

June 19, 2007

States Face Decisions on Who Is Mentally Fit to Vote

By [PAM BELLUCK](#)

CRANSTON, R.I. — Behind the barbed wire and thick walls of the state mental hospital here are two patients who have not been allowed to live in the outside world for 20 years. Both were found not guilty of murder by reason of insanity.

Still, they have voted in elections nearly every two years, casting ballots by mail. Now, however, election officials are taking steps that could ban them from voting, arguing that state law denies the vote to people with such serious psychiatric impairments.

“I just think if you are declared insane you should not be allowed to vote, period,” said Joseph DeLorenzo, chairman of the Cranston Board of Canvassers. “Some people are taking these two clowns and calling them disabled persons. Is insanity a disability? I have an answer to that: no. You’re insane; you’re nuts.”

[Rhode Island](#) is among a growing number of states grappling with the question of who is too mentally impaired to vote. The issue is drawing attention for two major reasons: increasing efforts by the mentally ill and their advocates to secure voting rights, and mounting concern by psychiatrists and others who work with the elderly about the rights and risks of voting by people with conditions like Alzheimer’s disease and dementia.

This summer, recommendations for national standards will be released by a group of psychiatrists, lawyers and others led by the [American Bar Association](#), suggesting that people be prevented from voting only if they cannot indicate, with or without help, “a specific desire to participate in the voting process.”

Some state skirmishes involve efforts to ease restrictions, while others involve specific cases that compel officials to clarify old laws.

And with research showing that many people with dementia or other impairments vote or want to, there is also a desire to ensure they are not pressured to vote certain ways.

“There’s a lot of people out there who either don’t have adequate access to the ballot and should, or could be vulnerable to overreaching political types who want to take advantage of their votes to swing an election,” said Charles Sabatino, director of the commission on law and aging at the bar association.

In Missouri, advocates for the mentally ill have sued the state, trying to make it easier for people under guardianship for mental incapacity to vote.

New Jersey may put on the November ballot an amendment to the state’s Constitution to replace language forbidding an “idiot or insane person” to vote. Advocates for the disabled want those words removed but worry that replacement language is so vague it could be unfairly restrictive. They want to allow people to vote if they can supply information for a voter registration form.

In Maine, a federal ruling a few years ago said a constitutional provision, twice affirmed by referendum, was discriminatory because it barred voting by people under guardianship for mental illness.

Recent local elections in Alabama, South Carolina and elsewhere have included accusations of ballots cast on behalf of nursing home residents who were incompetent to vote. In New Jersey, a nursing home employee who won a 2004 election to a county Democratic committee stepped down because her victory resulted from absentee ballots cast by the nursing home residents.

State laws vary and are inconsistently applied, said Jennifer Mathis, deputy legal director for the Bazelon Center for Mental Health Law, an advocacy group in Washington. Ms. Mathis said most states fell into one of two categories. About 18 bar voting by people under guardianship or who are “non compos mentis” (“not master of one’s own mind”), a determination that is often not clearly defined. Another 18 prevent voting if there is a specific determination that people lack voting competence.

Rhode Island’s case concerns William Sarmento, institutionalized after he claimed Satan had ordered him to kill two boys, ages 6 and 9, and John A. Sarro, charged in the throat-slashing of a man in a bar restroom, and later with killing another psychiatric patient.

If the men had been convicted and imprisoned, they would be unable to vote; only Maine and Vermont allow jailed felons to vote.

Last October, Edward Desautel, a restaurant manager running for the Rhode Island House of Representatives, learned that Mr. Sarro and Mr. Sarmento were on the voting rolls. He wrote the three-member Board of Canvassers, arguing “we don’t need the additional burden of worrying whether an incompetent child murderer’s vote might affect the outcome of a close School Committee or other local race.”

In an interview, Mr. Desautel said, “If you’re criminally insane, even if you’re found not guilty, you still shouldn’t be able to vote.”

Mr. DeLorenzo said he was “ready to remove them from the voting list,” but because the House election had been so close, the [American Civil Liberties Union](#) intervened, saying more notice was required for a hearing. (Mr. Desautel lost by 1,700 votes.)

In March, the canvassers notified Mr. Sarro and Mr. Sarmento that their voting rights were being reviewed, and a hearing is expected soon. The canvassers cite a state constitutional provision that a person “lawfully adjudicated to be non compos mentis” cannot vote.

Kate Sherlock and Kate Bowden, lawyers from the Rhode Island Disability Law Center, representing the hospitalized men, say “non compos mentis” is different from “not guilty by reason of insanity.”

The latter “means they were not found to form the specific intent required for the crime,” Ms. Sherlock said. “It does not address an individual’s capacity to vote in any way.”

Mr. DeLorenzo cited semiannual doctors’ evaluations saying the men should remain hospitalized. Ms. Bowden said the evaluations considered “dangerousness, not capacity to vote.”

Dr. Barry Wall, director of the forensic service at the mental hospital, said the hospital encouraged voting when possible. “We think of it as part of their treatment, to try to move them closer to society,” Dr. Wall said.

Through lawyers, Mr. Sarro, 52, said, "I've been voting a long time now, and it's important to me." Mr. Sarmiento, 40, said: "I read the paper just about every day. I'm aware of what is going on in the world. I care about voting."

The Missouri lawsuit seeks to end what it calls a state voting ban for people under full guardianship because of mental illness. Missouri's attorney general's office says the law lets judges allow voting in individual cases. A court ruled for the state, but the case is being appealed.

David C., 26, of Fayette, Mo., who asked that his last name be withheld, said he had been prevented from voting because he was under guardianship, although he had distributed campaign fliers and lobbied a state senator about issues like Medicaid.

Sebastian Go of St. Peters, Mo., under guardianship because of bipolar disorder, Asperger's syndrome and brain injury, registered to vote and researched races when he turned 18 last September, said his guardian and grandmother, Linda Clarke. But the day Mr. Go received his voting card he also got a letter saying he could not vote because he had been declared mentally incapacitated.

"He has to have someone manage his money for him and make his medical decisions," Ms. Clarke said. "But Sebastian is able to make a political decision."

Mr. Go said he considered voting "my duty as an American citizen," adding "I have an opinion on the outside world, on who's governor, who's senator, who's president. And that one vote could count."

The 2001 ruling in Maine, allowing people to vote if they understood the nature and effect of voting and could make a choice, was considered a model. How to assess such qualifications, however, is controversial.

"To fail to have any standard that requires a person to have a grasp of what the process is all about would degrade the voting process," said Dr. Paul S. Appelbaum, a [Columbia University](#) psychiatry professor who was a leader of a study that asked Alzheimer's patients to choose between hypothetical candidates and describe how elections work.

Some advocates for the mentally ill object to such questions, however, saying they exceed what most prospective voters are asked.

"The question asked of you when you go to vote is, Have you registered," said Sally Hurme, a senior project manager for [AARP](#), an association for older Americans. "Why should your next-door neighbor be given a greater barrier to voting than you just because they have a medical diagnosis?"

So far, in Maine "basically now there is no restriction," said Melissa Packard, the state's director of elections. "We don't require local registrars to determine if they think the person understands the voting process."

Copyright 2007 [The New York Times Company](#)

[Privacy Policy](#) | [Search](#) | [Corrections](#) | [RSS](#) | [First Look](#) | [Help](#) | [Contact Us](#) | [Work for Us](#) | [Site Map](#)