

Often Disenfranchised, People with Mental Disabilities Can Assert Their Voting Rights

October 2, 2008—“*Vote. It’s Your Right.*” So states the title of a [guide for people with mental disabilities](#). The booklet, written for voters with mental disabilities and their advocates, will also inform elections officials and mental health service providers about the laws that affect voting by individuals with mental disabilities.

“There is a widespread myth that people with mental disabilities shouldn’t vote,” said Jennifer Mathis, deputy legal director of the Bazelon Center for Mental Health Law and a principal author of the voting rights guide.

“Such arbitrary disenfranchisement violates federal law,” Mathis added. “We produced this guide to provide needed clarity and ensure that people with mental disabilities can exercise their right to vote like every other citizen.”

The voter guide was developed by the Bazelon Center and the [National Disability Rights Network](#), national advocacy organizations for people with mental illnesses and intellectual disabilities. The pocket-size booklet lists key legal principles ([see below](#)) and focuses on four areas of concern: 1) voter-competence requirements, 2) state photo-ID laws, 3) voter challenges and 4) providing help to voters with disabilities. The booklet includes a chart listing each state’s laws affecting the voting rights of people with mental disabilities.

All but 11 states have some type of law limiting voting rights of individuals based on competence, although more than half allow a court to take away someone’s right to vote only if it specifically finds that the person lacks the capacity to vote. However, even in states without such laws, the actions of election officials or staff at hospitals, nursing homes or group homes often deprive residents of access to the ballot. The guide cites the example of a Veterans Administration nursing home that refused to permit volunteers to come in to help residents register (noting that the VA recently modified that policy) and a study of Philadelphia nursing homes that denied residents’ voting rights based on staff decisions.

“Only a court can decide that someone is not competent to vote,” the guide points out. It also recommends that a voter who is told by a poll worker that he or she is not competent to vote “ask to vote a provisional ballot before leaving the polling place.”

Each section includes boxed text for advocates to copy for their clients. A box on guardianship proceedings answers the questions “what must you show to retain the right to vote?” and “what if you have already lost the right to vote?” Another explains “what you can do if told you may not vote.”

A box titled “who can help me vote, and how?” parallels a flyer available with the guide, listing for officials and service providers how help can be provided to a voter with mental disabilities, and by whom. A reduced copy appears at the back of the booklet, along with a copy of a flyer listing their voting rights for people with mental disabilities.

Vote. It’s Your Right. and the two flyers are available as PDFs to download from the Bazelon Center’s [publications pages](#), where print copies can also be purchased, with bulk discounts available, or contact [pubs @ bazelon.org](#) for information.

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Key Legal Principles Affecting Voting Rights (from the guide)

- A state does not need to require a voter to demonstrate competence, and some states don’t.
- If a state chooses to impose a voter-competence requirement, that requirement cannot be so broad that it takes away the right to vote of people who are capable of voting. For example, a state generally may not have laws that impose a blanket ban on voting by anyone under guardianship.

- If a state chooses to impose a voter-competence requirement, that requirement must be applied to *all* voters. It cannot single out a particular group of voters, such as people who are the subject of guardianship proceedings.
- In virtually all states, only a court can find that a person is not competent to vote. In fact, it would present serious constitutional concerns for election officials or anyone else to make such a determination without the procedural safeguards of a court proceeding.
- Service providers, such as nursing homes, hospitals, assisted-living facilities and group homes, cannot bar residents from voting based on staff or administrators' decisions that residents are not competent to vote.
- Questions about a voter's competence can form the basis for a voter challenge only under very limited circumstances, if at all. Most states' laws restrict the grounds on which a voter may be challenged, the people who may bring a challenge and the types of evidence that can form the basis for a challenge. Many states do not permit any voter challenges based on competence.
- People with disabilities have the right to get help with voting and to decide who will help them vote.
- A person with a disability can get help from a friend, family member, caregiver, residential service provider or almost anyone else of his or her choosing except an employer or union member. The person can also ask a poll worker for assistance with voting.
- A person helping a voter with a disability should ask the voter what choice he or she wants to make, if any. It is the voter who makes the choice whether to vote and how to vote, not the person providing help.
- The person providing help should not mark a ballot to reflect any choice other than the choice expressed by the voter.
- The person providing help must respect the voter's privacy at all times during the voting process.