

Voting, Holding Office, and Jury Duty

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Introduction

For many years the right to participate in basic acts of citizenship was essentially denied many people with disabilities. Individuals with mental or developmental disabilities were generally believed to be incompetent and people with physical disabilities were unable to enter inaccessible places to exercise these rights. In the past decade this has begun to change, enabling people with disabilities to have a greater say about who their elected officials will be and to make contributions as full participating members of their community.

Voting

Mental Competency

Article III, Section 2, Wisconsin Constitution

Incompetency to vote

Sec. 6.03(1)(a), Wis. Stats.

Sec. 880.33(3), Wis. Stats.

The Wisconsin Constitution allows laws which exclude a person “adjudged by a court to be incompetent or partially incompetent, unless the judgment specifies that the person is capable of understanding the objective of the elective process...” from the right to vote. However, unless the person has gone through a specific court proceeding or has been found by a court to be incompetent and has a guardian, his/her right to register or to vote may not be denied on the grounds of mental incapacity. In addition, a person may have a limited guardianship which specifically enables him/her to retain the right to vote.

Court proceeding required

Secs. 6.03(3) and 880.33(9), Wis. Stats.

A person may be found to be incapable of understanding the objective of the elective process even though s/he has not been found to be incompetent and in need of a guardian. Prior to this finding, there must be a court proceeding which follows the legal requirements of an incompetency proceeding. Thus, there must be a report by a psychologist or physician about the person’s mental capacity, there must be a guardian ad litem appointed to represent the best interests of the person, and there must be a full due process hearing before a court.

State Law

Voter registration

Sec. 6.27-6.33, Wis. Stats.

Sec. 6.33(2)(a), Wis. Stats.

Registration to vote in Wisconsin is required for people living in municipalities of over 5000 population. People can register by mail until the second Wednesday before election day, in person at the municipal clerk’s office until the day before the election, or at the polling place if certain procedures are followed and identification is provided. Any person who is eligible to vote can register by mail. Mail-in registration forms are available from local election boards or municipal clerks. Any individual who is unable to sign a registration form due to a physical disability may authorize another elector to sign his/her name.

HFS 94.22, Wis. Admin. Code State patient rights law provides that any person receiving treatment for alcoholism, drug dependence, mental illness or developmental disability has a right to election-related assistance. The director of an inpatient or residential treatment facility is responsible for surveying interest and providing assistance in registration and voting.

Physical access
 Sec. 5.25(4)(a), Wis. Stats. Wisconsin requires each polling place to “be accessible to elderly and handicapped individuals” unless the election official has received an exemption for the polling place from the State Elections Board.

Curbside voting
 Sec. 6.82(l), Wis. Stats.
 Sec. 6.82(2), Wis. Stats. If a person is unable to enter a polling place as a result of disability, two election officials must take a ballot out to him/her. After the ballot is marked it is taken back into the polling place where an election official announces that it was cast at the door by the individual, who as the result of a disability cannot enter without assistance. If there is no objection, the ballot is put in the ballot box. Any voter who needs assistance in marking the ballot because of disability may request a person of his/her choice, who is not his/her employer or labor union representative, to provide the assistance.

Access to presidential caucuses
 Sec. 8.125, Wis. Stats. Any political party which uses a caucus system to select delegates to the national presidential nominating convention must hold the caucus in a place which is wheelchair accessible.

Federal Law

Physical access
 Elections in Wisconsin are usually held in schools and other public buildings. Because of this, federal law generally requires that the building meet federal accessibility standards. Buildings constructed by federal agencies or subsidized programs in the last thirty years must be accessible to people with disabilities under the Architectural Barriers Act of 1968 (ABA) and Section 504 of the Rehabilitation Act of 1973 (504). The Uniform Federal Accessibility Standards (UFAS) define the current requirements. Governmental facilities built since January 26, 1992 must meet either UFAS or ADA Accessibility Guidelines (ADAAG) under Title II of the Americans with Disabilities Act of 1990 (ADA). The ADA requires elections held in governmental buildings constructed before 1992 that are not covered under the ABA or 504 to be “readily accessible to ... individuals with disabilities.”

42 USC § 4151 et seq.
 29 USC § 794
 Appendix A to 41 CFR Part 101-19.6
 Appendix A to 28 CFR Part 36
 42 USC § 12132, 28 CFR § 35.150-51

42 USC § 1973ee-1(a) & (b) All polling places for federal elections must be physically accessible under the Voting Accessibility for the Elderly and Handicapped Act unless:

- 42 USC § 1973ee-1 to -6
- there is an emergency (such as a snow-storm on election day); or
 - the chief election officer of the state determines that all potential polling places have been surveyed and none are accessible, even on a temporary basis, and s/he assures that any voter with a disability who requests reassignment in advance to an accessible

place will be reassigned or if this is not possible will be provided an alternative means for casting his/her ballot (such as curbside or absentee voting).

Assistance to voter
42 USC § 1973aa-6

In addition, federal law requires that assistance to vote must be given, by a person of the voter's choice, to one who needs it due to blindness, disability, or inability to read or write.

Registration and voting information
42 USC § 1973ee-3(a)
42 USC § 1973ee-3(c)
28 CFR § 35.160

The Voting Accessibility Act also requires that registration and voting instructions be printed in large type and conspicuously displayed at registration sites and polling places. Registration and voting information must also be available by way of telecommunication devices for the deaf. Notice of the availability of this information, of the possibility of having assistance in voting, and of the procedure for casting an absentee ballot must be made available to people with a disability. Effective communication of election information, including use of large type, TTYs or sign language interpreters is also required under the ADA.

Enforcement
42 USC § 1973ee-4

The Voting Accessibility for the Elderly and Handicapped Act may be enforced by first notifying the executive director of the Wisconsin State Elections Board of a violation (the address follows). If it is not resolved within 45 days, an aggrieved individual or the U.S. Attorney General may bring a law suit in federal court.

Complaints of ABA and 504 violations are made to the federal agency funding the program or service. ADA complaints are made to the Department of Justice. *(See the ADA: Title II-Government Programs and Services chapter, pg. 324, for more details on 504 and ADA enforcement.)*

Absentee Voting

Request of absentee ballot
Sec. 6.85, Wis. Stats.
Sec. 6.86(1)-(3), Wis. Stats.

A voter who cannot go to the polling place because of age (over 70), sickness, disability or physical disability may cast an absentee ballot. The ballot should be requested from the municipal clerk either in person or in writing by the Friday immediately preceding the election. Any voter who is indefinitely confined due to age, physical illness or infirmity or "is disabled for an indefinite period," may sign a statement to that effect and request that absentee ballots be sent automatically. If a person requesting an absentee ballot cannot sign his/her name due to a physical disability, s/he can request another elector to make the application for him/her. The application should state that it is being made on behalf of the person because s/he cannot sign due to a disability.

Sec. 6.87(5), Wis. Stats.

An absentee voter who is unable to read or to mark it due to disability, may be assisted by another individual, who is not his/her employer or labor union representative.

Nursing home and CBRF residents

Sec. 6.875, Wis. Stats.

Residents of nursing homes and community-based residential facilities (**CBRF**) may apply for an absentee ballot as described above. Where significant numbers of residents qualify for absentee voting, the election officials must send two special deputies to take the absentee ballots of all residents who have requested them. These officials may not be nursing home employees or their family members or have been so employed within the past two years. The relative of a person who has requested an absentee ballot may be notified in advance of when the ballots will be taken and may be present to help his/her family member. Notice of the designated time may not be given to people other than the nursing home employees, residents and their family members. If the person needs assistance but doesn't have a relative to help, the election officials may help him/her to mark the ballot.

Sec. 12.13(4), Wis. Stats.



While Wisconsin law will generally ignore technical errors in voting procedure, that may not be true with respect to errors in absentee voting. Votes may be ignored if a voter or voting official does not follow absentee procedures precisely.

Enforcement of State Election Laws

Sec. 5.06, Wis. Stats.

Any elector who believes that any election law is not being followed may file a complaint with the Wisconsin State Elections Board. In addition, the elector may petition the district attorney to start a law suit to require an elections official to obey the law. If the district attorney refuses or fails to act on the petition within 15 days, the individual may petition the state attorney general to take action.

Sec. 5.08, Wis. Stats.

Where to File Election Complaints

Wisconsin State Elections Board
132 East Wilson Street, Suite 200
P.O. Box 2973
Madison, WI 53701-2973
608-266-8005

Holding Public Office

The State of Wisconsin requires a candidate to be legally competent to comply with all election requirements. Because Wisconsin law generally favors putting candidates on the ballot and letting voters decide qualifications, there is no clear answer to who this would disqualify. A person who cannot vote because s/he was found “incapable of understanding the objective of the elective process” or is the subject of a general guardianship would probably not be allowed to run for public office. A person who is the subject of a limited guardianship where the person retains the right to vote would more likely be allowed to run for public office.

Sec. 17.025, Wis. Stats. The person is not qualified to remain in office when illness or injury renders him/her unable to perform all of the functions of the office. This is a different standard than the standard to run for public office. This standard is applied where an office-holder is clearly unable to perform the functions of office for more than a short period of time.

Serving on a Jury

State Law

Sec. 756.001(3), Wis. Stats.
Sec. 756.02, Wis. Stats. **In order to preserve the right of trial by jury, Wisconsin recognizes a right to serve as a juror without regard to disability or physical condition.** The only limitations on this right are that the person be “qualified and able to serve.” A resident of the area served by a circuit court is considered qualified if the person is at least 18 years of age, is a U.S. citizen, and is able to understand the English language unless convicted of a felony and his/her civil rights have not been restored.

Sec. 756.03(1), Wis. Stats. A court may excuse any person from jury service if “the person cannot fulfill the responsibilities of a juror.” A person who is found by a court to be incompetent generally loses the right to serve on a jury. This right could be retained if the court made a finding of limited incompetency which specifically enabled the person to retain this right.

Sec. 880.33(3), Wis. Stats.

Sec. 756.03(1), Wis. Stats. The determination of ability to fulfill the responsibilities of a juror must be made without consideration of any structural limitations of a facility. Since courthouses are public buildings, they must meet state and federal accessibility laws. (*See ADA: Title II- Government Programs and Services chapter, pg. 322.*)

Federal Law

28 USC § 1865(b)(4) Qualification for service on juries in federal court is very similar to the standard used in Wisconsin courts. An additional standard precludes anyone who “is incapable, by reason of mental or physical infirmity, to render satisfactory jury service” from jury service in federal court. In reviewing the few cases interpreting this provision it appears that courts are primarily concerned about mental disabilities which would interfere with the person’s understanding of what is happening in the trial.

Federal courts are located in federally owned or leased buildings which must be accessible under the Architectural Barriers Act. There are no special accessibility or accommodation requirements to assist disabled jurors. Section 504 of the Rehabilitation Act does not apply because the Courts are not an executive agency.