GUARDIANSHIP & VOTING: Preserving and Restoring the Right to Vote

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- People First Wisconsin
- Survival Coalition of Wisconsin Disability Organizations
- The Arc Wisconsin
- WI Coalition of Independent Living Centers
- WI Guardianship Association
- Wisconsin Guardianship Support Center
About Disability Rights Wisconsin

- DRW is the federally mandated Protection and Advocacy system for Wisconsin
- DRW helps protect the voting rights of people with disabilities, as required by the Help America Vote Act
- 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/
**Program Logistics**

Please remain muted throughout the session to limit background noise.

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Speakers, please say your name before you speak to help with accessibility.

Links to the presentation and resources will be emailed to all who registered for this event, and will be posted on the DRW and Disability Vote Coalition website.
How to Preserve and Restore the Right to Vote

- Ellen Henningsen, J.D.
  - Director, Voting Rights & Guardianship Project at Disability Rights Wisconsin
New Resources

- Guardianship & Voting: How to Get Your Right to Vote Back: A Summary
  - 4 pages
  - Quick reference
  - Will be available on websites of DRW, DVC and others.
  - Links will be emailed to registrants.
New Resources

- Guardianship & Voting: How to Get Your Right to Vote Back
  - Detailed, step-by-step guide
  - 19 pages
  - Includes legal forms & instructions
  - Will be available on websites of DRW, DVC and others.
  - Links will be emailed to registrants.
TOPICS

- Voter Eligibility Basics
- Guardianship Law Basics
- How to Keep Your Right to Vote
- How to Get Your Right to Vote Back
  - if lost in a guardianship case
- How to Convince the Court that You Should Get Your Right to Vote Back
Basics of Voter Eligibility

You are eligible to vote if:

✓ You are a U.S. Citizen
✓ You will be at least 18 years old on or before Election Day
✓ You have resided at your current address in WI for 28 days prior to the election
  ✓ Must vote at former address if residence at current address is less than 28 days
✓ You are not currently serving a sentence for a felony conviction.
  ✓ including incarceration, parole, probation, or extended supervision (also known as being “on paper”)
✓ You have not been determined by a court to be ineligible to vote.
Basics of Guardianship Law

- Two types of guardians
  - Guardian of the Person
    - Authorized to make specified personal decisions
  - Guardian of the Estate
    - Authorized to make specified financial decisions
- Options for court
  - depends on capacity of individual
  - Guardian of the Person and Guardian of the Estate
  - only a Guardian of the Person
  - only a Guardian of the Estate
Basics of Guardianship Law

- Many people assume guardianship automatically means the individual with a guardian cannot vote.
  - That’s wrong.
- Rights are retained unless expressly removed.
- What type of guardian was appointed?
  - Guardian of the Estate only?
    - Capacity of individual to make financial decisions.
    - Voting rights can never be removed if only a Guardian of the Estate is appointed.
Basics of Guardianship Law

- Guardian of the Person?
  - Capacity of individual to make personal decisions.
  - 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”
How to Keep the Right to Vote

- A person under guardianship keeps the right to vote unless a court expressly removes it.
- **Only a court** can take away your right to vote.
- People who can not take away your right to vote -
  - guardian
  - parent/other family member
  - election official
  - service provider
  - teacher
  - power of attorney
How to Keep the Right to Vote -

- Your right to vote is at risk in the guardianship process.
  - One of the issues the court considers when appointing a Guardian of the Person.
- You do not control the outcome.
  - The court controls the outcome.
- The court may remove the right to vote even if that is not what the petitioner requested or 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.

- Consider other options -
  - release forms
  - supported decision-making
  - rep payee
  - powers of attorney
  - rep payee
How to Keep the Right to Vote -

- If guardianship is the best option -
  - try to keep the right to vote.
  - Petitioners should be careful how they describe the individual’s abilities and disabilities so as not to jeopardize the right to vote.
How to Keep the Right to Vote -

- To minimize the risk of losing the right to vote -
  - In the Petition - don’t check the box.

STATE OF WISCONSIN, CIRCUIT COURT. ____________________________ COUNTY

IN THE MATTER OF

Name

Date of Birth

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 -

- The court relies on -
  - their own judgement
  - the Guardian ad Litem (GAL)
  - the examining doctor or psychologist
  - the petitioner (the person asking to have a guardian appointed)

- Some or all of them may believe that if a person needs a guardian for any reason, they should lose their right to vote.
How to Keep the Right to Vote -

- Negative reports from the GAL and the doctor/psychologist can influence the court.

- Talk to the Guardian ad Litem about why the individual should keep the right to vote.

- Talk to doctor/psychologist about why the individual should keep the right to vote.

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?
How to Keep the Right to Vote -

- Consider getting an attorney for the individual.
  - Tell the GAL
- Be prepared to present evidence that the individual should keep their right to vote.
- But remember, petitioner and individual don’t control the outcome.
  - The court decides.
The outcome you want is an empty checkbox on this form. What needs to be done to convince the court will be discussed later.
How to Get the Right to Vote Back

- Find out if you lost the right to vote.
- Look at Determination and Order.
- Not in Letters of Guardianship.
- 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 part**. If removed, this right may be exercised by the individual only with consent of guardian of person.
How to Get the Right to Vote Back

▶ If the box is checked, you cannot vote.

- The individual is unable to prevent financial exploitation.

- **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

- How do I start?
- Do I need to get anyone else’s okay?
- Can I have someone help me?
- Do I need an attorney?
- What does it cost?
- Who can file the petition?
- Where do I go to start?
- What will happen after I start?
How to Get the Right to Vote Back

How Do I Start?
  - You must go back to court.
  - You must file a form called a Petition with the court.
How to Get the Right to Vote Back

- Do I Need Anyone’s Okay?
  - No.
  - You do not need to ask the county or anyone else to start.
  - You decide if you want to ask to get your right to vote back.
How to Get the Right to Vote Back

- Can Someone Help Me?
  - Yes.
  - Your guardian, a friend, a family member, a service provider, a teacher can help you.
  - Someone who agrees that you should get your right to vote back.
How to Get the Right to Vote Back

- Do I Need an Attorney?
  - No.
  - Easier if you have your own attorney.
- What are my options?
How to Get the Right to Vote Back

- Options -
  - can do the whole process on your own.
  - can find and pay for your own attorney.
  - can start on your own and then get an attorney.
    - If you can’t afford it, you can ask court to find and pay for your attorney.
    - There is a place in the Petition.
How to Get the Right to Vote Back

- What Does it Cost?
  - No cost or fee to file.

- Who can file?
  - you, your guardian, a friend, a family member, anyone.
  - someone who agrees that you should get your right to vote back.

- Where Do I File?
  - with court that granted the guardianship
  - or the court where it was transferred to
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.
- Links will be emailed to registrants.
- Follow the instructions.
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

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

- Take or mail the Petition to the Register in Probate office
  - Directory of Wisconsin Probate offices (wripa.org)
How to Get the Right to Vote Back

- What Happens Next?
  - Notice of Hearing
  - Appointment of Guardian ad Litem
  - Appointment of an examining doctor or psychologist?
  - Hearing
  - Decision
How to Get the Right to Vote Back

Notice of Hearing

- The court will tell you when and where the hearing will be. This is called “Notice.”
- It is very important that you remember the date and time and place of the hearing.

- The court will want your guardian to be told the date and time and place of the hearing.
- The court may want other people to be told.
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** your attorney.
  - The GAL decides what she or he thinks is best, even if that is not what you want.
  - The GAL tells the court.
  - Tell the GAL why you should get your right to vote back.
  - 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 an examining doctor or psychologist?
  - Not required.
  - Court may want opinion of doctor or psychologist.
  - You can have your 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.
  - If you can’t get to the courthouse, ask to have the hearing held where you live.
  - 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.”
- If the court gives you your right to vote back, the court will also fill out another form and send it to the election clerk.
How to Get the Right to Vote Back

- Be sure to get a copy of the court’s Order.
- Be sure to get a copy of the form for the election clerk.
- If you vote in person, bring copies with you.
How to Convince the Court to Give you Your Right to Vote Back

- What Is the Court Deciding?
- What Should I Do Before the Hearing?
- What Should I Do at the Hearing?
How to Convince the Court to Give you Your Right to Vote Back

What Is the Court Deciding?

- Do you understand the objective of the elective process?
  - Do you know the purpose of an election?
  - Do you know why we have elections?
  - What is decided by an election?

- The purpose is to vote for a person (called a candidate) so that the person can win.
How to Convince the Court to Give you Your Right to Vote Back

- You need to explain that you know the purpose of an election.
- You need to explain that the purpose is to vote for a candidate so the candidate can win.
- You do not need to say which candidate you want to vote for.
- You can tell the court that other people do not have to pass any tests or explain anything before they can vote.
How to Convince the Court to Give you Your Right to Vote Back

Before the hearing -

Think about

- what it means to vote.
- why you want to vote.
- what you know about elections.
- how you decide who to vote for.

Practice

- what you want to tell the court.
- in front of a supporter.
How to Convince the Court to Give you Your Right to Vote Back

- Find someone who agrees that you should be allowed to vote.
  - Friend, family member, teacher, aide, caregiver, or your guardian.
- Ask them to come to the hearing and tell the court why you should be allowed to vote.
- Or have them write a letter of support.
How to Convince the Court to Give you Your Right to Vote Back

- 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 person you vote for can win the election.
  - The person who has come with you should tell the court why you should be allowed to vote.
  - Give the court any letters of support.
How to Convince the Court to Give you Your Right to Vote Back

- The court will listen to you, your supporters, and the GAL.
- The court will make a decision.
- The decision will be written in an “Order” and a “Notice of Voter Eligibility.”
- If you don’t get your right to vote back, you can try again in 6 months.
Resources

- DRW Voting Resource Page
  - https://disabilityrightswi.org/resource-center/voting/

- DRW Self-Determination and Guardianship Resource Page

- Wisconsin Disability Vote Coalition
  - https://disabilityvote.org/

- New “how to” resource guides mentioned earlier.
What do I do if I need help or run into a problem?

- DRW Voter Hotline
  - 844-DIS-VOTE/ 844-347-8683
  - info@disabilityvote.org

- Wisconsin Guardianship Support Center
  - For info & assistance on issues related to adult guardianship, protective placement, and advance directives.
  - Toll-Free Helpline (855) 409-9410
  - guardian@gwaar.org
Time for Your Questions!

Panel Members

- Mitch Hagopian
  - Managing Attorney at Disability Rights Wisconsin
- Peter Navis
  - Judicial Court Commissioner, Walworth County
- Polly Shoemaker
  - Wisconsin Guardianship Support Center Attorney

Please type your questions in the Chat