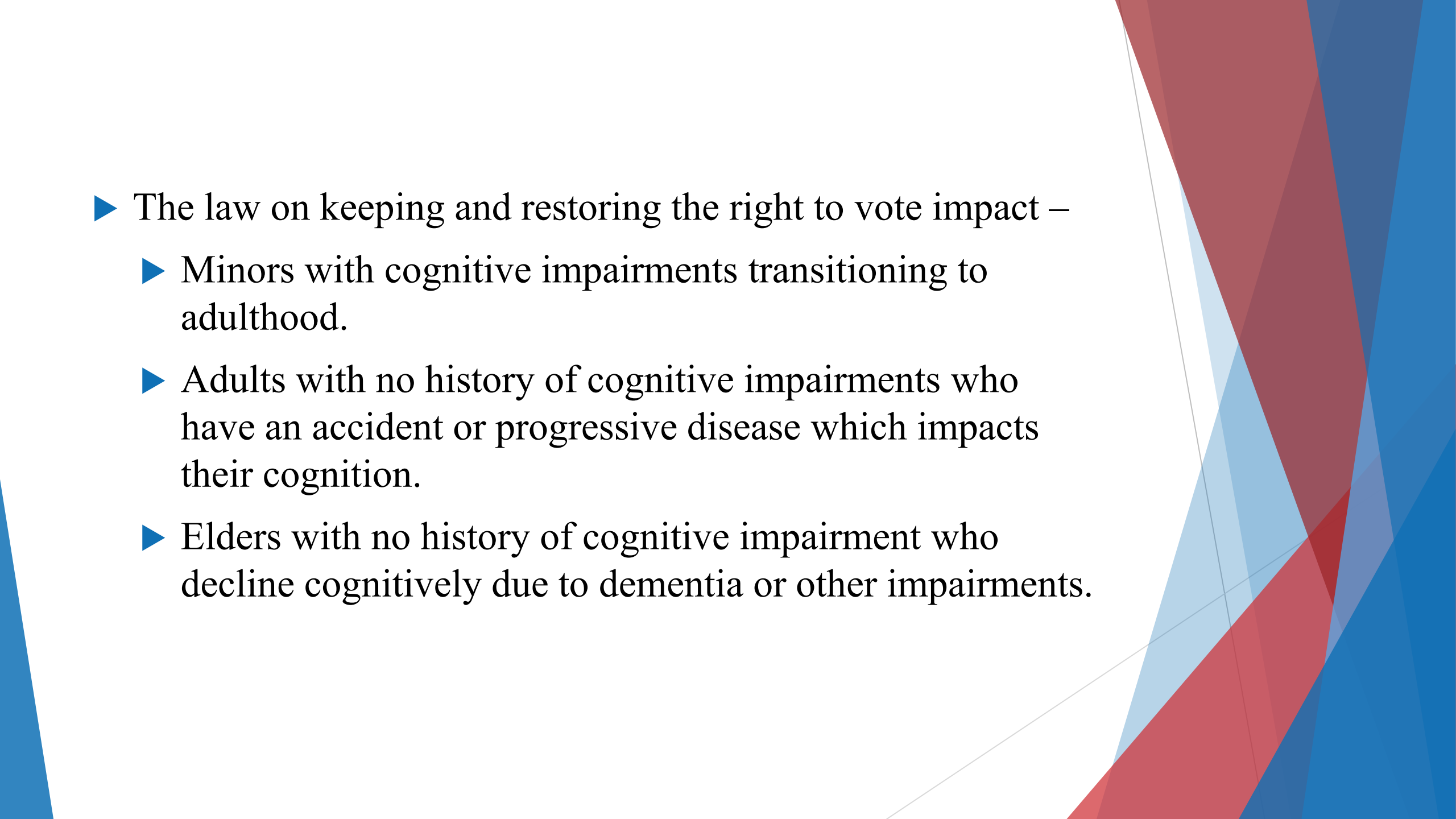
844-347-8683

info@disabilityvote.org

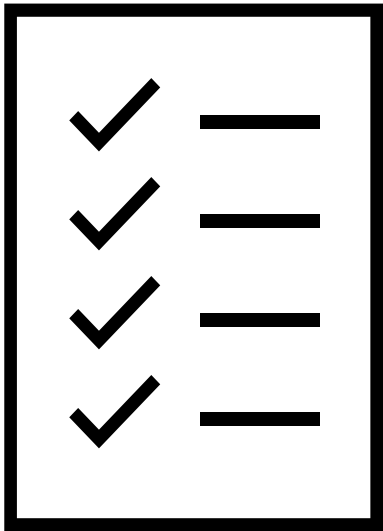
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About Disability Rights Wisconsin

- ▶ DRW is Wisconsin's Protection and Advocacy (P & A) agency for people with disabilities.
- ▶ DRW helps protect the voting rights of people with disabilities, as required by the Help America Vote Act (HAVA).
 - ▶ The Voting Rights and Guardianship Project promotes the retention and restoration of voting rights for people under guardianship.
- ▶ Contact the DRW Voter Hotline for assistance or questions about voting 844-347-8683 / info@disabilityvote.org
- ▶ Join the Wisconsin Disability Vote Coalition, coordinated by DRW and BPDD: <https://disabilityvote.org/>

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- ▶ The law on keeping and restoring the right to vote impact –
 - ▶ Minors with cognitive impairments transitioning to adulthood.
 - ▶ Adults with no history of cognitive impairments who have an accident or progressive disease which impacts their cognition.
 - ▶ Elders with no history of cognitive impairment who decline cognitively due to dementia or other impairments.

Topics



- ▶ Video message from Jen, who got her right to vote back
- ▶ Two new “how to” guides
- ▶ Basics of -
 - ▶ Voter Eligibility
 - ▶ Guardianship Law
 - ▶ Election and Guardianship Law
- ▶ How to Keep the Right to Vote
- ▶ How to Get the Right to Vote Back
- ▶ How to Prove Capacity to Vote
- ▶ Resources
- ▶ Summary

New Guides

- ▶ *Guardianship & Voting: How to Get Your Right to Vote Back*
 - ▶ Detailed, step-by-step guide
 - ▶ 19 pages
 - ▶ Includes legal forms & instructions
 - ▶ On the DRW guardianship and voting page
 - ▶ <https://disabilityrightswi.org/wp-content/uploads/2022/09/DRW-Guardianship-and-Restoration-Full-Guide-acc.pdf>



New Guides

- ▶ *Guardianship & Voting: How to Get Your Right to Vote Back: A Summary*
 - ▶ 4 pages
 - ▶ Quick reference
 - ▶ On the DRW guardianship and voting page
 - ▶ <https://disabilityrightswi.org/wp-content/uploads/2022/09/DRW-Guardianship-and-Restoration-Summary-Factsheet-acc.pdf>

GUARDIANSHIP & VOTING: HOW TO GET YOUR RIGHT TO VOTE BACK

A SUMMARY BY DISABILITY RIGHTS WISCONSIN



This guide briefly explains the steps you must take if you have lost your right to vote in a guardianship case and want to get it back. It may be helpful to ask a friend, family member, teacher, or guardian to read this with you. You may also have them help you follow all the steps.

A detailed guide is available on the Disability Rights Wisconsin (DRW) website at disabilityrightswi.org, or contact the DRW Voter Hotline at 844-347-8683 or info@disabilityvote.org.

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

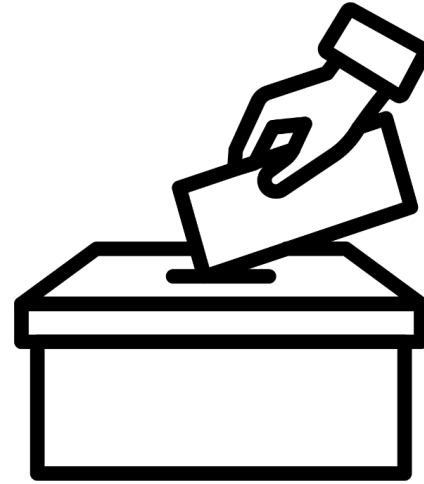
If a guardian was named by a court to make decisions for you, there will be a written decision. It is called a "Determination and Order on Petition for Guardianship Due to Incompetency." These are your guardianship papers. These papers show if you have the right to vote or if it was taken away.

Look for paragraph 3. A. (3). It looks like this:

- ☒ 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 checked, you cannot vote. Use this guide to help you get your right to vote back.

Basics of Voter Eligibility



- ✓ U.S. Citizen
- ✓ Age 18 years or older on or before Election Day.
- ✓ Resident at current address in WI for 28 days prior to election.
 - ✓ if at current Wisconsin address less than 28 days must vote at former address.
- ✓ Not currently serving a sentence for a felony, treason or bribery conviction.
 - ✓ Serving a sentence includes incarceration, parole, probation, or extended supervision (known as being “on paper”).
- ✓ Not made a bet on the outcome of the election.
- ✓ Not determined by a court to be incompetent to vote.

Basics of Guardianship Law

- ▶ Many people assume guardianship automatically means the individual with a guardian cannot vote.
 - ▶ That's wrong.
- ▶ Rights cannot be removed by a general finding of incompetency.
- ▶ Rights are retained unless expressly removed by a specific finding of incapacity regarding that right.
- ▶ To determine whether a person with a guardian can vote -
 - ▶ Need to know which type of guardian was appointed
 - ▶ Need to know what rights were retained or removed

Basics of Guardianship Law

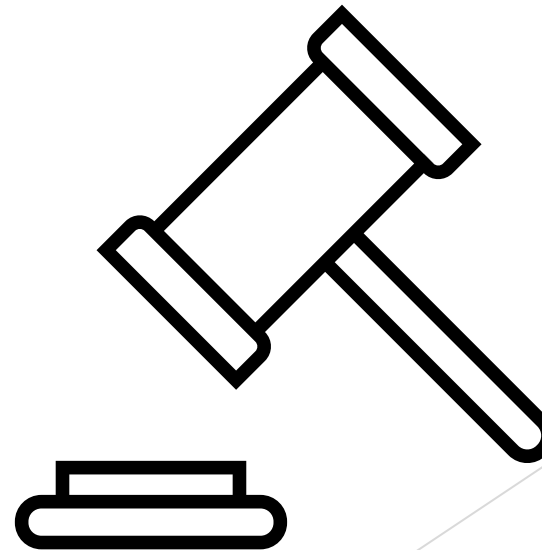
- ▶ Two types of guardians
 - ▶ Guardian of the Person
 - ▶ Authorized to make specified personal decisions for another person (who the law calls the ward)
 - ▶ Guardian of the Estate
 - ▶ Authorized to make specified financial decisions for the ward
- ▶ Options for court depends on capacity of individual
 - ▶ appoint both Guardian of the Person and Guardian of the Estate
 - ▶ appoint only a Guardian of the Person
 - ▶ appoint only a Guardian of the Estate

Basics of Guardianship Law

- ▶ What type of guardian was appointed?
 - ▶ Guardian of the Estate only?
 - ▶ Voting rights can never be removed if only a Guardian of the Estate is appointed.
 - ▶ Guardian of the Person?
 - ▶ What is the scope of the guardianship of the person?
 - ▶ What rights has the individual retained?
 - ▶ What rights have they lost (not transferred to the guardian)?
 - ▶ What rights have been transferred to the guardian?
 - ▶ What rights are shared with the guardian?
- ▶ The answer is in the court's "Determination and Order".
 - ▶ "Guardianship papers"

Basics of Election and Guardianship Law

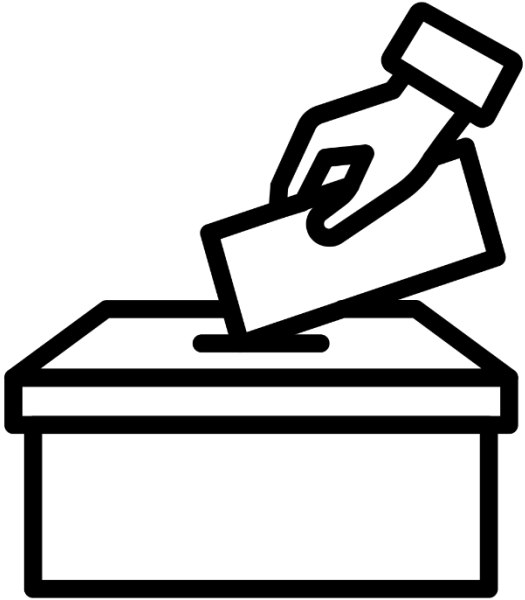
- ▶ Only a court can remove the right to vote of a person alleged to be incompetent to vote.
- ▶ The procedure for removing the right to vote is found in Wisconsin's guardianship law.
- ▶ The right to vote can not be taken away by –
 - guardian
 - parent/other family member
 - election official
 - service provider
 - teacher
 - power of attorney – even if activated



Basics of Election and Guardianship Law

- ▶ The standard for removing the right to vote is -
“incapable of understanding the objective of the elective process.”
- ▶ If the right to vote is removed, it cannot be exercised by the guardian.
- ▶ An individual who has lost the right to vote can petition the court to have their right to vote restored.

How to Keep the Right to Vote



- ▶ Always best not to lose it in the first place.
- ▶ Filing for guardianship of the person puts the right to vote at risk.
 - ▶ One of the issues the court considers when appointing a guardian of the person.
 - ▶ The court controls the outcome, not the petitioner or the proposed ward.
- ▶ The court may remove the right to vote –
 - ▶ even if that is not what the petitioner requested
 - ▶ even if that is not what the individual wants.

How to Keep the Right to Vote -

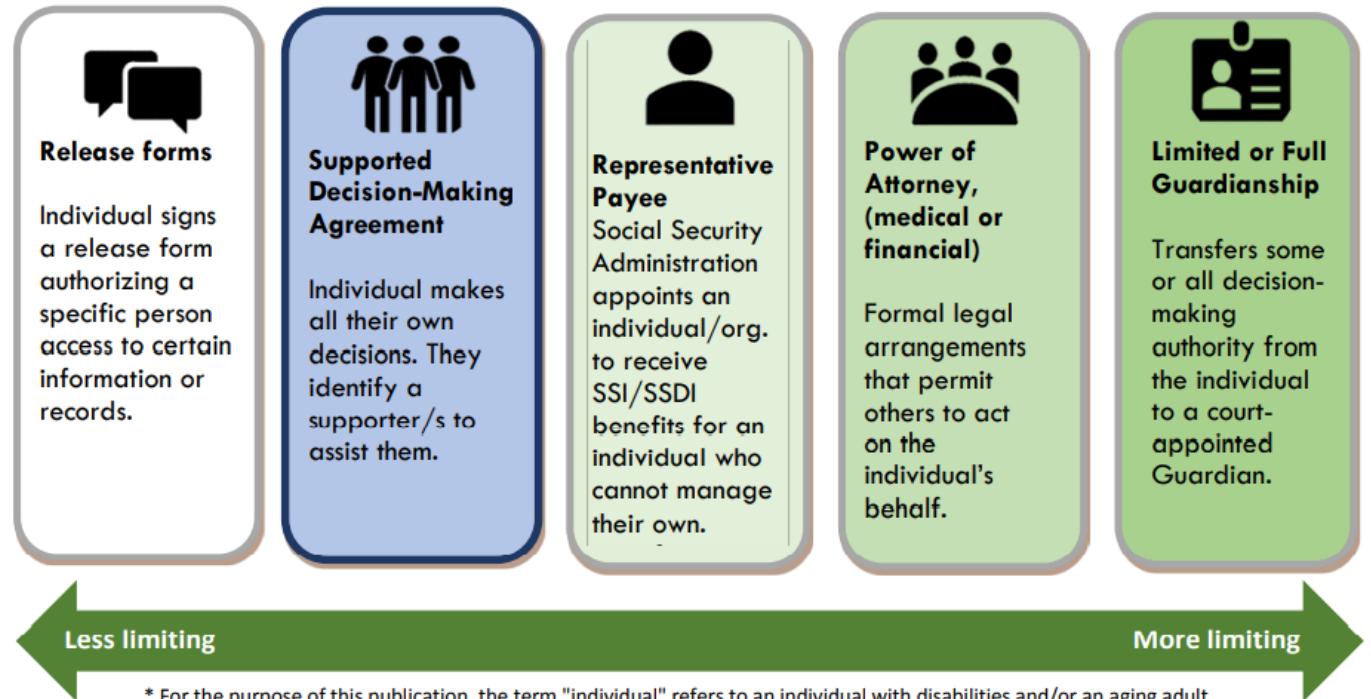
- ▶ To be 100% sure the person does not lose the right to vote -

- ▶ do not file a guardianship petition.

Current decision-making support tools

- ▶ Consider other options -

- ▶ release forms
 - ▶ supported decision making
 - ▶ representative payee
 - ▶ powers of attorney



<https://wi-bpdd.org/wp-content/uploads/2019/12/SDMToolkit.pdf>

WI Board for People with Developmental Disabilities

How to Keep the Right to Vote

- ▶ If guardianship is the best option -
 - ▶ Do not neglect the right to vote in the initial guardianship proceeding.
 - ▶ Advocate for proposed ward's voting rights.
 - ▶ Make sure this issue is thoroughly explored.

How to Keep the Right to Vote -

- ▶ The court relies on -
 - ▶ the petitioner (the person asking to have a guardian appointed)
 - ▶ the Guardian ad Litem (GAL)
 - ▶ the examining doctor or psychologist
 - ▶ their own judgement
- ▶ All need to be persuaded that the individual should keep the right to vote.

How to Keep the Right to Vote

- ▶ If guardianship is the best option -
 - ▶ Petitioner should not check the box in the petition that asks the court to remove the right to vote.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY	
IN THE MATTER OF	<input type="checkbox"/> Amended
_____ Name	Petition for
_____ Date of Birth	<input type="checkbox"/> Temporary
	<input type="checkbox"/> Permanent
	Guardianship Due to Incompetency (Adult Guardianship)
	Case No. _____

I STATE:

1. I am interested as _____

☐ 15. GUARDIAN OF THE PERSON

I request the appointment of a guardian of the person. If granted, I understand that this may result in a prohibition of the individual's ability to possess firearms pursuant to §54.10(3)(f), Wis. Stats.

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

I request that the court declare the individual has 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.

How to Keep the Right to Vote

- ▶ If guardianship is the best option -
 - ▶ Understand the legal standard.
 - ▶ **“Understand the objective of the elective process”.**
 - ▶ Be prepared to explain the legal standard.
 - ▶ Prepare the proposed ward to answer questions.

How to Keep the Right to Vote

- ▶ Talk to the GAL about the standard –
 - ▶ Goal – don't check the box (agree that the right to vote should be retained or have no opinion).
- ▶ Talk to the Examining M.D./Psychologist about the standard –
 - ▶ Goal – check “yes” or leave both blank (agree that the right to vote should be retained or have no opinion).

☐ 14. **GUARDIAN OF THE PERSON**

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

I recommend that the court declare the individual has incapacity to exercise the following rights to

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

9. Does the individual have the evaluative capacity to

A. execute a will?

B. serve on a jury?

C. register to vote or vote in an election?

- | | |
|------------------------------|-----------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |

- ▶ Hire an attorney to represent the individual.

How to Keep the Right to Vote -

- The outcome you want is an empty checkbox on this form.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY
IN THE MATTER OF _____ ☐ Amended
Name _____
Date of Birth _____
Case No. _____

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

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.
☐ not present because the guardian ad litem waived the individual's attendance.
☐ Other: _____

☐ 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.

B. Rights to be removed in full or exercised by individual only with consent of guardian of person

How to Get the Right to Vote Back

- ▶ Find out if the right to vote was lost.
- ▶ Not in Letters of Guardianship.
- ▶ The “Letters” list the authority of the guardian.
- ▶ The guardian of the person is never given the authority to vote on behalf of the ward.
- ▶ Look at “Determination and Order”.
- ▶ Orders prior to 2006 won’t include this info
 - assume right to vote was lost.

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

IN THE MATTER OF _____ ☐ Amended

Name _____ **Determination and Order on Petition for Guardianship**

Date of Birth _____ **Due to Incompetency**

Case No. _____ **(Adult Guardianship)**

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.
☐ not present because the guardian ad litem waived the individual's attendance.
☐ Other: _____

How to Get the Right to Vote Back

- ▶ If the box is not checked, you can vote.

☐ 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.
B. **Rights to be removed in full or exercised by individual only with consent of guardian of person**

- ▶ If the box is checked, you cannot vote.

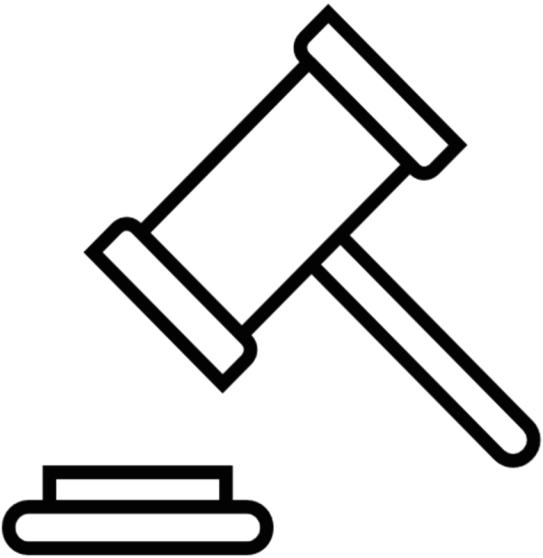
(3) The individual is unable to prevent financial exploitation.

☒ 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.
B. **Rights to be removed in full or exercised by individual only with consent of guardian of person**

- ▶ You can ask to get your right to vote back.

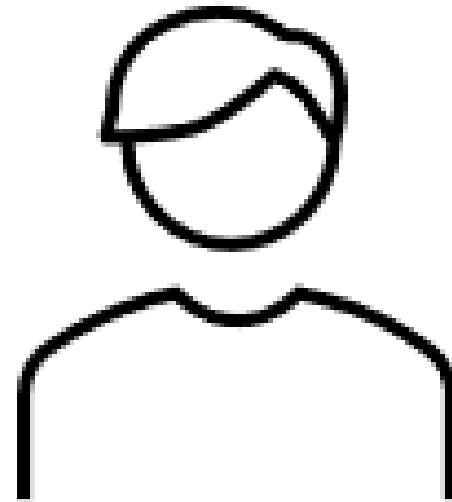
How to Get the Right to Vote Back

- ▶ Go back to court.
- ▶ File a form called a Petition with the court.
- ▶ File petition at office of the county Register in Probate.
- ▶ No cost.
- ▶ The individual decides when to start.
 - ▶ But must be 180 days after last guardianship hearing.



How to Get the Right to Vote Back

- ▶ Can Someone Help?
 - ▶ Yes.
 - ▶ The guardian, a friend, a family member, a service provider, a teacher can help.
 - ▶ Someone who agrees that the individual should get the right to vote back.
- ▶ The individual can file the petition, or a supporter can.



How to Get the Right to Vote Back

- ▶ Is an attorney needed?
 - ▶ Can do the whole process on your own.
 - ▶ But easier if you have an attorney.
 - ▶ Can find and pay for your own attorney.
 - ▶ Can start on your own and then get an attorney.
 - ▶ If can't afford it, ask court to find and pay for an attorney.
 - ▶ Petition includes request.

How to Get the Right to Vote Back

- ▶ Start by filling out **the Petition.**
- ▶ It's easy.
- ▶ Forms & instructions are included in the “how to” guide.
- ▶ **Follow the instructions.**

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

IN THE MATTER OF THE GUARDIANSHIP OF

☐ Amended

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

Name

Date of Birth

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.

How to Get the Right to Vote Back

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY	
IN THE MATTER OF THE GUARDIANSHIP OF _____ Name _____ Date of Birth	<input type="checkbox"/> 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.

How to Get the Right to Vote Back

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

How to Get the Right to Vote Back



- ▶ What Happens Next?
 - ▶ Notice of Hearing
 - ▶ Appointment of Guardian ad Litem (GAL)
 - ▶ Appointment of an M.D. or psychologist?
 - ▶ Hearing
 - ▶ Decision

How to Get the Right to Vote Back

▶ Appointment of GAL

- ▶ The court will appoint a Guardian ad Litem or GAL (pronounced G-A-L)
 - ▶ not a guardian
 - ▶ an attorney
- ▶ The GAL is **not** the individual's attorney.
- ▶ The GAL decides what she or he thinks is best, even if that is not what the individual wants.
- ▶ Tell the GAL why you should get your right to vote back.
- ▶ The GAL tells the court their opinion.
- ▶ Even if the GAL believes that you should not get your right to vote back, you can still tell the court that you should.

How to Get the Right to Vote Back

▶ Appointment of a doctor or psychologist?

- ▶ Not required.
- ▶ Court may want opinion of doctor or psychologist.
- ▶ Tell the doctor or psychologist why you should get your right to vote back.
- ▶ Even if the she or he believes that you should not get your right to vote back, you can still tell the court that you should.
- ▶ You can have you own doctor or psychologist write a letter of support.

How to Get the Right to Vote Back

▶ The Hearing

- ▶ The hearing is the formal meeting at the courthouse.
- ▶ This is when you tell the court why you should get your right to vote back.
- ▶ You must attend the hearing.
- ▶ Ask for accommodations, if needed.
 - ▶ AAC devices
 - ▶ Where hearing held
- ▶ At the hearing, the court will listen to you, your supporter, and the GAL.

How to Get the Right to Vote Back

▶ The Decision

- ▶ The court will decide whether you will get your right to vote back.
- ▶ The court's decision will be written in an "Order."
 - ▶ Sample form is in DRW's guide.
 - ▶ Get a copy of the court's Order.
- ▶ If the court gives you your right to vote back, the court will fill out another form and send it to the election clerk.
- ▶ Register to vote.
- ▶ Bring a copy of the Order when you register and when you vote.

How to Prove Capacity to Vote

- ▶ **“incapable of understanding the objective of the elective process.”**
- ▶ Different from the standard for appointing a guardian of the person:
 - ▶ “the individual is unable effectively to receive and evaluate information or to make or communicate decisions to such an extent that the individual is *unable to meet the essential requirements for his or her physical health and safety.*”
 - ▶ Voting has nothing to do with the physical health or safety of the individual.

How to Prove Capacity to Vote

- ▶ “understanding the objective of the elective process”
 - ▶ no definition in statutes
 - ▶ no court cases interpreting it
- ▶ Different and lower standard than the standard for appointing a guardian of the person.
 - ▶ Health and physical safety not involved.
- ▶ Not a civics or citizenship test.
- ▶ Consider what the standard is for testing the capacity of other voters –
 - ▶ There is none.

How to Prove Capacity to Vote

- ▶ Possible to have the capacity to vote but lack the capacity to exercise other rights.
- ▶ Needs to be “clear and convincing” evidence before right to vote can be taken away.

How to Prove Capacity to Vote

- ▶ What do these words mean?
- ▶ The dictionary tells us:
 - ▶ “objective” means “something toward which effort is directed: an aim, goal, or end of action.”
 - ▶ “elective” means “relating to an election.”
 - ▶ “process” means “a series of actions or operations conducing to an end.”
- ▶ **The phrase means to understand the purpose of an election.**
 - ▶ **The purpose an election is to vote for the candidate that the voter wants to win.**

How to Prove Capacity to Vote

- ▶ Most important question to answer is: Why do you want to vote?
- ▶ Other questions that might be asked:
 - ▶ Why do we have elections?
 - ▶ What is the purpose of voting?
 - ▶ How do you decide who to vote for?
 - ▶ How do people vote?
 - ▶ What offices are on the ballot?
 - ▶ What experience have you had with voting, such as in school clubs?
 - ▶ Do you have a photo ID and proof of residence?
- ▶ One question that should not be asked is who the person wants to vote for.

How to Prove Capacity to Vote

- ▶ Prepare the individual for the discussion with the GAL and for the court experience.
- ▶ At the hearing, if possible, have witnesses who can attest to the individual's understanding of the elective process –
 - ▶ Teachers, care givers, friends, family members, etc.
 - ▶ Oral testimony or letters of support
- ▶ Request accommodations as needed.
 - ▶ AAC devices (augmentative and alternative communication)
 - ▶ Location of hearing

Resources

DRW Voter Hotline

844-DIS-VOTE/ 844-347-8683

info@disabilityvote.org

Wisconsin Guardianship Support Center

Information & assistance related to adult guardianship, protective placement, and advance directives issues

(855) 409-9410

guardian@gwaar.org

Resources

- ▶ DRW Guardianship and Voting Resources
 - ▶ <https://disabilityrightswi.org/resource-center/guardianship-and-voting/>
- ▶ Wisconsin Disability Vote Coalition
 - ▶ <https://disabilityvote.org/>
- ▶ WI Guardianship Support Center (at Greater WI Agency on Aging Resources)
 - ▶ <https://gwaar.org/guardianship-resources>
- ▶ Directory of Wisconsin Probate offices (wripa.org)
 - ▶ <http://www.wripa.org/directory-of-wisconsin-probate-offices.html>

Summary

- ▶ The only way to lose the right to vote is through a court process that follows the procedures in the guardianship statute.
- ▶ In order to lose the right to vote, there must be “clear and convincing” evidence that the individual is “incapable of understanding the objective of the elective process.”
- ▶ If the right to vote was lost in a court proceeding, the individual can later petition the court to have their right to vote restored.
 - ▶ The individual must establish that they now understand the purpose of voting.

Thank You for Watching

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Toll Free Number: [800-928-8778](tel:800-928-8778)

Email: info@drwi.org

DRW Voter Hotline: [844-347-8683](tel:844-347-8683)