



Voting Rights of Institutionalized People with Disabilities

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Introduction

“I didn’t realize once you come into a facility, your voting rights could be taken away from you ... my vote may not have made a difference, but dear God give me the opportunity to vote; that should have been my decision’ and not the facility’s.” Nursing facility resident in Virginia Beach, VA.¹

People with disabilities have the same voting rights as other eligible citizens, whether or not they reside in an institution. Most citizens of the United States are eligible to vote if: they turn 18 years old on or before Election Day; meet their state’s residency requirements; and are registered to vote. In general, the only categories of people who are disqualified from voting are some people with felony convictions and people who are legally determined to lack “mental capacity.”²

When eligible to vote, institutionalized people with disabilities are entitled to help to participate in the voting process. This fact sheet explains the general rights of people who live or are placed in institutions to vote and to

¹ Kohn, Nina A., [Coronavirus isolated nursing home residents. Now it might keep them from voting.](#) Washington Post, Oct. 14, 2020.

² National Voter Registration Act, 52 U.S.C. § 20507(a)(3)(B), formerly cited as 42 U.S.C. § 1937gg-6.

get help to do so. Since laws in every state vary, it will be important to get answers to specific questions from someone who is knowledgeable about your state.

Helping all eligible people to exercise their right to vote is an important national priority. State Protection and Advocacy (P&A) agencies receive funding through the federal Help America Vote Act specifically to assist people with disabilities to vote. You can [contact the P&A in your state](#) to learn more about your state laws and ways the P&A can help make sure people with disabilities are able to vote.

What is an institution?

There are many types of institutions and many ways of defining the term. In this fact sheet, unless stated otherwise, the word “institution” includes: nursing facilities and nursing homes, assisted living, state institutions for people with developmental or psychiatric disabilities, Intermediate Care Facilities (ICF) or group homes, locked psychiatric facilities including Institutions for Mental Disease, veterans’ homes, and jails and prisons.

This fact sheet does not address rules about voting for people who have an unexpected acute hospitalization close to Election Day. For more information on each state’s rules for getting an emergency absentee ballot due to hospitalization, go to the website [Patient Voting](#).

Can people who are institutionalized vote?

Unless they are legally determined to be ineligible to vote, people who live or are placed in institutions have the same right as other citizens to vote. This generally includes the right to vote using the method they choose (such as absentee or in person), and with the assistance they need. For more information on the types of help or “accommodations” that may assist certain people with mental disabilities, see [NDRN’s publication on voting accommodations for people with mental disabilities](#).

Generally speaking, the only categories of people who can legally have their voting rights taken away are people who are determined by a court to

lack “mental capacity”³ and some people with felony convictions.⁴ There may be some differences in how people are able to vote, however, depending on state rules about the kind of institution they are in. For instance, eligible voters who are committed to a locked institution or in jail or prison may not have the choice to go to a polling place but should still be assisted to vote in other ways.

Are there laws that protect the right to vote for people who are institutionalized?

In addition to protections under the U.S. and state constitutions, a number of laws have sought to ensure that people with disabilities can exercise their right to vote on an equal basis with other citizens. These include:

- Federal disability rights laws:
 - **Americans with Disabilities Act of 1990 (ADA)**, which requires that all parts of voting⁵ be accessible to people with disabilities and that voters with disabilities in both public and privately-funded institutions receive “reasonable accommodations.”⁶
 - **Section 504 of the Rehabilitation Act of 1973 (Section 504)**, which generally provides the same protections as the ADA from programs or activities receiving federal financial assistance.⁷
- Federal voting rights laws:

³ Federal law permits removing people from the voter rolls if they lack mental capacity, but each state has different standards for whether and how they implement this. National Voter Registration Act, 52 U.S.C. § 20507(a)(3)(B), formerly cited as 42 U.S.C. § 1937gg-6. For more information on restoring or retaining the right to vote in a guardianship proceeding, see this [Toolkit](#) on enfranchisement of people subject to guardianship by NDRN and the Bazelon Center.

⁴ [State laws vary greatly about whether people convicted of a felony can vote](#), but otherwise eligible voters in pre-trial detention and those convicted of misdemeanors may still vote.

⁵ According to the U.S. Department of Justice, “[t]he 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.” U.S. Dep’t of Justice, Civil Rights Division, Disability Rights Section, [The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities](#) (Sept. 2014), at 1.

⁶ 42 U.S.C. §§12101 *et seq.*; § 12182(b)(2)(A)(ii), 28 C.F.R. § 36.302(a) (privately operated facilities), 42 U.S.C. §§ 12131(2), 12132; 28 C.F.R. § 35.130(b)(7) (publicly operated facilities).

⁷ 29 U.S.C. § 794 and regulations at 28 C.F.R. § 41.51.

- **Voting Rights Act of 1965**, which gives people with disabilities a right to receive assistance in voting from someone of their choice (except for their employer or union representative).⁸
- **Voting Accessibility for the Elderly and Handicapped Act of 1984** (VAEHA), which requires that polling places and registration facilities be accessible.⁹
- The **National Voter Registration Act of 1993 (NVRA)** which is intended to increase the voter registration of people with disabilities by requiring agencies that primarily serve people with disabilities to offer their clients the opportunity to register to vote and provide assistance in registering.¹⁰
- **Help America Vote Act of 2002 (HAVA)**, which requires states to make voting systems accessible “in a manner that provides the same opportunity to people with disabilities for access and participation” as is provided to non-disabled voters.¹¹
- State anti-discrimination and election laws.

In addition to these federal laws, there are federal and state regulations that set forth general and specific rights of people who reside in certain types of institutions. Even if residents’ legal rights do not mention voting, other legal rights they have should enable them to vote, such as the right to communicate with people and receive visitors, the right to receive and send mail, etc.

For example, people who live in nursing facilities funded by Medicaid or Medicare have rights that include the right to be free from discrimination, to communicate, and to receive mail. During the COVID pandemic, the Centers for Medicare and Medicaid Services (CMS) issued a Memorandum affirming the right of nursing facility residents to vote.¹² The Memorandum

⁸ “Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508, formerly cited as 42 U.S.C. § 1973aa-6.

⁹ 52 U.S.C. § 20101 *et seq.*, formerly cited as 42 U.S.C. § 1973ee *et seq.*

¹⁰ 52 U.S.C. § 20501 *et seq.*, formerly cited as 42 U.S.C. § 1937gg *et seq.*

¹¹ 52 U.S.C. § 21081(3)(A).

¹² <https://www.cms.gov/files/document/gso-21-02-nh.pdf>. Note, this Memorandum only applies to people in nursing facilities, not ICFs or other Medicaid or Medicare-funded facilities.

stated that a “resident’s rights, including the right to vote, must not be impeded in any way by the nursing home and its facility staff.” The Memorandum also made clear that nursing facilities are required to help and support residents to vote, including helping them to register, to request and return an absentee ballot, to fill out a ballot with the help of the person they choose (subject to applicable restrictions), or to go to a polling location or drop-box.

What are the ways that eligible institutionalized people can vote and get help in the voting process?

People with disabilities are entitled to meaningful access to public programs, such as voting; in other words, people with disabilities should have “an opportunity to participate in voting that is equal to that afforded others.”¹³ Eligible voters who are institutionalized should be able to:

- Get information about the voting process and options: Residents of institutions have a right to information about registration and voting requirements, timelines, candidates and issues, and methods of voting. This includes getting information in a manner that is accessible to them, including in alternative formats, their preferred language, and plain language or easy read materials.
- Vote at a polling place: Residents should be permitted to leave the institution independently or get transportation assistance from staff or others to go vote at the polls (unless the terms of their commitment prohibit this).
- Vote absentee: Residents at all types of institutions have a right to receive and send mail, including mail (absentee) ballots.
- Choose other voting options as available: Some states and localities have programs such as mobile voting, polling places set up in nursing facilities, visits by election officials, and curbside voting. Residents should not be required to use these options if they do not prefer to.
- Get help with the voting process: Residents have a right to receive help in the voting process from a person they choose (except their employer or union representative) in all parts of the voting process, including updating their address, getting acceptable identification,

¹³ 28 C.F.R. § 35.130(b)(1)(ii).

registering to vote, understanding voting choices, and casting a ballot either in person or absentee.¹⁴

Who can help an institutionalized voter to vote?

Section 208 of the Voting Rights Act entitles people with disabilities to get help in the voting process by the person they choose, except for their “employer or agent of that employer or officer or agent of the voter’s union.”¹⁵ The ADA similarly allows people to choose the person who will help them vote as a reasonable accommodation or modification of rules and practices.¹⁶

Many people choose to rely on family members to help them, and in some states, designated election officials visit institutions to help people vote. Institutionalized voters should not be required to depend on family members or be limited to getting help from election officials. If they choose to get help from a friend, facility staff, another resident, long-term care ombudsman, poll worker, or outside group, they should be able to do so. Be aware, however, of any state laws that limit these options, even if these limitations might be illegal. For example, in Louisiana and North Carolina, nursing facility staff are not permitted to help residents vote.¹⁷ Some states limit the type of assistance certain individuals or outside groups can provide, or the number of people they can assist.¹⁸

What are the barriers that people who are institutionalized face in getting help to vote?

¹⁴ The Voting Rights Act defines voting as “all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration...or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly” 52 U.S.C. § 10310(c)(1).

¹⁵ 52 U.S.C. § 10508.

¹⁶ 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302(a) (privately operated facilities); 42 U.S.C. § 12131(2), 12132; 28 C.F.R. § 35.130(b)(7) (publicly operated facilities); 29 U.S.C. § 794(a) (facilities that receive federal funding, including those administered by the Department of Veterans’ Affairs).

¹⁷ The Louisiana statute is at: LA Rev Stat sec 18:1333(G)(4)(a). In 2020, a court found North Carolina’s law, which can be found at N.C. Gen. Stat. Ann. § 163-226.3(a)(4), to be “impermissibly restrictive” and allowed one person to receive help from nursing facility staff. The lawsuit is ongoing. *Democracy N. Carolina v. N. Carolina State Bd. of Elections*, 476 F. Supp. 3d 158 (M.D.N.C. 2020), reconsideration denied, No. 1:20CV457, 2020 WL 6591396 (M.D.N.C. Sept. 30, 2020)

¹⁸ For example, S.B. 1 in Texas criminalizes “vote harvesting” (ballot collection assistance) by paid individuals or organizations. This law is being challenged by a number of advocacy organizations including Disability Rights Texas in the consolidated case *LUPE v. Abbott*, Case No. 5:21-cv-00844-XR (W.D. Tx).

Many institutionalized people need help to vote in a variety of ways, either due to their disability or their circumstances. Due to legal and practical obstacles, many eligible voters are denied the right to vote in the manner they choose with the help they need.

Some states have passed laws that apply to all voters but may make it especially difficult for institutionalized people to vote. These include voter identification or absentee ballot requirements including witness or signature matching rules. During the COVID pandemic, when institutions were on lockdown and visitors were prohibited, many state rules changed for the 2020 election cycle—voting became easier and safer for many people, but not for institutionalized people.¹⁹ In 2021 and 2022, most states have passed or proposed changes to their voting laws in ways that could affect people living in institutions; you can [contact the P&A in your state](#) to find out about any changes in your state laws.

Some states have passed laws that illegally and specifically limit access to voting for people who reside in institutions. These laws can be challenged in court in an individual or systemic lawsuit. For example, a North Carolina law that prohibits nursing facility staff from assisting facility residents to complete their ballot was challenged in 2020 by a blind resident who requested that staff help him fill out his absentee ballot because his wife, who normally helped him, was not able to visit him due to the pandemic.²⁰ The court made an exception to the state law but only for the plaintiff, finding that the state law denied the plaintiff meaningful access to the ballot, in violation of the ADA and Section 504 as applied to him.²¹ The court also found that the state statute violated Section 208 of the Voting Rights Act because it didn't allow the resident to have the person of his choice help him complete his absentee ballot.²²

There are also many common practices and circumstances that prevent institutionalized people from voting. Family members and facility staff may make assumptions about whether an individual has the capacity to vote,

¹⁹ Kohn, Nina A., [Coronavirus isolated nursing home residents. Now it might keep them from voting.](#) Washington Post, Oct. 14, 2020.

²⁰ *Democracy N. Carolina v. N. Carolina State Bd. of Elections*, 476 F. Supp. 3d 158 at 231-232 (M.D.N.C. 2020), *reconsideration denied*, No. 1:20CV457, 2020 WL 6591396 (M.D.N.C. Sept. 30, 2020).

²¹ *Id.* at 233.

²² *Id.* at 235.

which they are not legally permitted to do. In addition, people living in congregate settings may have limited privacy to discuss their voting preferences or complete a ballot. They are often isolated from people and information outside the facility, which means that they lack access to news, campaign information, and opportunities to discuss voting preferences with others. Many people who are institutionalized may not be aware of an election, know that they have options for how to vote, or realize that there are accommodations available to help them with the voting process. Even if voting assistance is provided upon request, many eligible voters will still miss out on the opportunity if they are not offered information and assistance.

Can an institutionalized person be prevented from voting based on the fact that they live or are placed in a facility?

No. People who are institutionalized may not be prevented from voting based on where they live or the conditions of their confinement (unless the right to vote has been legally removed by a court). Eligible institutionalized voters with disabilities are entitled to cast a ballot without having their eligibility or competency questioned by election officials, facility staff, or family members.²³ Lawsuits filed in several states have successfully challenged attempts to deny the right to vote to people based on their placement or residence in state hospitals and other facilities, requiring instead a particularized showing of incompetence.²⁴ People can cast something called a “provisional ballot” if their competency is challenged by election officials or poll workers.²⁵

²³ According to the US Department of Justice, “an election official cannot refuse to provide an absentee ballot or voter registration form to a person with a disability because the official knows the voter resides in a nursing home.” [The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities](#) (September 2014), at 4.

²⁴ See, e.g., *In the Matter of Absentee Ballots Cast by Five Residents of Trenton Psychiatric Hospital*, 750 A.2d 790 (N.J. Super. App. Div. 2000) (ballots could not be challenged based simply on voters’ residence in a state psychiatric hospital); *Carroll v. Cobb*, 354 A.2d 355 (N.J. Super. App. Div. 1976) (individuals could not be barred from registering to vote based on residence in state institution for people with intellectual/developmental disabilities); *Boyd v. Board of Registrars of Voters of Belchertown*, 334 N.E.2d 629 (Mass. 1975) (residence in state institution for individuals with intellectual/developmental disabilities did not make individuals ineligible to vote).

²⁵ A provisional ballot is used when there is uncertainty about a voter’s eligibility. In most states, a person whose eligibility is questioned must be allowed to vote using a provisional ballot, and their ballot is kept separate from other ballots until after the election. Within a few days, election officials will determine if the ballot should be counted.

In addition to illegal or improper curtailment of voting rights due to perceived lack of competence, institutionalized people may also be disenfranchised due to a lack of access to a ballot or to the polls. In one case, residents of a state psychiatric hospital in New York were almost prevented from voting because their privileges to leave the facility had been taken away for failure to comply with hospital rules. Hospital staff did not attempt to obtain absentee ballots to enable them to vote. After a resident contacted advocates for help, the hospital eventually agreed to take the residents to the polling place to vote.²⁶ In another case, a voter was placed in a psychiatric hospital before Election Day and requested an absentee ballot, which did not arrive in time to meet the mailing deadline. Attorneys at Disability Rights Ohio, the protection and advocacy agency (P&A), immediately filed a lawsuit and the court ordered her ballot to be counted even though it was received late.²⁷

What about the possibility of a resident being a victim of fraud or manipulation?

It is important to remember that actual fraud is punishable and the individuals who commit fraud are the ones who should be punished. Preemptively punishing voters with disabilities by disenfranchising them not only fails to solve any real or perceived problem, but as a violation of their constitutional rights, should never be considered an acceptable solution.

While concerns about “election security” and voter fraud have dominated discussions about voting rights, the fact remains instances of actual fraud in the general population are extremely rare and incidents of fraud involving people in institutions are negligible. In addition to outright criminal activity, for instance, where facility staff falsify and submit residents’ ballots, there are also concerns that people who have cognitive or mental impairments, or those subject to influence by family or staff who they depend on, will have their voting preferences manipulated. These concerns have been raised primarily with respect to the use of absentee ballots, as it is more difficult to detect fraudulent actions that occur outside of the polling place.

²⁶ Bazelon Center for Mental Health Law, Autistic Self-Advocacy Network, National Disability Rights Network, Schulte, Roth & Zabel LLP, and Akin Gump Strauss Hauer & Feld LLP, *VOTE. It’s Your Right: A Guide to the Voting Rights of People with Mental Disabilities* at 26.

²⁷ *Mooneyhan v. Husted*, No. 3:12-CV-379, 2012 WL 5834232 (S.D. Ohio Nov. 16, 2012).

A better approach is to ensure that institutionalized voters have access to information and assistance to ensure that they can vote equally to other voters with and without disabilities. For more discussion voters with mental disabilities, see NDRN's publication [Voting Accommodations for People with Mental Disabilities](#).

How can advocates help institutionalized people access their right to vote?

When people with disabilities are institutionalized, voting may not be a primary concern and may be overlooked even as election season approaches. Advocates can play an important role in providing information and training to voters in institutional settings, as well as families, facility staff, and election officials about their role in assisting people to register and vote.

In addition to protection and advocacy agencies, who can access institutions where people with disabilities live in order to provide information and training, and monitor access to voting for residents, many other organizations can provide trainings and voter assistance, subject to state law restrictions. These organizations may include: League of Women Voters, Gray Panthers, independent living centers, AARP, state developmental disabilities councils, self-advocacy groups, and local voting organizations. Working independently or collaborating with local election officials can be highly effective.

Of course, advocates and attorneys can also play a critical role in protecting the right to vote through individual and systemic advocacy and litigation. Access to voting for people who are institutionalized can help them retain important constitutional rights, as well as their dignity and connection to the community.

Resources

If you have questions about these materials, please contact:
votingrights@ndrn.org

Find your state's [protection and advocacy agency](#).

NDRN, March 2022, [Voting Accommodations for People with Mental Disabilities](#)

NDRN and Bazelon Center, March 2022, [Enfranchisement of People Subject to Guardianship: A Toolkit for Retaining and Restoring the Right to Vote](#)

[VoteRiders](#) (information about and assistance to get voter ID)

CMS Letter, Oct. 5, 2020, [Compliance with Residents' Rights Requirement related to Nursing Home Residents' Right to Vote](#)

[Patient Voting](#) (information about voting during emergency hospitalization)

American Bar Association, [Assisting Cognitively Impaired Individuals with Voting: A Quick Guide](#)

Election Assistance Commission, October 2008: [SERVING VOTERS IN LONG-TERM CARE FACILITIES](#)