



The New Jersey Council on Developmental Disabilities

Voting Rights of People with Intellectual Disabilities

Important Information that

- * Voter Registration Agencies * Election Officials * Poll Workers *
* People with Disabilities * Families * Providers *
Should Know!***

Capacity - What everyone should know:

- The *capacity* to vote means that a person has the legal right to cast a vote.
- Laws about who can vote include rules about:
 - (1) a person's age (you must be at least 18 years old to vote)
 - (2) a person's citizenship (you must have been born in the United States, or be a child of a United States citizen or pass a test to become a U.S. citizen); and
 - (3) a person's place of residence (you must live in the state and town where you want to vote);
- The fact that a person has an intellectual, developmental or psychiatric disability does not mean that the individual cannot vote.
- A person has the right to vote as long as they understand what voting is and can make a decision about what person to vote for or whether to vote yes or no on a ballot question.
- Therefore, if a person with a disability is an eligible voter (based on age, citizenship and residence) and if that person wants to vote and is able to complete a voter registration form and cast a vote (with or without reasonable assistance) that person has the legal capacity to vote.
- A determination of whether a person has the intellectual capacity and legal right to vote cannot be made by a family member or by the people who work for a provider, residential center or group home.
- **THE RIGHT TO VOTE IS A CONSTITUTIONAL RIGHT THAT CAN ONLY BE TAKEN AWAY BY A JUDGE!**

New Jersey Law on Capacity to Vote- What Everyone Should Know:

- The only written law about a person's mental or intellectual capacity to vote in New Jersey is in the State Constitution. The New Jersey Constitution says that a person who is an "idiot" or "insane" is not allowed to vote. These offensive and outdated terms were originally written into the New Jersey Constitution of 1789 based on court cases decided in England during the 1600's.
- In a 1975 court decision, Carroll v. Cobb, the Appellate Division of the Superior Court of New Jersey declared that it was illegal to prevent people from registering to vote just because they are diagnosed with mental retardation.
- The court in the Carroll v. Cobb case also explained that the words "idiot" and "insane" used in the State Constitution were old and offensive.
- The court also ruled that these words do not have legal meaning any more. Instead, the court declared that an individual's capacity to vote must be decided based on whether the person can understand what voting is and whether the person can form an opinion about the choices on the ballot.
- The court also ruled that as long as a voter is: (1) a *bona fide* (genuine, actual) resident of the place where he or she wants to vote; (2) is properly registered to vote; and (3) is not otherwise disqualified, the person is entitled to vote.
- **Only a judge can take away a person's right to vote.**
- A county board of elections can only challenge a person's right to vote on an *individual basis*. This means that the fact that a person has a particular disability or lives in a place that provides services to people with disabilities is not enough proof that the person should not be allowed to vote.
- The challenger must show in court the specific reasons why a particular person lacks the capacity to vote. The proof must include testimony from an expert that the particular individual does not understand what voting is and is not able to make a decision to cast a vote.
- The court in the Carroll v. Cobb case also ruled that a judge may only take away a person's right to vote if there is "clear and convincing" evidence that the person does not understand what voting is and cannot form an opinion about the choices on the ballot.
- Significantly, the court said, ***"It should be abundantly evident that a lay person is completely unequipped to determine" whether a person has the intellectual capacity to vote.***

Some Important Election Laws - What Everyone Should Know:

- Among other things, the **Help America Vote Act (HAVA) of 2002** requires states to provide at least one accessible voting system in each polling place by January 1, 2006. HAVA also requires states to make registration forms, ballots and other materials available in alternate formats that are accessible (can be used) by people with disabilities. Significantly, HAVA declares that people with disabilities must be given the same opportunities to vote as other voters, including the opportunity to vote privately and independently.
- According to the **National Voter Registration Act of 1993 ("Motor Voter" Law)** federal, state, and local governments must promote the exercise of their citizens' fundamental right to vote. This includes requiring all state-funded offices that primarily serve people with disabilities to provide voter registration forms and assistance to people who apply for their services and programs.
- Title II of the **Americans with Disabilities Act (ADA)** (enacted in 1991) makes it illegal for state and local governments to exclude people with disabilities from their programs, services and activities. This means that election officials must be sure that their voting materials and polling places, when viewed in their entirety, are *readily accessible to and usable by individuals with disabilities* and that voting should be offered in *integrated settings* (places used by all people, with and without disabilities).
- Title II of the **ADA** also establishes the right of people with disabilities to *reasonable modifications* that make it possible for them to participate in and benefit from government programs and services. This means that governments must make reasonable changes in their rules, materials, facilities, and the way they do things to make it possible for people with disabilities to use and benefit from government programs. However, if a modification or change will *fundamentally alter* the program or service itself (make a very big change so the program or service seems to become something different) then the modification may not be reasonable. A modification may also be unreasonable if it will cause an *undue burden* to the government (cost more or cause more inconvenience than makes sense or is fair).
- The **ADA** also requires state and local governments to provide people with disabilities *auxiliary aids* (such as translation or assisted listening equipment) to ensure that communication with people with disabilities is as effective as communication with other people. The government does not have to provide a particular auxiliary aid if it causes an *undue burden or fundamental alteration* but must still seek another aid to make communication effective.
- Examples of *reasonable modifications* and *auxiliary aids* are providing registration forms and ballots in large print or Braille, providing ramps and accessible parking; providing voting machines that are accessible to people with various disabilities and providing help at the polling place so a person understands how a voting machine works.

What Voter Registration Agencies Should Know:

- The **National Voter Registration Act (Motor Voter Law)** also requires offices that serve people with disabilities to become *voter registration agencies* (places where people can go to register to vote). This means that such offices must provide voter registration and other election forms and must help people complete voter registration forms unless a person refuses such help.
- A voter registration agency must not say or do anything to discourage a person from registering to vote.
- A voter registration agency must not say or do anything that can cause a person to believe that a decision to register to vote or a decision to not register to vote has anything to do with whether the person receives services or benefits from the agency.
- A voter registration agency must give people information on how and where to report or file a complaint about being denied the right to register or the right to decide not to register to vote, or the right to privacy in making decisions about registering or voting.

What Election Officials and Polling Place Workers Should Know:

- State and local governments must eliminate unnecessary eligibility standards or rules that deny people with disabilities an equal opportunity to enjoy their services, programs or activities unless the standards are "necessary" for the service, program or activity to run properly.
- For example, it is generally illegal to require a person with an intellectual disability to demonstrate knowledge of the candidates or election issues in order to vote when people who have not been labeled as having intellectual disabilities are not asked any questions about what they know about the candidates or the issues.
- Similarly, identification requirements that tend to screen out individuals with disabilities, such as requiring a driver's license as the only acceptable means of identification, are also prohibited.
- A state or local government is certainly allowed and encouraged to provide more assistance and help than the law requires in order to make it easier for individuals with disabilities to participate in the voting process.
- When a voter who has a disability signs in to vote on Election Day he or she can ask to have help in the voting booth.
- A voter has the right to have up to two people of his or her choice come in the booth to help. The voter can choose a relative, friend, or assistant to help them in the voting booth.
- When a voter asks the poll workers to assign someone to help them, the poll workers may send one person from each political party to help the voter.
- Printed instructions in simple, large lettering will help people vote. Pictures or symbols also help everyone. For example, arrows or a hand pointing are easier for everyone to understand than signs that say "Voters' Entrance at the East Side."
- Remember that some voters and poll workers are not familiar with the operation of the voting machines. Make sure that the poll workers are fully trained in their operation.
- Specifically make sure that the poll workers are trained on how to lower the machine to make it available for people using wheelchairs or scooters or for people of short stature.
- Also make sure that any extra equipment (such as a crank) needed to operate the machine is at the polling place and available on the day of election.
- Having poll workers who have disabilities working in the polling place will help other election officials to know what to do should a problem arise.

Disability Etiquette Tips for Polling Place Workers:

- Registered voters with disabilities must be treated with the same courtesy and respect as all other citizens.
- Speak to the person directly, not to the person's personal assistant, companion or family member.
- Do not assume that a person with a disability needs help. Ask if a person needs assistance.
- Do not push someone in a wheelchair without receiving specific permission and guidance.

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What People with Intellectual Disabilities Should Know:

- You have the right to vote even if you have a disability that affects the way you learn, read, understand or process information, communicate, remember things or perform other intellectual functions.
- You have the right to vote even if you live in a developmental center, group home, or other residential care facility.
- You have the right to vote even if you have a guardian, unless a judge has decided (clearly said) that that you cannot vote.
- You might have a guardian because a judge has decided that you cannot make decisions by yourself about your medical treatment or living expenses. However, having a guardian does not mean that you are not able to make other decisions about your life and about voting.
- You have the right to make up your own mind about which candidate you want to vote for as a government leader and about how you want to vote on any ballot questions.
- You have the right to vote even if you don't have a driver's license to prove your identity. Instead, you can use a written sworn statement as proof of who you are and where you live.
- You have the right to vote alone or with help.
- If you ask for help in a polling place and a polling place worker cannot give you the help you want, you and the poll worker can decide together on another way you can be helped to vote.
- You have the right to choose someone to help you in the voting booth and to take some extra time to vote.
- You have the right to have someone show you how to use the voting equipment on Election Day.
- You have the right to have someone explain, in a way you understand, what happens if you make a mistake when voting and how you can fix it.
- You have the right to vote if you are waiting in line when the poll closes.

What to do if someone tries to stop you from voting:

- If an election official or a *challenger* (a person from a political party who is allowed to watch the election) thinks you should not be allowed to vote, the challenger has to sign an *affidavit* (a written statement that they swear under oath is true) explaining why the person believes that you should not be allowed to vote.
- If that happens, you have the right to get a copy of the challenger's affidavit. You also have the right to fill out a sworn statement called a *Challenged Voter Affidavit* to explain why you disagree with the challenger and why you should be allowed to vote.
- If the District Election Board upholds the challenge and says you cannot vote, you can bring the challenger's affidavit and your affidavit to the County Courthouse. A judge may listen to both sides that day and decide if you can vote.
- You have the right to get information on what to do if someone tries to stop you from voting.

You have the right to get legal help if someone tries to stop you from voting. For example, You can contact New Jersey Protection & Advocacy or a private lawyer.

What Families And Providers Should Know:

- Residents of developmental centers are entitled to develop their individual opinions regarding candidates and voting.
- It is not appropriate for family members or personnel employed by providers and residential centers to prevent someone from registering to vote or voting. Family members and staff are not authorized to make decisions about a person's legal right to vote. The right to vote is a constitutional right that can only be taken away by a judge. Only a judge can make the legal decision that a person lacks the intellectual capacity and legal right to vote.
- To facilitate voting and self-determination, honor the uniqueness of each individual and that each individual may have a unique communication style.
- Develop ways to help people with intellectual disabilities understand the ballot and to understand how to vote for the candidate of his or her choice.
- Many registered voters who have disabilities do not vote because they feel unsure or uncomfortable about the process. This includes hesitance based on who to vote for as well as hesitance about how to find their way around the polling place and sign-in desk and how to use the voting machine or fill out the ballot. It may also include concerns about how they will be treated at the polling place.
- To support people with disabilities exercising their right to vote, organize practice-voting events. Every potential voter with a disability should have pre-election experience with actual voting machines or paper ballots.
- Speak to your county or local election officials to set up dates, times, and places where a voting machine or practice ballot can be used.
- Work with election officials to conduct training for poll workers and election officials on etiquette toward people with disabilities.
- Discuss the matter with election officials before Election Day. If a problem is anticipated, be prepared to point to other towns where the problem has been successfully resolved in the past.
- Assemble voter education materials. These should include information on voter's rights, procedures, candidates, and issues. Community groups such as the League of Women Voters and Monday Morning can assist with these materials and training.
- The materials must be non-partisan. Do not tell people with disabilities how they should feel about an issue or what candidate or political party they should support. If a provider organization or staff member shares their preferences it may unfairly bias the individuals in the training program.
- If challenged at the polls, the voter should be able to explain why he or she is there. This must not include a requirement that the voter demonstrate knowledge of the candidates or issues, only that the voter understand that he or she is there to vote and that voting means to choose a person to hold a public office or to vote for or against an issue being decided by voters (such as a school budget or ballot question).
- Providers should make sure to have lists of all people who want to go to the polls, their support and service needs, and what times they will be available to go to the polls.
- On Election Day, voters should have access to the phone numbers of local election commission officials. You may also wish to get the assistance of a local civil rights attorney, New Jersey Protection & Advocacy, or another advocate who will be available on Election Day to receive phone calls and help resolve any issues or problems that may occur at the polls. For example, for voting questions anytime or for help on Election Day, you can call the People for the American Way's Election Protection Hotline toll free: **1-866-OUR-VOTE (1-866-687-8683)**.

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