

State Voter Competence Laws

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Issue

Summarize state laws that impose competence requirements on registering to vote. Identify states that do not impose these requirements.

Summary

According to the Bazelon Center for Mental Health, an advocacy organization for people with mental disabilities, 40 states and Washington D.C. have “voter competence” laws. Generally, these laws require a certain level of competence to register to vote, and they sometimes remove the right from individuals who are under guardianship or have mental disabilities. Laws in the remaining states either are silent with respect to voter competence requirements or do one of the following: specifically protect voting rights for these individuals or prohibit removing the right because of a disability.

In some states, voter competence laws are part of elections statutes that specify voter qualification requirements. In others, they are included with statutes that specify the rights of people with developmental disabilities or who are under guardianship or conservatorship. Additionally, some state constitutions have disqualification provisions. However, states vary widely in terms of their laws and disqualification provisions, and according to a 2018 *Stateline* [article](#) by The Pew Charitable Trusts, most lack a clear legal definition of mental capacity for voting. Further, some state laws contradict their own constitutional provisions.

Broadly speaking, however, just over half of the states with voter competence laws, including Connecticut, bar voting if a court determines that an individual specifically lacks the capacity to vote. Of these states, at least six have adopted laws specifying a standard for making this

determination. California, Maine, Maryland, Nevada, and New Mexico adopted some version of the standard recommended by the American Bar Association (ABA) Commission on Law and Aging in its 2007 [Report to the House of Delegates](#). Generally, under this standard, a person should be determined to lack capacity only if he or she cannot communicate, with or without accommodations, a specific desire to participate in the voting process. Washington adopted a stricter standard: a person should be determined to lack capacity only if the person lacks the capacity to understand the nature and effect of voting such that he or she cannot make an individual choice.

The remaining state voter competence laws are more restrictive. Roughly one-third bar voting by individuals who are under guardianship (though in some cases, attorney general opinions have interpreted the law more narrowly and permit voting by individuals under guardianship who have the capacity to vote). A handful bar voting by individuals who are deemed “non compos mentis” or some other outmoded term like “insane.” (In practice, courts often make this determination through an adjudication process.)

States with Voter Competence Requirements

Table 1 summarizes the voter competence laws in Connecticut and 16 other states and provides the relevant constitutional and statutory citations. The included states illustrate the range of requirements that voter competence laws impose on registering to vote.

The most restrictive laws, as in South Carolina, appear to automatically revoke the right to vote upon adjudication of mental incapacity or guardianship. Less restrictive laws, as in California, allow for revocation only after a judicial finding specifically about voting capacity and establish a standard for making this determination. Connecticut’s law appears to fall somewhere in the middle: generally, it requires a judicial finding about voting capacity in order to revoke the right, but it does not establish a standard for making the determination.

Table 1: States With Voter Competence Requirements

State	Constitution	Statutes
Arizona	No person who is adjudicated an incapacitated person shall be qualified to vote (AZ Const. art. VII, § 2(C)).	<p>Election statutes: An individual is not qualified to register to vote if adjudicated as incapacitated (AS § 16-101(A)(6)).</p> <p>The county recorder must cancel the registration of a voter who is (1) adjudicated incapacitated or (2) committed as an "insane person" in a court proceeding (AS § 16-165(A)(3) and (C)).</p> <p>Other statutes: The law defines “incapacitated person” as a person who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic drug use, chronic intoxication or other</p>

Table 1 (continued)

State	Constitution	Statutes
		<p>cause, except minority, to the extent that he or she lacks sufficient understanding or capacity to make or communicate responsible decisions regarding him- or herself.</p> <p>In cases of limited guardianship only, a person is not deemed incapacitated for purposes of voting if he or she files a petition, has a hearing, and the judge determines by clear and convincing evidence that the person retains sufficient understanding to exercise the right to vote (AS § 14-5101(1)).</p> <p>People undergoing mental health evaluation or treatment may not be denied the right to vote. Court-ordered mental health evaluation or treatment is generally not a determination of legal incompetency (AS § 36-506(A)).</p>
California	<p>The legislature shall provide for the disqualification of electors while mentally incompetent (CA Const. art.II, § 4).</p>	<p>Election statutes: A person must be deemed mentally incompetent, and therefore disqualified from voting, if (1) the court finds by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process and (2) (a) a conservator is appointed, or (b) the person has pled or been found not guilty by reason of insanity and is deemed to be "gravely disabled" at the time of judgment.</p> <p>If the conservatorship proceeding is heard by a jury, the jury must unanimously find that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process before disqualifying the person from voting (CAL. ELEC. CODE § 2208(a) and (b)).</p> <p>A conservatee's capability of communicating, with or without reasonable accommodations, a desire to vote in the voting process must be reviewed during the annual or biennial review of conservatorship (CAL. ELEC. CODE § 2209(a)).</p> <p>A conservatee may contest his or her disqualification from voting under the procedure specified by law. When a conservatorship terminates after one year, the person's right to register to vote is automatically restored. If a petition is filed for the reappointment of the conservator, a new determination must be made about voting qualifications. If the right to vote is restored, the court must notify the secretary of state and the applicable county election official (CAL. ELEC. CODE § 2210).</p> <p>The law disqualifies certain people from voting or registering to vote while involuntarily confined, pursuant to a court order, in a public or private treatment facility. Generally, they are people who have:</p> <ol style="list-style-type: none"> 1) pled not guilty, or have been found not guilty, by reason of insanity; 2) been found incompetent to stand trial;

Table 1 (continued)

State	Constitution	Statutes
		<p>3) been convicted of a felony and judicially determined to be a mentally disordered sex offender; or</p> <p>4) convicted of a felony and being treated at a state hospital for mental illness, mental deficiency, or insanity.</p> <p>If the person is later released from the treatment facility, his or her right to register to vote is restored (CAL. ELEC. CODE § 2211).</p> <p>Other statutes: The conservatorship report must include a recommendation for or against disqualifying the person from voting (CAL. WEL. & INST. CODE § 5357(c)).</p>
Connecticut	No constitutional disqualification provision.	<p>Election statutes: A mentally incompetent person cannot be admitted as an elector (CGS § 9-12(a)).</p> <p>Other statutes: The guardian or conservator of an individual may file a petition in probate court to determine the individual's competency to vote in a primary, referendum, or election. The court must hold a hearing on the petition within 15 days after its filing (CGS § 45a-703).</p> <p>People who are hospitalized or receiving treatment for psychiatric disabilities may vote unless the court has declared them incapable of voting and appointed a conservator (CGS § 17a-541).</p>
Delaware	No person adjudged mentally incompetent... or incapacitated under the provisions of the constitution from voting, shall enjoy the right of an elector (Del. Const. art. V, § 2).	<p>Election statutes: A person who is adjudged mentally incompetent cannot be a qualified voter. For voter registration purposes, the term "adjudged mentally incompetent" means a specific finding in a judicial guardianship or equivalent proceeding, based on clear and convincing evidence, that the individual has a severe cognitive impairment that precludes the exercise of basic voting judgment (15 DCA § 1701).</p>
Iowa	A person adjudged mentally incompetent to vote is not entitled to electoral privileges (Iowa Const. art. II, § 5).	<p>Election statutes: A person who is incompetent to vote is disqualified from registering and voting. Such a person may requalify if a district court clerk certifies that he or she is no longer incompetent to vote.</p> <p>"Person who is incompetent to vote" means a person with an intellectual disability who has been found, in a guardianship proceeding, to lack the mental capacity to vote (ICA §§ 48A.2(4) and 48A.6(2)).</p> <p>Other statutes: When a court appoints a guardian for a person with an intellectual disability, it must make a separate determination as to his or her competency to vote. The court must find such a person incompetent only upon determining that he or she lacks sufficient mental capacity to comprehend and exercise the right to vote (ICA § 633.552(3)).</p> <p>A person under guardianship and found incompetent to vote may request voting rights reinstatement as part of a petition to terminate the guardianship or in a separate petition (ICA § 633.679(3)).</p>

Table 1 (continued)

State	Constitution	Statutes
Maine ¹	People under guardianship for reason of mental illness shall not be electors (ME Const. art. II, § 1) (held unconstitutional).	<p>Election statutes: No disqualification statute</p> <p>Other statutes: An adult subject to guardianship retains the right to vote unless the court orders otherwise. A court order removing the right to vote must include a finding that the adult cannot communicate, with or without support, a specific desire to participate in the voting process (MRSA tit. 18-C § 5-310(2)).</p> <p>Patients in psychiatric hospitals or residential care facilities have the right to vote unless (1) the chief administrative officer determines a need to restrict the right due to medical welfare, (2) the patient is adjudicated incompetent and the finding is not reversed, or (3) another statute or rule restricts the right (MRSA tit. 34-B § 3803(1)(A-C)).</p> <p>People with intellectual disabilities or autism may not be denied the right to vote (MRSA tit. 34-B § 5605(5)).</p>
Maryland	The state may regulate or prohibit the right to vote of a person under care or guardianship for mental disability (MD. Const. art I, § 4).	<p>Election statutes: A person is not qualified to be a registered voter if he or she is under guardianship for a mental disability and a court has specifically found, by clear and convincing evidence, that the person cannot communicate, with or without accommodations, a desire to participate in the voting process (MD CODE ELEC. LAW § 3-102(b)(2)).</p> <p>Other statutes: A person cannot lose the right to vote solely because he or she receives services for a developmental disability or because of residency in a facility for a mental disorder (MD CODE HEALTH-GEN. §§ 7-1004 and 10-704).</p>
Massachusetts ²	Every citizen...except those under guardianship...shall have a right to vote in an election (Mass. Const., Amend art. III).	Election statutes: A citizen who is under guardianship may not have his or her name entered on the voter registry list or vote in any election (MA GEN. LAWS ch. 51, § 1).
Missouri ³	No person under guardianship or because of mental incapacity, nor a person involuntarily confined in a mental institution, can vote (MO Const. art. VIII, § 2).	Election statutes: No person adjudicated incapacitated is entitled to vote (MRS § 115.133(2)).

¹ In *Doe v Rowe*, a federal district court held that Maine’s probate court procedures did not give plaintiffs adequate due process because they were not notified that they lose the right to vote as a result of the guardianship process. It also found that the constitutional provision did not pass strict scrutiny because there was not a factually valid correlation between the ends and the means; therefore, it violated the Equal Protection Clause.

² Under an Office of the Secretary of State Opinion, people who are under general guardianships that do not specifically forbid voting are eligible to register and vote (Mass. Sec. of State, Elections Div. [Opinion](#) (1992)). No person shall be deprived of the right to vote solely on the basis of admission or commitment to a mental health facility ([104 CODE MASS. REG. 27.13](#)).

³ Person who had been committed to mental hospital many years earlier but did not have a guardian was not disqualified under the constitutional provision (*New v. Corrough*, 370 S.W.2d 323 (Mo. 1963)).

Table 1 (continued)

State	Constitution	Statutes
Nevada	No person who has been adjudicated incompetent, unless restored to legal capacity, is entitled to the privilege of elector (NV Const. art. II, § 1).	<p>Election statutes: The county clerk must cancel a voter registration if the clerk receives a certified copy of an order stating that the court specifically finds by clear and convincing evidence that the person registered lacks the mental capacity to vote because he or she cannot communicate, with or without accommodations, a specific desire to participate in the voting process (NRSA § 293.540(2)).</p> <p>Other statutes: No person admitted to a public or private mental health facility, or to a program of community-based or outpatient services, may be denied the right to vote by reason of admission, unless specifically adjudicated incompetent and not restored to legal capacity (NRSA § 433A.460).</p> <p>The medical director of a division mental health facility must evaluate each recipient of services who has been adjudicated as a person with mental incompetence, at least once every six months, to determine if there is sufficient cause to believe that the recipient remains unable to vote (NRSA § 433A.480(1)).</p>
New Jersey	No person who has been adjudicated to lack the capacity to understand the act of voting shall enjoy the right of suffrage (NJ Const. art II, § 1(6)).	<p>Election statutes: A person who has been adjudicated to lack the capacity to understand the act of voting does not have the right to vote (NJS § 19:4-1(1)).</p> <p>Other statutes: Subject to any other law, patients cannot be deprived of the right to vote solely because they are receiving treatment. Similarly, people cannot be presumed incapacitated because they have been examined or treated for mental illness (NJS § 30:4-24.2(a) and (c)).</p>
New Mexico ⁴	Individuals who are unable to mark a ballot and concurrently also unable to communicate their voting preference cannot vote (NM Const. art. VII, § 1(A)).	<p>Election statutes: No disqualification statute</p> <p>Other statutes: An incapacitated person for whom a guardian or limited guardian has been appointed retains all legal and civil rights except those that a court has expressly limited or specifically granted to the guardian (NMSA §§ 45-5-301.1 and 45-5-312(A)).</p>
New York	No constitutional disqualification provision.	<p>Election statutes: No person who has been adjudged incompetent has the right to vote, unless later adjudged competent. If a voter is adjudicated incompetent, his or her registration must be cancelled, including an inactive status registration (NY ELECT. LAW § 5-106(6) and 5-400(1)(c)).</p> <p>Other statutes: People receiving services for mental disabilities cannot be deprived of the right to register or vote if otherwise qualified (NY MENT. HYG. LAW § 33.01).</p> <p>The commissioner of mental health must include in rules and regulations promulgated for community residences a statement of the residents' rights, which must include the right to vote (NY MENT. HYG. LAW § 41.41(p)).</p>

⁴ Individuals with "mental retardation" "who can understand the nature of their actions should be allowed to register and vote" (1974 Op. An, Gen. No. 74 35).

Table 1 (continued)

State	Constitution	Statutes
Oregon	A person "suffering from a mental handicap" is entitled to the full rights of an elector, if otherwise qualified, unless the person has been adjudicated incompetent to vote as provided by law (OR Const. art.II, § 3).	<p>Election statutes: No disqualification statute</p> <p>Other statutes: People with mental illness who are committed to the Oregon Health Authority have the right to vote, unless adjudicated incompetent and the right has not been restored to legal capacity (ORS § 426.385(1)(p)).</p> <p>While receiving mental health services or developmental disability services, people are entitled to specified legal rights. These specified rights are in addition to all other statutory and constitutional rights that are afforded to all citizens, including the right to vote (ORS § 430.210(2)).</p>
Rhode Island	No person who has been adjudicated "non compos mentis" is allowed to vote (RI Const. art. II, § 1).	<p>Election statutes: No disqualification statute</p> <p>Other statutes: Patients admitted to a mental health facility, or residents in a community residence, cannot be deprived of the right to vote or to participate in political activity solely because of their admission (RI GEN. LAWS §§ 40.1-5-5(f)(10) and 40.1-24.5-5(6)).</p>
South Carolina	The General Assembly must establish disqualifications for voting by reason of mental incompetence and may provide for the removal of the disqualifications (SC Const. art. II, § 7).	<p>Election statutes: A person is disqualified from registering or voting if mentally incompetent as adjudicated by a court of competent jurisdiction (SCC § 7-5-120(B)(1)).</p> <p>Other statutes: Generally, individuals with mental or intellectual disabilities have the right to be electors if otherwise qualified (SCC §§ 44-22-80(7) and 44-26-90(7)).</p>
Washington	People are excluded from the elective franchise while they are judicially declared mentally incompetent (WA Const. art. VI, § 3).	<p>Election statutes: Upon receiving notice that a court has imposed a guardianship for an incapacitated person and has determined that the person is incompetent for the purpose of rationally exercising the right to vote, the county auditor must cancel the person's voter registration (RCWA § 29A.08.515).</p> <p>Other statutes: Imposition of a guardianship for an incapacitated person must not result in the loss of the right to vote unless the court determines that the person is incompetent for purposes of rationally exercising the right because he or she lacks the capacity to understand the nature and effect of voting such that he or she cannot make an individual choice. The court order establishing guardianship must specify whether the individual retains voting rights (RCWA § 11.88.010(5)).</p>

States Without Voter Competence Requirements

In the remaining states, the law is either silent with respect to voter competence requirements or does one of the following: specifically protects voting rights for individuals who are under guardianship or have mental disabilities or prohibits removing the right. For example, in Illinois, Indiana, Kansas, and Pennsylvania, neither the constitution nor the statutes contain a disqualification provision. In Michigan, the state constitution authorizes a voter incompetence disqualification statute, but the legislature has not enacted one.

In Colorado, the law explicitly guarantees individuals with certain disabilities the right to vote, while in New Hampshire the law prohibits removing the right because of a disability. Table 2 summarizes the relevant statutory provisions in these two states (neither state has a relevant constitutional provision).

Table 2: Colorado and New Hampshire Laws

State	Statutes
Colorado	<p>Election statutes: The right to vote is not lost because of confinement in a state institution for people with behavioral or mental health disorders (CRS § 1-2-103(5)).</p> <p>Other statutes: People who are receiving services for intellectual or developmental disabilities or mental illness must have the opportunity to exercise their right to register and vote in primary and general elections. Agencies or facilities providing the care must help these people, upon their request, to obtain voter registration forms, mail ballots, and comply with other voting prerequisites (CRS §§ 25.5-10-225 and 27-65-120). (Some provisions are not effective until July 1, 2022.)</p>
New Hampshire	<p>Election statutes: No disqualification statute</p> <p>Other statutes: People cannot be deemed incompetent to vote or to exercise any other civil right solely because they (1) are admitted to the mental health services system or (2) have developmental disabilities or receive services (NHRS §§ 135-C:56(II) and 171-A:14(I)).</p>

Source: Bazelon Center for Mental Health

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