

Competency, Guardianship, and Voting in Wisconsin



Image 1: A Hispanic man in a wheelchair fills out a voter registration form.

**Disability Rights Wisconsin
Protection and Advocacy for People with Disabilities**

Introduction

In Wisconsin, anyone 18 years old or older is legally an adult and is presumed by law to be able to manage all personal and financial affairs, including the ability to register to vote and to vote. However, an adult may have their right to vote taken away by a court under Chapter 54 of the Wisconsin Statutes.

Nobody has the right to vote instead of you or to tell you how to vote — not even your guardian.

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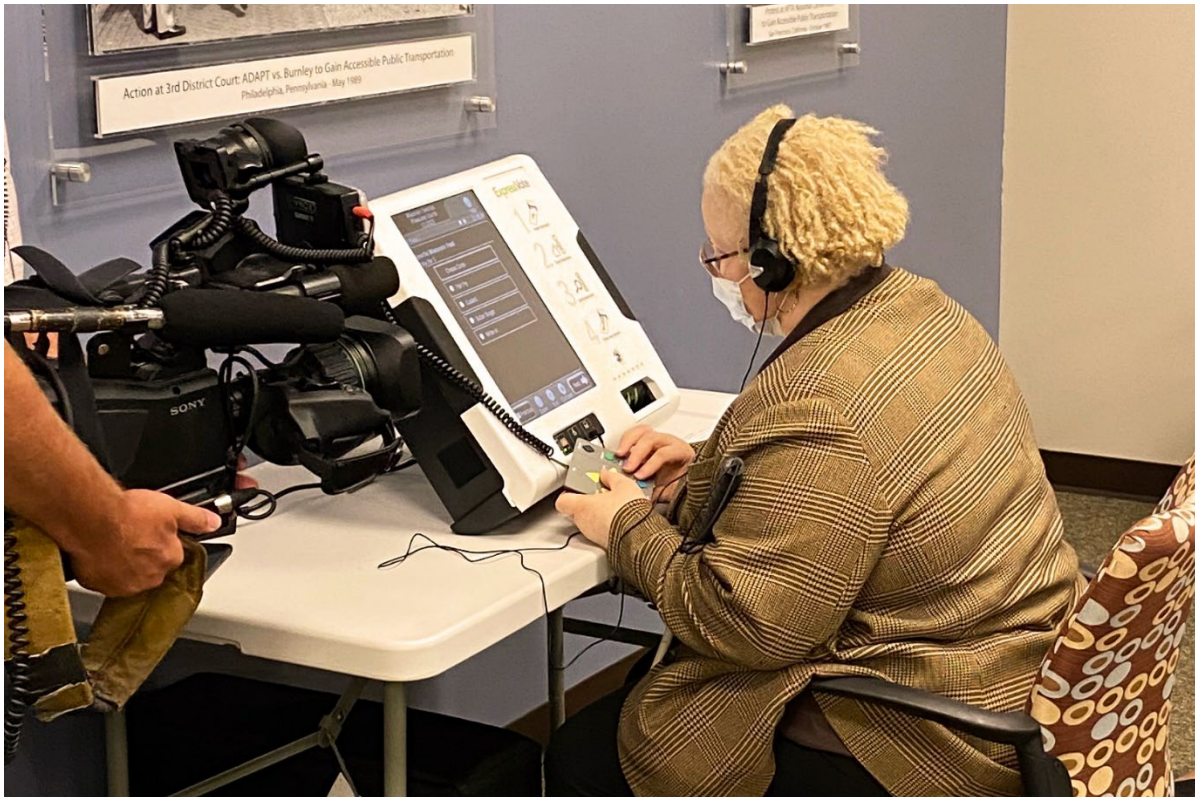


Image 2: A woman wearing a surgical mask uses an accessible voting machine.

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Loss of Right to Vote

There are two ways a person may lose their right to vote due to allegations of incompetency:

1. Under the process for appointing a guardian, if an adult is found by a court to be “incompetent,” a guardian of the person will be appointed. [1]
 - As part of the process, the judge or court commissioner will determine if the person should lose their right to vote.

1 The issue of whether a person should lose the right to vote arises only when a guardian of the person is being appointed. The issue of voting does not arise if only a guardian of the estate is being appointed.

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- A person will lose the right to vote if the judge or commissioner determines that the individual is “incapable of understanding the objective of the elective process.”
(Wis. Stat. § 54.25 (2) (c) 1. g.)
- Even if a guardian of the person is appointed, the person will retain the right to vote if the judge or commissioner determines that the person is capable of understanding the objective of the elective process.
- The court’s decision regarding the right to vote will be recorded in a court form called a “Determination and Order on Petition for Guardianship Due to Incompetency.”
- A person who has lost the right to vote may request that their right to vote be restored.

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2. A person may also lose their right to vote through a petition to the circuit court filed for the sole purpose of finding the person “incapable of understanding the objective of the electoral process.”

- This petition can be brought by any other voter who lives in the individual’s municipality.
- If the court grants the petition, a person will lose their right to vote even though no guardian is appointed.

(Wis. Stat. §§ 54.25 (2) (c) 1. g. and 6.03 (3))

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Restoration of Right to Vote

Lost voting rights may be restored in one of two ways:

1. A person who has a guardian and who has lost the right to vote may petition the court to restore their right to vote. (Wis. Stat. § 54.64 (2) (a))
 - A step-by-step guide, including the Petition to Restore the Right to Vote, on how to restore the right to vote can be found at: disabilityrightswi.org/resource-center/guardianship-and-voting/
 - The court will appoint a guardian ad litem (GAL) and schedule a hearing.

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- The person has the right to their own attorney to advocate for their wishes, and if the person is indigent, the county will pay the attorney's fee.
2. A person who is protectively placed can ask to have their right to vote restored during the **annual Watts review**.
- A person who has been found incompetent may also be ordered by a court to be protectively placed by the county human services agency. The county, in turn, finds the appropriate placement and/or services for the person. (Chapter 55, Wisconsin Statutes)
 - The courts must review every placement every year. This is called an annual review, a Watts review, or Watts hearing.

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- The court will appoint a guardian ad litem (GAL) and schedule a hearing.
- During the period of the Watts review, the person should tell the GAL that they want their right to vote restored.
- A Petition to Restore the Right to Vote must be filed so that the court can consider this issue along with the protective placement. The petition can be filed by the person or by the GAL.
- The person has the right to their own attorney to advocate for their wishes, and if indigent, the county will pay the attorney's fee.

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Power of Attorney for Health Care

A person who has an **activated** Power of Attorney for Health Care still has the right to vote as long as that right has not been taken away through a guardianship proceeding or the separate proceeding to determine eligibility to vote.

How can I find out if I have the right to vote?

If you are under guardianship, you can find out whether or not you have the right to vote from your Determination and Order form. Ask your guardian for a copy.

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You can also ask your attorney, or another person who has a signed release from you, or your guardian to request a copy of the Determination and Order form from the Office of the Register in Probate (Probate Court). Each copy costs about \$2.

You or another person requesting a copy of the Determination and Order form should do so in the Probate Court where you receive services, or in the county that is paying for your services. If neither county has the form, contact the county in which your guardian resides.

Information about the right to vote is **not** included in the Letters of Guardianship.

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If you have any questions about people with disabilities and the voting process:

Disability Rights Wisconsin

- Website: disabilityrightswi.org
- Voter Hotline: 844-347-8683
- Email: info@disabilityvote.org

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