

The Guardian is a quarterly newsletter published by the Greater Wisconsin Agency on Aging Resources' (GWAAR) Wisconsin Guardianship Support Center (GSC).

The GSC provides information and assistance on issues related to guardianship, protective placement, advance directives, and more.

To contact the GSC:

Call:
(855) 409-9410

E-mail:
guardian@gwaar.org

Website:
<http://gwaar.org/guardianship-resources>

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Consumer Financial Protection Bureau Spring Webinar Series

The Consumer Financial Protection Bureau is offering new webinars on protecting older adults from financial exploitation. [Register for free online.](#)

About the Webinar Series

Protecting Older Adults from Check Fraud

Thursday, January 16, from 2:00 to 3:30 Eastern

Check fraud is a big problem nationwide, with more than \$688 million in reported suspicious activity in a recent six-month period. Check fraud is an especially significant threat to older adults, three quarters of whom report using checks.

The webinar will feature presentations by experts from the Federal Trade Commission, United States Postal Inspection Service, and Consumer Financial Protection Bureau that will provide professionals with information to protect older adults from check fraud.

Cognitive Decline and Financial Exploitation in Older Age

Wednesday, February 12, 2:00 – 3:30 Eastern

Mild cognitive impairment, which often goes undiagnosed in older adults, can adversely affect financial decision-making leaving vulnerable adults at risk for financial exploitation. Financial exploitation is the most common form of elder abuse and the research suggests a change in financial management and skills may be an early indicator of cognitive decline. Although a person may be able to perform simple tasks such as writing checks or paying bills, they may have difficulty with more complex tasks such as balancing a checkbook or managing investments.

Advances in the neuroscience of cognition and aging can help family members and professionals recognize the signs of poor monetary management and take steps to respond to and prevent the financial risks associated with early cognitive decline. Those

research findings can be used to inform the work of law enforcement, adult protective services, financial institutions, clinicians, and other service providers. They are also relevant to older adults, themselves, who can be empowered to take steps to protect their financial well-being.

The webinar will feature presentations by experts in the field of aging and cognition.

Social Isolation and Financial Exploitation in Older Age – Register Today for a CFPB Webinar

Wednesday, March 5, 2:00 – 3:00 Eastern

Many people are socially isolated and regularly feel lonely, according to the National Institutes of Health. Older adults are at higher risk for social isolation and loneliness due to changes in health and social connections that can come with growing older, including: hearing, vision, and memory loss; disability; trouble getting around; and the loss of family and friends.

Researchers who study elder abuse are finding that loneliness and dissatisfaction with personal relationships, along with an increase in digital technology usage, has significantly increased vulnerability to scams and other forms of elder financial exploitation.

The webinar will feature emerging research, as well as innovative programs, which shed light on interventions that may protect older adults from financial exploitation.

Government Imposter Scams and Older Adults

Thursday, March 6, 2:00 – 3:30 Eastern

In government imposter scams, criminals contact consumers pretending to be from government agencies. This webinar will look at how to help older adults spot, avoid, and report these scams. The webinar will feature experts from the Federal Trade Commission, Securities and Exchange Commission, Consumer Financial Protection Bureau, and U.S. Postal Inspection Service.

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Solar Financing and Consumer Protection for Older Adults

Tuesday, April 15, 3:00 – 4:00 Eastern

The market for residential solar panels continues to grow. With that growth, marketing and door-to-door sales of solar-related financial products have become more prevalent. In some cases, “solar-specific” loans marketed to consumers present risks, such as hidden markups and fees, misleading tax credit information, unexpected prepayment requirements, exaggerated financial benefits, as well as fraud and scams.

This presentation by CFPB experts in solar financing and consumer protection will help professionals and older adults make informed decisions about solar financing.

Reverse Mortgages, Home Equity Investment Products, and Consumer Protection for Older Adults

Thursday, May 15, 3:00 – 4:00 Eastern

Making informed choices about using home equity to pay for retirement costs begins with understanding the products. This webinar will focus on two products commonly offered to older adults:

Reverse mortgages, which are a special type of home loan typically for homeowners aged 62 or older. With reverse mortgages, borrowers don’t make monthly mortgage payments but are charged interest and fees, and the balance due goes up – not down – over time. In general, the loan must be repaid when the borrower no longer lives in the home.

Home equity investment products, also known as home equity sharing agreements, which are financial agreements in which a homeowner gets an upfront cash payment in exchange for a percentage of their home’s future value or future price appreciation.

This presentation by CFPB experts will look at how these products work, what questions to ask, and what risks to consider. The webinar will help professionals and older adults make informed decisions about their home equity and how to avoid fraud and scams.

Recent NCLER Webinar – Elder Abuse Representation 101: Case and Client Management, Jan. 21, 1 pm

The National Center on Law & Elder Rights’ recent webinar on Elder Abuse Representation is the first in a three-part series designed to provide legal and elder rights practitioners with the basic tools and civil legal strategies needed to help older adults who have experienced abuse. The series will also provide tips for providing person-centered and trauma-informed representation. This webinar focused on case and client management. The webinar materials are not yet available online but should be posted in coming weeks on the [NCLER website](#).

Recent NCLER Webinars

The National Center on Law & Elder Rights held a number of webinars this fall on topics that may interest both professionals and consumers:

- *Helping Older Borrowers Apply for Total & Permanent Disability Discharge* (Nov. 21)
 - [Recording](#)
 - [Slides](#)
 - [Tip Sheet](#)
- *Life Planning Strategies for Supporting the Needs of Older Adults and Their Families* (Dec. 18)
 - [Recording](#)
 - [Slides](#)
 - [FAQ Sheet](#)
- *Update on Social Security Overpayment Policies* (Jan. 9) (Recording not yet available but expected soon)
 - [Slides](#)
 - [Practice Update](#)

Alzheimer’s Association Wisconsin Advocacy Day at the Capitol, March 4, 9-4, Madison

Join the Alzheimer’s Association in gathering at the Wisconsin State

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Capitol to show how Wisconsinites are affected by Alzheimer's disease. During the opening program at the Best Western Premier Park Hotel, hear from key state policymakers and take away tools to empower advocacy efforts on behalf of all who are impacted by Alzheimer's and dementia. Then head to the Capitol to meet with your lawmakers and discuss policy issues. Lunch is included for all participants. [Register online](#) by Friday, February 21.

Wisconsin Department of Justice Elder Abuse Training, March 12, 8-4:30, Green Bay

The Wisconsin Department of Justice is hosting a training on elder abuse at the Brown County Sheriff's Office in March. The course promotes a multi-agency approach to the problem of elder abuse for frontline law enforcement professionals and others who serve older adults or handle elder abuse cases. The course is free; please register through the [Department of Justice](#).

Save the Date: Aging Advocacy Day, May 13, Madison

The Wisconsin Aging Advocacy Network (WAAN) will hold our [9th Annual Aging Advocacy Day \(AAD\) 2025](#) event in Madison on Tuesday, May 13, 2025. Registration coming soon!

Healthy Aging Summit, May 15, Stevens Point

Early bird registration is now open for the Wisconsin Institute of Healthy Aging's 2025 [Healthy Aging Summit](#), an in-person conference designed to inform, inspire, engage, and empower! The summit is a fun, inspiring educational event for professionals and people with an interest in improving the health of their communities. The event will take place at the SentryWorld Conference Center in Stevens Point. Cost: \$165, with a \$10 discount if you register before January 31. ☐

What is the Guardianship Support Center able to help with?

The GSC is a neutral statewide informational help-line for anyone throughout the state. We can provide information on topics such as Powers of Attorney, Guardianship, and Protective Placement. The GSC is unable to provide information on minor guardianships, wills, trusts, property division, or family law. The GSC is also unable to give legal advice or specific direction on completing court forms such as the inventory and annual accounting. The GSC does not have direct involvement in cases and is not able to provide legal representation.

What are some other free or low-cost legal resources?

Other resources include the American Bar Association's Free Legal Answers [website](#) where members of the public can ask volunteer attorneys legal questions. The State Bar of Wisconsin also offers a Modest Means Program for people with lower income levels. The legal services are not free but are offered at a reduced rate. Income qualifications must be met. For more information, visit the State Bar's [website](#) or call **800-362-9082**.

Interested in Receiving *The Guardian*?

Do you want more information about guardianship, POAs, and related issues?

Signing up is easy with a link on our website: [Guardian Newsletter Sign-Up](#).

You can also subscribe by emailing your name, email address, and organization to guardian@gwaar.org.





Press Release: DRW, GWAAR Applaud Wisconsin Supreme Court Decision in *WVA v. Secord*

For Immediate Release: January 17, 2025

Contact: Lisa Hassenstab, Public Policy Manager, Disability Rights Wisconsin, lisah@drwi.org, (608) 308-2639

Janet Zander, Advocacy and Public Policy Coordinator, Greater Wisconsin Agency on Aging Resources, Inc., janet.zander@gwaar.org, (608) 228-7353

Disability Rights Wisconsin (DRW) and the Greater Wisconsin Agency on Aging, Inc. (GWAAR) applaud today's decision by the Wisconsin Supreme Court to leave in place the District IV Appellate decision protecting the right of individuals under guardianship in maintaining their privacy.

Guardianship proceedings are mandated by state statute to be confidential, including a determination made during those proceedings regarding the individual's right to vote. The need for confidentiality is clear, as the mere fact that an individual is the subject of guardianship petition, or is under guardianship, may lead to improper and incorrect assumptions about that person, including their capacity to exercise their right to vote, even when a judge has determined the individual should retain that right. The confidentiality of guardianship proceedings helps address this concern, and today's ruling upholds this clear and critical understanding of Chapter 54 of Wisconsin's statutes.

DRW and GWAAR look forward to working with the Wisconsin State Legislature to support common-sense reforms to improve communications whenever an individual's right to vote is either removed or restored, thereby protect every individual's sacred and fundamental right to vote as guaranteed by the Wisconsin Constitution.

Voters with disabilities who have questions about the electoral process or their voting rights, or who encounter challenges during the voting process, are encouraged to contact the Disability Rights Wisconsin Voter Hotline at 844-DIS-VOTE (844-347-8683) or info@disabilityvote.org.

Free Sign Language Interpreters for Victim Service Organizations

Activating Change has announced a new service to provide free, remote ASL interpreting services for victim service providers across the US. The service is funded by the U.S. Office of Victims of Crime (OVC). Interpreters are trauma-informed and committed to ensuring safety, security, and confidentiality. For more information and to request an interpreter, please visit ActivatingChange.org/interpreting.

Department of Justice Releases Annual Report to Congress on Elder Justice Activities

The Department of Justice released its sixth [Annual Report to Congress](#) on its elder justice activities from July 1, 2023 through June 30, 2024. The Department pursued over 300 elder justice enforcement actions and engaged in nearly 1000 public awareness events reaching over 320,000,000 Americans.

In addition to highlighting the Department's elder justice efforts, this year's Report highlights resources, training, and tools available to law enforcement and our other elder justice partners. It also highlights important information on trending fraud schemes and tips on how older adults and their families can protect themselves.

HHS Releases 2024 Update to the National Plan to Address Alzheimer's Disease

HHS is excited to announce the release of the [National Plan to Address Alzheimer's Disease: 2024 Update](#), highlighting another historic year of progress on Alzheimer's disease and related dementia research, care, and services. The National Plan serves as a roadmap of strategies and actions for how HHS and its partners can accelerate innovative research and expansion of treatments, improve care, support people living with dementia and their caregivers, and promote dementia risk reduction strategies.

The 2024 National Plan updates includes a description of

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the accomplishments and activities undertaken from fall 2023 through mid-2024, including new and ongoing action steps towards each of the Plan's six main goals. Notable highlights include the FDA's approval of Kisunla (donanemab-azbt) to treat Alzheimer's disease, NIH-funded behavioral and lifestyle interventions (e.g., blood pressure control, correcting hearing loss with hearing aids, daily, broad-spectrum multi-vitamin use, and personalized health coaching) that offer promise in reducing dementia risk and improving cognition and memory, and the development of new diagnostic tests for dementia.

SSA Service Changes

By the GWAAR Legal Services Team

The Social Security Administration (SSA) recently announced that it will be transitioning to appointment-based services for in-person visits to local field offices. Beginning January 6, SSA will require customers to schedule an appointment for services, including requests for Social Security cards.

SSA emphasizes that it will not turn people away for walk-in service who are unable to make an appointment or do not want to make an appointment, such as "members of vulnerable populations, military personnel, people with terminal illnesses, and individuals with other situations requiring immediate or specialized attention." Field offices with minimal wait times will also continue to provide walk-in assistance.

Nonetheless, SSA still encourages people to take advantage of online services or the automated services available by telephone at 1-800-772-1213.

Flu and COVID Combination Tests

By the GWAAR Legal Services Team

The Food and Drug Administration (FDA) recently approved a new at-home kit that can test for COVID-19 and two strains of the flu virus at the same time. The tests are available at pharmacies without a prescription and can help people determine what types of precau-

tions they need to take to avoid infecting friends and family members.

The tests should cost about the same as a COVID-only test kit – around \$15 per test. The kits should provide test results within 15 to 30 minutes.

Limited English Proficiency Accommodation Rights *By the GWAAR Legal Services Team*

The healthcare system is already challenging to navigate, but it can sometimes be almost completely inaccessible for people with limited English proficiency (LEP). These individuals may struggle to communicate symptoms and health concerns to their medical providers because they do not speak English or have a limited understanding of English. This language barrier results in inadequate medical care and poor medical outcomes. When a medical provider receives federal money from the Department of Health and Human Services (HHS) for programs like Medicare and Medicaid, they are required to accommodate LEP individuals. The providers are expected to safeguard equitable access to HHS-funded programs.

The inability to access equitable medical care can result when assumptions about a person's English language proficiency are made. For example, when LEP accommodations are not given because an individual can answer basic questions, like their name and address in English, even though they can't fully understand their provider's diagnosis or care plan. The communication barrier creates inequitable access to healthcare for the LEP individual. Even if the individual can speak some English, it does not mean they don't need LEP accommodations. The complexity of medical care may require a deeper understanding of English and a need for translation services to help LEP individuals achieve a better understanding of their medical care. The provider is responsible for ensuring that all patients understand the care they need and receive.

Federal law protects the right to meaningful healthcare access regardless of what language you speak. Title VI of the Civil Rights Act of 1964 and Section 1557 of the Pa-

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tient Protection and Affordable Care Act outline the rights of individuals to be free from discrimination based on race, color, sex, national origin, religion, age, or disability. These rights extend to healthcare settings and services. Medical providers are required to take reasonable steps to accommodate LEP individuals. These steps may include interpretation services, translating important materials, or any other accommodation needed to ensure LEP individuals understand their medical care and can effectively communicate their medical needs.

These Federal laws help protect LEP individuals from poor health outcomes and ensure that federal money is used equitably to provide for all individuals. Language barriers should not prevent a person from accessing appropriate medical care. Poor healthcare outcomes occur when communication breaks down between the patients and their medical providers. When accommodations are provided, medical outcomes improve and allow people to receive the care they need. It is essential that healthcare providers accommodate LEP individuals, not only because it is the law but because it improves the medical outcomes for these individuals.

Meaningful access to critical healthcare is a right, not a privilege. The ability to communicate with healthcare providers is vital for a person's overall health and well-being, regardless of what language they speak.

If you have issues receiving LEP accommodations and feel that you have been discriminated against based on your race, color, national origin, age, sex, religion, or dis-

ability, you can file a complaint with the Office of Civil Rights. This process can be done in writing or online at the [Office of Civil Rights](#) website. Follow the website's directions to submit your claim.

Additional Information on LEP

[Department of Health and Human Services Limited English Proficiency \(LEP\)](#) - DHS provides information and resources for LEP individuals.

[Office for Civil Rights \(ORC\) Limited English Proficiency \(LEP\)](#) - This website provides information about the rights and protections for LEP individuals.

What the Lifeline Program Is and How to Sign Up By the GWAAR Legal Services Team

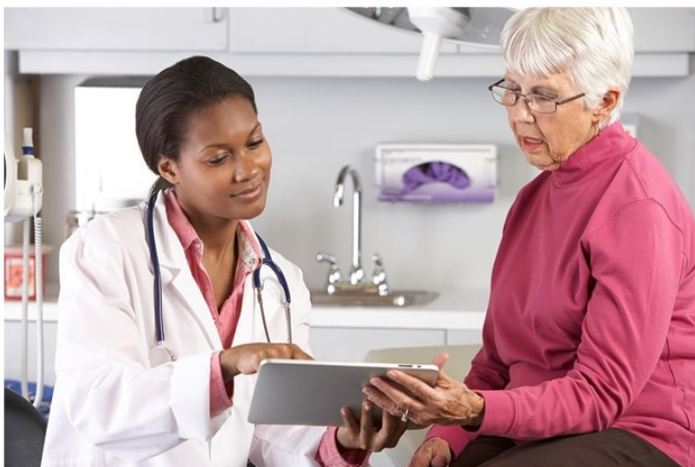
What is Lifeline?

Lifeline is a program that provides qualified low-income Wisconsin residents with affordable access to essential telecommunications services by discounting the cost of phone, cellular, and internet services. Lifeline is a voice-based benefit, however, so while the discount can be applied to bundled internet and voice service, voice service must be included as part of the package for a Lifeline discount to be provided. Discounts range from \$5.25 to \$18.50 per month, depending on the type of service you have. Your service provider can tell you the exact amount of your discount. Tribal members living on Tribal land are eligible for a further discount of \$25 and have additional qualifying programs.

Who is Eligible for Lifeline?

To be eligible for Lifeline, your income must be at or below 135% of the [Federal Poverty Guidelines](#), or you must participate in one of the following programs:

- Medicaid
- FoodShare
- Supplemental Security Income (SSI)
- Federal Public Housing Assistance (Section 8)



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- Veterans and Survivors Pension Benefit

In addition, only one person per household may receive a Lifeline discount. If you live with someone who has Lifeline but is not a part of your household, you may still qualify. Complete the [Household Worksheet](#) at Lifeline-Support.org.

You can check your eligibility for Lifeline online by going to the [FCC Lifeline National Verifier](#) website. The National Verifier website is connected to federal databases and can determine if you are enrolled in a qualifying program listed above. If you do not participate in a qualifying program, you must provide proof that you meet the income guidelines in order to be eligible for Lifeline.

How Can You Sign Up for Lifeline?

To get Lifeline, you have two options. You can start by first qualifying for the service through Lifeline. You can receive proof that you qualify either by going online to the [FCC Lifeline National Verifier](#) website and receiving a code or by mailing in a [paper application](#) to Lifeline. Once you receive proof that you qualify for Lifeline, you can choose a [participating phone or internet company](#) in your area and apply the Lifeline discount to new or existing service.

Alternatively, you can start by just reaching out directly to a local participating service provider and asking them to help you find out if you are eligible to sign up for the program.

For Additional Information

For additional information on Lifeline in Wisconsin, visit <https://psc.wi.gov/Pages/ForConsumers/Lifeline.aspx>, or call the Wisconsin Internet & Phone Helpline at (608) 267-3595, Monday through Friday, from 7:45 a.m. to 4:30 p.m. You can request an interpreter if you need assistance in a different language. For additional information about Lifeline at the federal level, you can visit lifelinesupport@usac.org, or call (800) 234-9473, Monday through Friday, from 10 a.m. to 10 p.m.

January is Glaucoma Awareness Month

By the GWAAR Legal Services Team

January is Glaucoma Awareness Month, a critical time to shed light on this debilitating eye condition that damages the optic nerve, the nerve responsible for carrying visual information from the eye to the brain.

Glaucoma is a leading cause of vision loss and blindness in the U.S. It is estimated that approximately 4.2 million Americans have glaucoma, but nearly half of people with the disease don't even know they have it. The insidious nature of glaucoma lies in its lack of early symptoms, making it difficult to detect until significant vision loss has occurred. This is why regular comprehensive eye exams are crucial, especially for individuals at higher risk, including individuals over the age of 60, those with a family history of glaucoma, and members of certain races or ethnicities (e.g., African Americans, Latinos, and Asian Americans).

While there is currently no cure for glaucoma, early detection and treatment can often slow its progression and prevent further vision loss. Treatment options include eye drops, laser procedures, and in some cases, surgery.

As we embark on Glaucoma Awareness Month, let's prioritize eye health. Encourage friends and family to schedule regular eye exams, especially if they have risk factors for the disease. Together, we can raise awareness, promote early detection, and help safeguard precious eyesight.

Subsidized Housing Eviction Notices

By the GWAAR Legal Services Team

During the coronavirus pandemic, the federal government passed the Coronavirus Aid, Relief and Economic Security Act (the "CARES" act). Among other things, the CARES act made it more difficult for landlords to evict their tenants. When the national Public Health Emergency ended in May 2023, most of the elements of the CARES act also ended, but one important piece of the law remains in effect. That piece can be very important for people who live in housing that is subsidized by any

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form of federal funding, such as Section 8 or Section 42 housing units.

Under Wisconsin state law that applies to most rental housing, landlords are required to give at least 5, 14, or 28 days notice, depending on the nature of the lease and the reason for termination, before cancelling a lease agreement and having the right to evict a tenant. The CARES act imposed a moratorium on evictions for non-payment of rent, which has now ended, but it also imposed a 30-day notice requirement for residents of publicly subsidized housing before a landlord could begin eviction proceedings. That 30-day notice requirement was written into the law with no end date, so it still applies today.



Although there hasn't yet been a case about the 30-day notice requirement that has gone through Wisconsin's appellate courts, other states including Washington, Colorado, Ohio, and Indiana, have dismissed eviction cases where landlords failed to provide 30 days' notice. Not only can the notice requirements of the CARES act help residents of subsidized housing avoid getting evicted, there are also penalties for landlords who fail to follow the notice requirements. Being aware of the notice requirements can make a big difference for lower income renters who may be getting threatened with eviction by landlords hoping to re-rent a property at a higher rental rate.

Helpline Highlights



My loved one's health care POA was just activated. Their financial POA also says it's activated on incapacity. Can I use the statement of incapacity from the health care POA to activate the financial?

Generally no, unless the financial POA specifically allows it. A certification of incapacity to make health care decisions cannot by default be used to indicate the principal has an incapacity to manage finances. When an individual has a POA -HC activated upon incapacity, this means that two physicians or one physician and one advanced practice clinician have personally examined the person and determined they are unable to "receive and evaluate information effectively or to communicate decisions to such an extent" that they lack capacity to manage "health care decisions." Wis. Stat. § 155.01(8). This is not an automatic determination that an individual is unable to make financial decisions or access and manage their funds or assets.

Does a state-authorized Certificate of Incapacity form exist for doctors to complete for purposes of activating a power of attorney for health care?

There is no standard state-issued Certificate of Incapacity form for these purposes. Individual hospitals or clinics may have their own forms or a doctor could draft their own document stating that the principal is incapacitated.





Title: *Wisconsin Voter Alliance v. Secord*

Court: Supreme Court of Wisconsin

Date: 1/17/2025

Citation: 2025 WI 2

Case Summary

When an individual under guardianship loses or regains the right to vote, the court generates a Notice of Voter Eligibility form to communicate that information to election officials. This case asks whether that form can be released via a public records request. However, the Supreme Court recognized a second question: whether one district court of appeals can issue an opinion that produces the opposite result from a previous published opinion with the same facts. Because existing case law notes that different districts within a unified court of appeals must follow other districts' precedent, the Supreme Court reversed the court of appeals with an order to apply previous precedent to this case. The Supreme Court did not decide whether the NVE forms are subject to public records requests.

Note: Disability Rights Wisconsin and the Guardianship Support Center submitted an [amicus brief](#) in this case. In addition, DRW and GWAAR issued a joint press release on this decision, included on page 5 above.

Case Summary

In spring 2022, the Wisconsin Voter Alliance sent letters to multiple county registers in probate around the state asking for copies of guardianship records, or at a minimum, Notices of Voter Eligibility for individuals in that county's case load. At least thirteen registers in probate refused, noting that guardianship court records are confidential. The WVA then filed mandamus actions in those thirteen counties to request that the records be produced.

Juneau County's court dismissed their case without a hearing, finding that the records were confidential and WVA was not entitled to them. That case was subsequently appealed. In November 2023, the District IV court of appeals issued an opinion in that case, [Wisconsin Voter Alliance v. Reynolds](#), 2023 WI App 66, affirming the lower court's ruling that these records are confidential and not subject to public records laws. That case was published, making it precedential for other courts of appeals.

While that case was pending, Walworth County's court held a hearing and also found that the records are confidential and WVA is not entitled to them. That case was also appealed, and in December 2023, the District II Court of Appeals issued a decision in [Wisconsin Voter Alliance v. Secord](#) that disagreed with the District IV opinion. The District II court found that its case could be distinguished from *Reynolds* and that it therefore did not need to follow the *Reynolds* opinion.

Walworth County's register in probate, Kristina Secord, appealed that decision to the Supreme Court of Wisconsin. During oral argument, the justices questioned whether its past case law requiring courts of appeals to follow precedential decisions would apply. See *Cook v. Cook*, 208 Wis. 2d 166, 560 N.W.2d 246 (1977). While the parties agreed *Cook* likely did apply, both also asked the Court to decide the underlying question of whether these records are subject to public records requests.

In this opinion by Justice Protasiewicz, the Supreme Court chose not to address the merits and instead ruled that the District II Court must follow the District IV Court's opinion. It found that the facts and requests in both cases were identical. It also noted that when the Court of Appeals is faced with a precedential opinion it disagrees with, it has two options: first, it can certify the case to the Supreme Court to decide; second, it can write an opinion in which it follows the precedent while noting the reasons it disagrees. It remanded the case to the District II Court of Appeals to apply *Cook*.





(*WVA v. Secord*, cont. from pg 10)

Justice Hagedorn wrote a concurring opinion questioning whether *Cook* should continue to be followed and addressing the standard for public records requests. Justice Rebecca Bradley wrote a dissent arguing that if the Court had intended to dispose of this case on a technical question, it should have done so prior to requiring oral argument and full briefing. Chief Justice Ziegler joined that dissent.

In practical terms, this means that the District II Court of Appeals will likely review its opinion and ultimately send it back to the Supreme Court for a decision on the merits. In the meantime, however, District IV's opinion in *Reynolds* means that these records remain confidential for now.

Title: *Waukesha County v. M.D.S., Jr.*

Court: Court of Appeals, District II

Date: 11/06/2024

Citation: [2024AP1315](#)

Case Summary

This case involved the appeal of the circuit court's orders granting an involuntary commitment and involuntary medication and treatment order of M.D.S., Jr. ("Martin Smith"). Martin argued that the court applied the incorrect legal standard and that Waukesha County failed to provide sufficient evidence of dangerousness. The Court of Appeals disagreed with Martin and reaffirmed the involuntary commitment and involuntary medication and treatment order.

Case Details

On June 14, 2023, Martin was emergently detained after displaying concerning behavior near Alec W. Alec testified that he was moving items into his brother and father's apartment when Martin appeared incoherent, invaded his personal space, made growling noises, and attempted to enter the apartment. Alec also stated that Martin made threatening gun gestures and spoke about a "showdown" with the police, prompting Alec to call 911. The police then took Martin to a hospital where a police officer testified that he continued making delusional statements and threats toward imagined biblical figures, including claiming he would harm one such figure with a rifle.

Dr. Kabins, Martin's treating psychiatrist, testified that Martin had schizophrenia, which caused paranoia and delusions. He explained that Martin's condition led to escalating behaviors, which increased his risk of harm to himself or others. Dr. Kabins also said that Martin had a history of noncompliance with antipsychotic medication due to his dislike of the side effects. He further stated that, while Martin acknowledged his schizophrenia, he did not recognize that his paranoia and delusions were symptoms of the condition. Accordingly, this lack of insight made Martin highly likely to refuse medication and more prone to dangerous behavior. Lastly, Dr. Kabins noted that Martin avoided disclosing whether he had firearms, although he admitted possessing a concealed carry permit.

The circuit court concluded Martin was dangerous under Wis. Stat. § 51.20(1)(a)2.b. His attempts to enter Alec's family's apartment, threatening gun gestures, and talk of a "showdown" with police placed others in reasonable fear of violent behavior or serious physical harm. Thus, the court ordered Martin to be involuntarily committed and involuntarily medicated and treated for six months. Martin appealed.

The Court of Appeals examined the issue of Martin's involuntary commitment. Under Wis. Stat. ch. 51, for a person to be involuntarily committed, they must be (1) mentally ill; (2) a proper subject for treatment; and (3) dangerous to themselves or others. Martin did not contest that he was mentally ill or a proper subject for treatment. Therefore, the



(Waukesha Cty v. M.D.S. Jr., cont. from pg 11)

primary issue was whether he met the dangerousness requirement. To establish dangerousness under Wis. Stat. § 51.20(1)(a)2.b, the County needed to demonstrate either a substantial probability of physical harm to other individuals as manifested (1) by evidence of recent homicidal or other violent behavior or (2) by evidence that others were placed in reasonable fear of violent behavior and serious physical harm to them by a recent overt act, attempt or threat to do serious physical harm.

Martin argued that the evidence failed to establish dangerousness and that the circuit court had misapplied the legal standard. However, the Court of Appeals rejected these arguments, finding that, in light of the totality of the evidence, Martin had not demonstrated that the circuit court had erred in determining he was dangerous. The court explained that without involuntary commitment and medication and treatment, Martin was at high risk of noncompliance with antipsychotic medications, which could control his dangerous condition. Martin's behavior, which included invading a stranger's personal space, attempting to enter a private residence, expressing his intent and desire for a "showdown" with police, making threatening gun gestures, and suggesting he had access to firearms, justified Alec's reasonable fear that Martin would engage in violent behavior and cause serious physical harm. As a result, the Court of Appeals concluded that Martin met the requirement for dangerousness because he presented a substantial probability of physical harm to others.

The Court of Appeals thus reaffirmed Martin's involuntary commitment and medication order.

Title: *Vernon County v. F.W.R.*

Court: Court of Appeals, District IV

Date: 11/21/2024

Citation: [2024AP203](#)

Case Summary:

This case involved the appeal of the circuit court's orders granting an involuntary commitment of F.W.R. F.W.R. argued that his involuntary commitment was improper for three reasons: (1) a person could not be committed under Wis. Stat. § 51.20 to treat alcoholism; (2) the circuit court did not follow the proper procedures during the probable cause hearing; and (3) Vernon County failed to satisfy its burden of proving that F.W.R. met the criteria for an involuntary commitment by clear and convincing evidence. The Court of Appeals disagreed with F.W.R. and upheld the involuntary commitment order.

Case Details

On May 16, 2023, the County filed a three-party Petition for Examination of F.W.R. for an involuntary commitment for treatment. The petition was signed by F.W.R.'s personal physician, a supervisor, and a case manager from the Vernon County Community Support Program. The petition stated that F.W.R. had previously been subject to a ch. 51 commitment to treat his alcohol use but resumed drinking soon after it expired in April 2022. The CPS caseworker reported that F.W.R. had recently been drinking up to three quarts of alcohol daily and had missed appointments for community services. F.W.R.'s personal physician noted that his drinking caused severe health issues, leading to two hospitalizations for alcohol detoxification, including one requiring intubation and ventilation. The physician concluded that F.W.R.'s current level of alcohol consumption would lead to more catastrophic hospitalizations and premature death. Based on this information, the circuit court issued an order for detention and scheduled a probable cause hearing.

On May 22, 2023, the circuit court held a probable cause hearing. At the hearing, F.W.R.'s physician and a court-appointed psychiatrist testified in favor of an involuntary commitment. The circuit court found probable cause to be-

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(Vernon Cty v. F.W.R., cont. from pg 12)

lieve that F.W.R. met the criteria for an involuntary commitment under Wis Stat. § 51.20. At the final hearing on May 31, 2023, the circuit court determined that clear and convincing evidence supported the conclusion that F.W.R. met the criteria for involuntary commitment under Wis. Stat. § 51.20 and ordered F.W.R. committed for six months. F.W.R. appealed.

F.W.R. argued that his involuntary commitment was improper. Under Wis. Stat. § 51.20, a person may be involuntarily committed for treatment if the individual is (1) mentally ill, drug dependent, or developmentally disabled; (2) a proper subject for treatment; and (3) dangerous to themselves or others. F.W.R. argued that "drug dependence" did not include alcoholism. The Court rejected this argument, explaining that whether "drug dependence" under § 51.20 includes alcoholism was a matter of first impression in Wisconsin. However, the Court found significant evidence supporting the conclusion that "drug dependence" included alcoholism. First, the Court reasoned that although "drug" is not explicitly defined in ch.51, other definitions under Wis. Stat. § 51.01 refer to alcohol as a drug. Second, the Court noted that if the legislature had intended to exclude alcoholism from the definition of "drug dependence," it could have explicitly done so. Third, surrounding statutes, such as Wis. Stat. § 51.45, also supported the conclusion that "drug dependence" included alcoholism.

F.W.R. further argued that if a person could be involuntarily committed for alcoholism under § 51.20, the statutory procedures outlined in § 51.45(13) were superfluous. The Court dismissed this argument, highlighting material differences between the two statutes, including the required factual findings, the legal standards, and the length of the commitments. The Court also emphasized that the legislature expanded § 51.45 in 2017 to include individuals who were "drug dependent," further supporting the statutes' coexistence. Thus, the Court concluded that commitments under § 51.20 did not render § 51.45(13) superfluous.

Next, F.W.R. argued that the circuit court failed to follow the proper procedures during the probable cause hearing. He claimed that the circuit court allowed the County to convert the petition from a § 51.45 petition to a § 51.20 without proper notice and also failed to make a determination of probable cause under § 51.20. The Court rejected these arguments, concluding that the petition had been filed under § 51.20 from the beginning and explicitly alleged that F.W.R. met the three main criteria for commitment under § 51.20. Additionally, the Court emphasized that the circuit court had expressly stated it was proceeding under § 51.20 and had determined probable cause existed.

Finally, F.W.R. argued that the County failed to prove by clear and convincing evidence that he met the criteria for an involuntary commitment. The Court of Appeals rejected this argument, finding that the County had met its burden. The Court found clear and convincing evidence that F.W.R. was (1) drug dependent, (2) a proper subject for treatment, and (3) dangerous. First, the Court determined that F.W.R.'s alcohol use was beyond his ability to control and had substantially impaired his health, placing him at a high risk of death and making him drug dependent. Second, the Court found that F.W.R. was a proper subject for treatment, as both doctors testified that his alcoholism was treatable and that he was capable of rehabilitation. Finally, the Court concluded that F.W.R. was dangerous. Both doctors agreed that his impaired judgment posed a substantial risk of physical injury to himself and that his continued alcohol abuse was causing significant harm to his mental and physical health, likely leading to death.

The Court of Appeals held that under Wis. Stat. § 51.20, a person may be involuntarily committed for alcoholism treatment, the circuit court followed the proper procedures in the probable cause hearing, and the County met its burden of proving by clear and convincing evidence that F.W.R. was drug dependent and dangerous. Therefore, the Court affirmed F.W.R.'s involuntary commitment under Wis. Stat. § 51.20. □