

Disability Rights and Voting: A Briefing for Policymakers & Election Officials

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A project of Disability Rights Wisconsin and the Wisconsin Board for People with Developmental Disabilities.

Sponsored by Wisconsin Disability Vote Coalition

- ▶ The WDVC is a non-partisan effort to help ensure full participation in the entire electoral process of voters with disabilities, including registering to vote, casting a vote, and accessing polling places.
- ▶ The Coalition is coordinated by Disability Rights Wisconsin and the Wisconsin Board for People with Developmental Disabilities. Members include people with disabilities, community agencies, and other partners.

Thank you to our co-sponsors

- ▶ Access to Independence
- ▶ Adaptive Community Approach Program (ACAP)
- ▶ The Arc-Dane County
- ▶ Center for Independent Living for Western Wisconsin
- ▶ Employment Resources, Inc.
- ▶ Greater Wisconsin Agency on Aging Resources, Inc.
- ▶ Independence First
- ▶ League of Women Voters of Wisconsin
- ▶ League of Women Voters Milwaukee County
- ▶ LOV Inc (Living Our Visions, Inclusively)
- ▶ Mental Health America of Wisconsin
- ▶ Midstate Independent Living Choices, Inc.
- ▶ Milwaukee County Commission on Aging
- ▶ NAMI Wisconsin
- ▶ National MS Society
- ▶ North Country Independent Living
- ▶ Options for Independent Living
- ▶ People First Wisconsin
- ▶ Portal Inc.
- ▶ Promote Local, LLC
- ▶ Save IRIS
- ▶ Survival Coalition of Wisconsin Disability Organizations
- ▶ Vision Forward Association
- ▶ Wisconsin Aging Advocacy Network
- ▶ Wisconsin Coalition of Independent Living Centers, Inc
- ▶ Wisconsin Council of the Blind & Visually Impaired
- ▶ Wisconsin Family Ties
- ▶ Wisconsin Milkweed Alliance, Inc.

Briefing Logistics

1. Captioning: Click on the Live Transcript CC icon to use captioning, or to turn it off. Then click “show subtitle”. Click “view full transcript” to see the full captioning stream.
2. ASL Interpreters are available. You may pin the interpreter. If you need to communicate directly w/interpreter, note that in the Q & A.
3. Enter questions in the Q & A. We will answer as many as possible, and can follow up after the briefing.
4. The links to the briefing agenda and briefing resources document are being shared in the chat. Includes a list of Wisconsin State Statutes Related to Accessibility.

Purpose of the briefing

To inform policymakers and election officials regarding:

- ▶ The voter experiences of Wisconsinites with a disability
- ▶ Barriers experienced by voters with disabilities and older adults
- ▶ Overview of federal laws and policies that protect rights of voters with disabilities
- ▶ Key state laws that protect rights of voters with disabilities
- ▶ To share resources on disability rights and voting.

The Disability Vote

- ▶ Approximately 23% of the electorate in the November 2020 election were individuals with some type of disability, according to AAPD.
- ▶ This is a diverse group of voters: people who are blind and low vision, deaf and hard of hearing, with intellectual and developmental disabilities, physical disabilities, mental health disabilities, complex medical needs, and chronic health conditions.
- ▶ Many older adults have disabilities acquired through aging, although they may not formally identify as a person with a disability.
- ▶ People with disabilities are underrepresented at the polls. The *Rutgers University Fact Sheet on Disability and Voter Turnout in the 2018 Elections* notes a 10.4% gap in Wisconsin voter turnout between citizens with and without disabilities.

Major Barriers for Voters with Disabilities

- ▶ Accessibility concerns
- ▶ Lack of Photo ID (high percentage of non-drivers)
- ▶ Lack of Transportation
- ▶ Failure to provide accommodations
- ▶ Limited access to internet and technology (digital divide)
- ▶ Lack of training for poll workers
- ▶ Confusion about voting rights, including for people under guardianship
- ▶ Stigma and discrimination

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- ▶ Voter Access & Engagement Manager - National Disability Rights Network
- ▶ Leads a team to coordinate NDRN's national network around voting rights, voter engagement, and access to the vote for people with disabilities in every US state, district, and territory.
- ▶ Has provided public testimony on multiple occasions to the United States Congress, US Commission on Civil Rights, and the US Election Assistance Commission.

Voting Accessibility Laws

- ▶ The Americans with Disabilities Act (ADA) of 1990
- ▶ Help America Vote Act (HAVA) of 2002
- ▶ Voting Accessibility for the Elderly & Handicapped Act (VAEHA) of 1984
- ▶ Voting Rights Act (VRA) of 1965
- ▶ National Voter Registration Act (NVRA or Motor Voter) of 1993

ADA and Voter Access

- ▶ Title II of the ADA requires state and local governments (“public entities”) to ensure that people with disabilities have a full and equal opportunity to vote.
- ▶ The ADA’s provisions apply to all aspects of voting, including voter registration, site selection, and the casting of ballots, whether on Election Day or during an early voting process.
- ▶ Every option available to voters must be fully accessible to all voters, including in person and remote voting options.
- ▶ Accommodations, like curbside voting and moving up in line, should be used and must be used in some situations.

HAVA and the Voting Booth

- ▶ Guarantees all voters the right to a private and independent ballot.
- ▶ Requires jurisdictions responsible for conducting federal elections to provide at least one accessible voting system for persons with disabilities at each polling place in federal elections.
- ▶ The accessible voting system must provide the same opportunity for access and participation, including privacy and independence, that other voters receive.

VAEHA Accommodations

- ▶ Requires accessible polling places in federal elections for elderly individuals and people with disabilities, pre-dating the ADA.
- ▶ Where no accessible location is available to serve as a polling place, voters must be provided an alternate means of voting on Election Day.
- ▶ Creates the right for voters to request to be moved up in line. Voters who are not moved to the front of the line must be in some way accommodated.

Voting Rights Act

- ▶ Provides for voters who need assistance to vote by reason of blindness, disability, or inability to read or write.
- ▶ Any such voter may be given assistance by a person of the voter's choice, other than the voter's employer or agent of the employer or officer or agent of the voter's union.
- ▶ Prohibits conditioning the right to vote on a citizen being able to read or write, attaining a particular level of education, or passing an interpretation “test.”

Motor Voter and Disability

- ▶ Aims, among other things, to increase the historically low registration rates of persons with disabilities.
- ▶ Requires all offices that provide public assistance or state-funded programs that primarily serve persons with disabilities to also provide the opportunity to register to vote in federal elections.
- ▶ Always a best practice, even in states that offer same day registration.

Voting Rights

- ▶ A medical diagnosis does not disqualify a person from voting. A diagnosis of Alzheimer's disease, traumatic brain injury, or other cause of cognitive impairment does not disqualify a person from being eligible to vote.
- ▶ Evaluating a person's capacity to vote should not be done except by a court authorized to do so.
- ▶ Guardianship - people under guardianship may retain the right to vote. Only a court can take away that right.
- ▶ CMS requires nursing homes that receive Medicare and Medicaid funding to affirm and support their residents right to vote.

Voter Access in the COVID Era

- ▶ Voting difficulties among people with disabilities declined markedly from 2012 to 2020.
- ▶ About one in nine voters with disabilities encountered difficulties voting in 2020. This is double the rate of people without disabilities.
- ▶ Among people with disabilities who voted in person, 18% reported difficulties, compared to 10% of people without disabilities. The disability number is down from 30% in 2012.

What We Did Right

- ▶ Expanding early voting
- ▶ Adding dropboxes
- ▶ Extending vote by mail deadlines
- ▶ Relaxing unnecessary vote by mail requirements
- ▶ Expanding use of electronic remote voting (already required by the MOVE Act)
- ▶ Focus on voters in long term care facilities (supported by CMS guidance)



▶ Q & A

Absentee Voting

- ▶ Importance of absentee voting
 - ▶ Health or mobility restrictions, lack of transportation, accessibility concerns
- ▶ In-person early voting
- ▶ Importance of support with the voting process
 - ▶ Need for increased support from state funded programs
 - ▶ Federal and Wisconsin law state right to assistance
 - ▶ Limited access to technology
- ▶ Assistance returning absentee ballots and witnessing

Indefinitely Confined Voters

- ▶ Permanent absentee voters due to age, illness or disability.
- ▶ Important safeguard for some voters: *Individuals for whom, due to his or her own age, illness, or disability, either permanent or intermittent, leaving their residence imposes a burden.*
- ▶ Legislature passed Photo ID Law in 2011: exempted permanent absentee voters from having to provide a copy of their photo ID.
- ▶ These voters are allowed a substitution under state law. Their witness verifies their identity and certifies to that by signing the return envelope. State law requires the witness to verify the name and address of the indefinitely confined voter “in lieu of providing proof of identification.” [Wis Stats 6.87\(4\)\(b\)2](#).

Indefinitely Confined

- ▶ 80% of indefinitely confined voters had photo ID on file or had shown their ID in the past four years when they voted in person.
 - ▶ WEC November 2020 Election Data Report:
<https://elections.wi.gov/node/7329>
- ▶ Current language confusing and dated.
- ▶ DRW has proposed language to update and clarify the statute, for “Permanent Absentee Voter due to age, illness, or disability.”

Guardianship and voting

- ▶ More training needed about guardianship and voting rights, and alternatives to guardianship.
- ▶ In Wisconsin, a person under guardianship retains the right to vote unless the court expressly removes it.
- ▶ The right to vote may only be taken away by a court, usually in a guardianship proceeding, but only if the court decides that the person is *“incapable of understanding the objective of the elective process.”*
- ▶ A person who has a guardian and has lost the right to vote may petition the court to restore their right to vote (Wis. Stat 54.64(2)(a)).
- ▶ Wisconsin law recognizes that a person who did not, when the guardianship went into effect, understand the purpose of an election may, with instruction, learn about elections.

Transportation: A Barrier for Voting

- ▶ Lack of affordable and accessible transportation statewide
- ▶ Rural areas severe shortage: programs limited to larger rural communities and do not go outside city limits.
- ▶ Medicaid transportation does not cover cost to polls or DMV.
- ▶ Volunteer “rides to the polls” do not have lifted equipped vehicles
- ▶ Transportation barriers contribute to heavy reliance on absentee voting
- ▶ In 2020, clerks sent absentee ballot applications to registered voters; helped many persons with disabilities with limited access to transportation.

Accessibility at Polling Places & Curbside Voting

- ▶ 30 years after ADA passage, accessibility of Wisconsin polling places still a concern, especially in rural areas.
- ▶ Accessibility must be addressed by WEC and legislature.
- ▶ Needed: State-wide accessibility assessment of all polling places, both physical access and programmatic access.
- ▶ Accessibility Issues elevate the need for curbside voting!
Required by state law but not consistently available or promoted.
- ▶ For persons with disabilities who have difficulties ambulating, curbside voting is a necessity.

Lack of Broadband in Rural Areas

- ▶ Lack of broadband in rural areas, and affordability when available, is a barrier for persons with disabilities.
- ▶ Only access to the internet may be at area libraries which may not be accessible.
- ▶ Registering for an absentee ballot relies on scanning and emailing required voter identification to the county clerk.

Right to Vote Privately and Independently

- ▶ **Accessible Voting Equipment:** Required in every polling place on Election Day under federal law.
- ▶ **Right to an Assistant:** An individual of the voter's choice, including a poll worker, excluding the voter's employer or union steward.
- ▶ **Accessible Absentee Ballot:** Wisconsin does not have an ADA-compliant accessible absentee ballot.

What are Residential Care Facilities?

- ▶ Nursing Homes
- ▶ Community-Based Residential Facilities (CBRFs)
- ▶ *Qualified* Retired Homes
- ▶ Residential Care Apartment Complexes (RCACs)
- ▶ Adult Family Homes

Special Voting Deputies (SVDs)

- ▶ Individuals appointed by a municipal clerk (or board of elections) to conduct absentee voting at certain residential care facilities. A person who is appointed as an SVD:
 - Must be a qualified elector of the county,
 - Must attend training,
 - May not currently be employed by the facility (or within two years of the appointment), and
 - May not be an immediate family member of anyone currently employed by the facility (or employed by the facility within two years of the appointment).

Residential Care Facilities and Retirement Homes Served by SVDs

- ▶ Municipal clerks are required to use SVDs in residential care facilities *if*:
 - There are at least five registered electors of the municipality who are occupants of the facility, *and*
 - It the clerk has at least one absentee ballot application from an occupant of the facility.
- ▶ Retirement homes may be served by SVDs if the municipal clerk determines:
 - A significant number of the occupants lack adequate transportation to the appropriate polling place,
 - Need assistance in voting,
 - Are aged 60 or over, or
 - Are declared as indefinitely confined electors.

Who May Undertake the Following Actions for Electors Voting by Special Voting Deputy

The following table summarizes the rules related to assisting voters served by SVDs.

Action	Anybody	Family Member*	SVD	Power of Attorney or Guardian
<u>Assist</u> a voter in completing a Voter Registration Application ⁺	Yes	Yes	Yes	Yes
<u>Assist</u> the voter by signing the voter's name on the Voter Registration Application ⁺	Yes	Yes	Yes	Yes
<u>Assist</u> a voter in completing a request for absentee ballot	Yes	Yes	Yes	Yes
<u>Assist</u> the voter by signing the voter's name on an absentee ballot request	Yes	Yes	Yes	Yes
<u>Assist</u> a voter in marking a ballot at the direction of a voter	No	Yes	Yes	No
<u>Assist</u> the voter by completing the Absentee Certificate Envelope	No	Yes	Yes	No
<u>Assist</u> the voter by signing the voter's name on the Absentee Certificate Envelope	No	Yes	Yes	No
<u>Assist</u> a voter by requesting an absentee ballot for the voter	No	No	No	Yes

⁺ Before the open registration cut off only

* Includes a family member employed by the facility



▶ Q & A

Resources

- Briefing Resource list
<https://disabilityvote.org/wp-content/uploads/2021/04/DVC-Briefing-Resources-4-2021-acc.pdf>
- List of Wisconsin Accessibility Provisions
<https://disabilityvote.org/wp-content/uploads/2021/04/State-Statutes-Related-to-Accessibility-acc.pdf>
- WEC November 2020 Election Data Report
<https://elections.wi.gov/sites/elections.wi.gov/files/2021-01/D.%20November%202020%20Election%20Data%20Report.pdf>
- Contact Briefing Speakers. Email info@disabilityvote.org with your request and we will connect you.