

2023-24

Legislative Report

ACLU
Wisconsin

A NOTE FROM OUR ADVOCACY DIRECTOR, AMANDA MERKWAE



Amanda Merkwae

(she/her)

Advocacy Director
ACLU of Wisconsin

As Wisconsin's 2023-24 state legislative session comes to an end, we are grateful for your support through **hard fought battles against a barrage of harmful legislation**. The Assembly introduced 1,229 bills (denoted by "AB"), and the Senate introduced 1,113 bills (denoted by "SB") during this session, which began in January 2023 and lasted through the Senate's final floor votes held on March 12, 2024.

We fought against bills that **targeted LGBTQ+ Wisconsinites** and singled out trans kids. As Wisconsin's prison crisis looms large and worsens by the day, many legislators in both parties ignored evidence-based opportunities for reform, police oversight, and policies that actually create safer communities, instead opting for an outdated "tough on crime" approach that fuels our mass incarceration problem. Extremist conspiracy theories and election denial fueled debates on voting rights issues this session. A multitude of bills were introduced to censor information and expression and expand the surveillance state.

Fortunately, the vast majority of bills we opposed this session did not become law. **The ACLU of Wisconsin is not done fighting**, and neither are our supporters. Read more below about the bills we defeated, the bills that passed, and how we will continue to make an impact.

BY THE NUMBERS

4

BILLS WE SUPPORTED
THAT WERE ENACTED

74

BILLS WE OPPOSED
THAT FAILED

617

BILLS WE CLOSELY
MONITORED

37

BILLS WE SUBMITTED
TESTIMONY ON

22,000

ACLU SUPPORTERS REACHED
THROUGHOUT THE SESSION

TRANS PEOPLE BELONG

Protecting LGBTQ+ Rights at the Capitol

This year, Wisconsin legislators launched an **unprecedented attack on LGBTQ+ Wisconsinites**. 12 bills introduced were part of a coordinated, hate-driven campaign to push LGBTQ+ people, particularly trans youth, out of public life.

Many of these bills were offered under the guise of “protecting parental rights,” but parents who support their LGBTQ+ kids are **having their rights stripped away**.

Whether it’s a parent’s right to access gender-affirming care for their kid, or to request a teacher refer to their child by the name and pronouns aligned with that child’s gender identity — these anti-LGBTQ+ bills only aimed to protect parents whose ideologies align with certain politicians and out-of-state extremists.

GENDER AFFIRMING CARE BAN FOR YOUTH

VETOED!

Every reputable medical organization has found that some transgender people need gender affirming care, which is often life-saving medical care. A dangerous bill passed by the Wisconsin legislature, AB 465 **would prohibit families and doctors from providing age-appropriate, evidence-based care** for youth who require it.

Despite intense opposition from families of trans youth here in Wisconsin, as well as warnings from medical professionals, some lawmakers chose to **risk the lives of young people** by forcing their way into family decision-making, a fundamental right which has traditionally been protected against government intrusion.

Young people who are trans need support and affirmation, not to be a political target. Fortunately, Governor Evers vetoed AB 465, preventing this harmful bill from going into effect as law.

AB 502 is another bill inappropriately singling out gender-affirming care and attempting to **create a chilling effect** on providers by aiming to expose doctors and hospitals to heightened legal risk for providing medical treatment that is overwhelmingly supported by science. The bill failed to pass both houses and will not become law this session.



Photo: Lily Shea Photography

RIGHT TO LEARN & PLAY

Multiple bills introduced in the 2023-24 session attempted to control what youth can and cannot read, what they can and cannot learn, and — **most troublingly** — who they can and cannot be.

Three bills which failed to pass would have required parental notification related to library materials and provided an avenue to criminalize school staff for distributing or exhibiting “obscene material” to minors.

AB 510, dubbed the “Parental Bill of Rights,” would have allowed parents to opt students out of “instruction about gender identity, sexual orientation, racial identity, structural systemic, or institutional racism.”

As we have seen across the country, when classroom instruction is censored, it is mostly material by and about LGBTQ+ people, people of color, and other marginalized groups that are the first to be banned. Students have a right to learn about all types of people and histories. This bill would have **a chilling effect on accurate, inclusive education.**

The bill would have also **forced teachers to out students** who request to be referred to by a different name or pronoun, by sending a note home to parents.

We spoke out against this bill, and while it still passed, AB 510 was ultimately vetoed by Governor Evers.

Legislators introduced trans athlete bans at the K-12 and college levels, proposing to unfairly **exclude trans students** from participating in sports teams consistent with their authentic gender identity. Not only do these proposed laws discriminate against trans youth in ways that compromise their health, social and emotional development, and safety, they also raise a host of privacy concerns. AB 377 initially passed but was later vetoed by the governor.

Legislative attacks on the transgender community are linked with **rises in hate and transphobic sentiment** where they are levied, and we hold our elected officials accountable for exacerbating a hostile atmosphere towards the most marginalized in our state.

We marched in the Milwaukee Pride Parade and rallied at the Capitol for the anti-trans bills’ public hearings. We extend our heartfelt appreciation to all of the Wisconsinites who showed up to testify and fight.



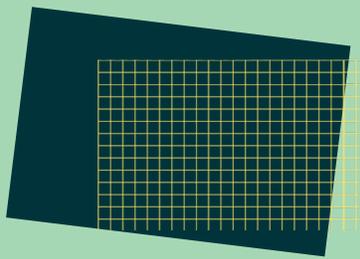
INCARCERATED WHILE TRANS

DEFEATED

Legislators introduced AB 447/SB 438, which would force transgender and intersex incarcerated people into Wisconsin jail and prison placements that do not match their gender. Ultimately, this legislation would violate the federal Prison Rape Elimination Act and increase the likelihood of experiencing sexual or physical abuse and worse mental health outcomes for trans and intersex people incarcerated in DOC facilities and counties’ jails.

We testified against this bill, and it failed to pass.

Photos: Lily Shea



COMMUNITY REENTRY CENTER

VICTORY!

2023 Act 233 begins to reshape the service delivery model for people returning to the community from incarceration by creating **a single place for people to turn for re-entry services and support**, including health services, identification services, financial services, housing services, employment services, education services, and supervision services.

INCREASING PENALTIES FOR DEATH BY DISTRIBUTION

WE OPPOSED

2023 Act 29 imposes harsher penalties for those who supply drugs that lead to an overdose. This new law, signed by Governor Evers after passing with bipartisan support, ignores the reality that friends and family members of overdose victims are most likely to be prosecuted under the “death by distribution” law and flies in the face of research showing fear of prosecution **prevents people from making critical 911 calls that could save lives.**



BACKWARDS BAIL REFORM

WE OPPOSED



Originally, bail was supposed to make sure people return to court to face charges against them. But instead, the money bail system has morphed into widespread wealth-based incarceration, perpetuating a two-tiered system of justice: one for the wealthy and one for the rest of us. Act 3, signed into law by Governor Evers after passing the legislature with bipartisan support, exacerbates inequities in pre-trial detention while failing to fix the broken cash bail system. All this law does is ensure that **even more people stay behind bars**, languishing in Wisconsin’s overcrowded jails.

We will continue working with legislators to push for reform that will limit pretrial detention to the rare case where a person poses a serious, clear threat.

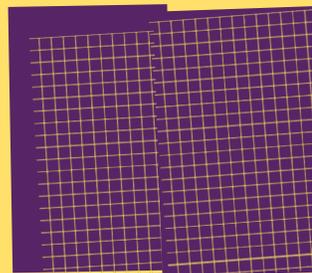
BILLS WE OPPOSED THAT FAILED TO BECOME LAW

- AB 58/SB 106 **Mandatory Minimum for Felony Gun Possession**
- AB 70/SB 96 **Anti-Protest Bill**
- AB 310/SB 309 **Automatic Revocation**
- AB 421/SB 404 **Criminalizing License Infractions**
- AB 433/SB 427 **Mandatory Bail Amounts for Prior Bail Jumping Convictions**

FAILED TO PASS

- AB 57/SB 86 **Limiting Prosecutorial Discretion and Diversion Opportunities**
- AB 544/SB 517 **Limiting Recourse for Individuals Killed by Police**

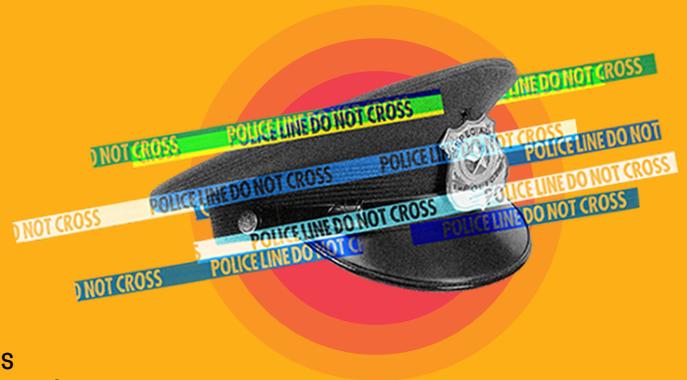
VETOED BY GOV. EVERS



POLICING

Over the last several years, Milwaukee communities have increasingly called for more police accountability and transparency. In blatant disregard to those requests, in AB 245 – now 2023 Act 12 – Wisconsin legislators made desperately needed state aid contingent on maintaining police staffing and funding levels. Act 12 also reinforces the **school-to-prison pipeline** by requiring officers in Milwaukee Public Schools, and guts the policy-making authority of the Milwaukee Fire and Police Commission.

These **anti-democratic** moves by legislators strips autonomy from local governments, overrides local control of law enforcement, and sabotages the ability of communities to conduct proper police oversight and make budgetary decisions. The people of Milwaukee deserve to make decisions about civilian oversight of MPD, they deserve to be able to say no to police in schools, and they deserve to make critical local decisions without interference from politicians in Madison.



2023 Act 253 increases the cost of law enforcement open records by authorizing police and corrections agencies to charge a requester for the price of redacting audio and video content disclosed in response to a public records request. While amendments to the bill provide some exceptions – including requests made by a person directly involved in an incident related to the records – we opposed this bill because **lack of transparency and police accountability** creates further distrust in law enforcement, making community engagement with law enforcement more fraught and less effective.

PRIVACY & SURVEILLANCE

We fought against several bills that would expand government surveillance of location information, contents of digital communications, and student conduct in schools. The proliferation of cell site simulators (aka “Stingrays”), geofence warrants, and other cellphone tracking tools used by law enforcement in Wisconsin and nationwide has triggered **constitutional alarm bells for privacy experts**.



Fortunately, many of these bills failed to pass. AB 334/SB 331 would have expanded the ability of police to capture phone call data to also include the “to” and “from” addresses of email messages, records about instant message conversations, data associated with social networking identities, and at least some information about the websites you visit. Furthermore, schools that acquire firearm detection software would have been awarded grants as required by AB 542/SB 523 if it became law, incentivizing the deployment of invasive, error-prone, and largely ineffective surveillance technology.

Two additional failed bills proposed to **“card” people before they use social media** or when they visit particular websites by requiring age verification to access websites with content deemed “material harmful to minors.” AB 373/SB 385 would force social media platforms such as Facebook, Instagram, TikTok, and YouTube to verify that users are 18 or have consent from parents or guardians to use the sites, and AB 730/SB 683 would require age verification by checking a website user’s government-issued identification card or “by using any commercially reasonable method that uses public or private transactional data gathered about the individual.” While intended to protect minors, these bills would’ve exposed adult Wisconsinites to harmful surveillance, violating the First Amendment by requiring internet users to provide personal information to companies that purport to be able to verify their ages before they’re able to access protected speech.

We advocated for critical amendments to the surveillance bill that did end up becoming law this session, to ensure there are checks on police access to cell phone location information to comply with the Fourth Amendment. 2023 Act 232 requires cell phone companies to disclose a person’s cell phone location to law enforcement without a warrant in limited emergencies, enacted into law with our amendments.





VOTING RIGHTS

ELECTION FUNDING RESTRICTIONS



As an end-run around the governor's veto and an affront to voting rights, the Republican-led legislature also passed joint resolutions proposing amendments to the Wisconsin Constitution. SJR 78, which passed both houses in the 2021-22 and 2023-24 legislative sessions, placed two binding referendum questions on the April 2, 2024 statewide ballot that ultimately amended the Wisconsin Constitution to make it **more difficult for local governments to administer elections** and uphold our democracy.

These vague, confusing amendments could prevent election officials from using polling places in non-public buildings or even using tables, chairs, electrical outlets, or any other equipment that are privately owned. The same politicians who put these questions on the ballot **stripped millions in funding** from the state budget to support election administration.

ATTACKS ON DEMOCRACY

Attempts to remove the the nationally recognized administrator of the bipartisan Wisconsin Elections Commission (WEC), steps to **subvert the will of Wisconsin voters** by threatening to impeach a newly elected Supreme Court Justice before she decided her first case, and legislation proposing to dissolve the WEC altogether demonstrate our legislature's resolve to undermine democracy and Wisconsinites' faith in elections.



ATTEMPTS TO RESTRICT VOTING RIGHTS

We opposed several measures limiting Wisconsinites' access to the ballot box and making election administration more difficult. Luckily, none of these bills became law.

AB 21/SB 26 **Removing Voters from the Voter Registration List**
AB 76/SB 69 **Modern-Day Poll Tax**
AB 1037/SB 966 **Witness Address Requirements on Absentee Ballot Envelopes**

FAILED TO PASS

AB 57/SB 86 **Election Observer Restrictions**
AB 572/SB 593 **Invasive Procedures for Absentee Voting in Residential Care Facilities**

VETOED BY GOV. EVERS

RACIAL JUSTICE

Attacks on Diversity, Equity, and Inclusion

Mirroring legislative and executive actions nationwide, Republican legislators in Wisconsin this session waged a war on diversity, equity, and inclusion (DEI) initiatives in state government and the University of Wisconsin system. After Assembly Speaker Robin Vos held hostage over \$100 million in already-approved pay raises for the UW system unless UW eliminated DEI positions across campuses, the UW Board of Regents ultimately voted to approve a deal with Republican lawmakers to “reimagine” DEI efforts on campuses in exchange for releasing the funds for staff pay raises and infrastructure projects.

A joint resolution proposing a constitutional amendment to ban state and local government entities from using race, sex, ethnicity, and other factors in hiring decisions, public education, and public contracting, AJR 109, passed both houses. This measure would **eliminate identity-conscious initiatives** that address longstanding inequalities in access to public education, employment, contracting, and administration in an attempt to advance the ongoing crusade against diversity, equity, and inclusion. If an identical joint resolution is passed during the 2025-26 legislative session, a referendum would be placed on a statewide ballot to amend the state constitution.

One victory for Wisconsin students was the passage of 2023 Act 266, ensuring the **unique history and experiences of Hmong Americans and all Asian Americans** are included in K-12 instruction in Wisconsin public schools.



MISSED OPPORTUNITIES

Bills we Supported that Failed to Pass

SUPPORTING DACA RECIPIENTS

Four bills, AB 51/SB 78, AB 820/SB 865, AB 821/SB 843, and AB 822/SB 828, were introduced to allow undocumented Wisconsinites with DACA status to pay in-state tuition at Wisconsin's public colleges and universities, obtain occupational licenses for professions from teaching to nursing to plumbing to real estate to cosmetology, and receive a tax credit.

All of these measures would help incentivize young Dreamers to remain, live, and work in our state. The 8,000 DACA recipients who live in Wisconsin, along with the undocumented community as a whole, play a vital role in keeping Wisconsin running. DACA recipients' economic difference is so significant that without them the state would lose \$427 million in GDP annually.



EXPANDING POSTPARTUM MEDICAID ELIGIBILITY

Wisconsin has one of the worst records in the nation when it comes to racial disparities in maternal and infant health outcomes. Black, Brown, and Indigenous women in Wisconsin are three to five times more likely to suffer pregnancy-related deaths than white women. Expanding access to postpartum care is a critical step towards addressing birth equity in the face of systemic racism and structural barriers that exist in our healthcare system.

AB 114/SB 110 would expand postpartum eligibility for BadgerCare from 60 days after pregnancy to 12 months of continuous coverage during the postpartum period. This bill passed the Senate, but the Assembly Committee on Health, Aging, and Long-Term Care failed to hold a public hearing.



CANNABIS LEGALIZATION

Cannabis legalization is wildly popular in Wisconsin. A 2022 Marquette Law School study found that 69% of Wisconsin registered voters and the majority of voters in every political party supported legalizing recreational weed. Yet, Governor Evers' proposal to legalize and regulate recreational cannabis was stripped from the 2023-25 Biennial Budget by the Joint Committee on Finance. The Assembly Committee on State Affairs and Senate Committee on Judiciary and Public Safety also failed to hold public hearings on AB 506/SB 486, a standalone bill that would allow Wisconsin residents and non-residents to possess up to five ounces of marijuana and six plants for personal use. Under the bill, cannabis would be taxed and regulated much like alcohol and regulated by the Department of Revenue (DOR) and the Department of Agriculture, Trade, and Consumer Protection (DATCP). Further, a process would be created to dismiss and expunge convictions for acts that would be decriminalized under the bill.

EXPANDING ACCESS TO BIRTH CONTROL

Access to contraception is critical to an individual's autonomy, equality, and ability to participate in social, economic, and political life. AB 176/SB 211 would expand access to birth control to patients who are at least 18 years of age by allowing pharmacists to prescribe and dispense birth control such as patches and oral contraceptive pills. This bill passed the Assembly and the Senate Committee on Health but failed to receive a Senate floor vote.



EXPUNGEMENT REFORM

In Wisconsin, approximately 1.4 million people have a criminal record, which can result in many collateral consequences that can make successful re-entry a daunting task. If passed, AB 37/SB 38 would have allowed a court to order expungement after a sentence has been completed, remove the arbitrary age limit of 25, and provide necessary clarity in the law for both employers and employees. Unfortunately, the bill passed the Assembly, yet failed to receive a vote in the Senate Committee on Judiciary and Public Safety.



PROTECTING INDIGENOUS STUDENTS' RIGHT TO WEAR TRIBAL REGALIA

Graduation is a time of celebration and community. After centuries of attempted genocide and erasure of Indigenous culture and tradition, the ability to celebrate commencement in a culturally appropriate way is essential for Indigenous students. Tribal regalia worn at commencement symbolize resistance, resilience, and reclamation by students of their right to an education that honors their culture and heritage. But for some Indigenous students, graduation can be fraught with uncertainty or controversy over their ability to wear tribal regalia during commencement ceremonies. AB 210/SB 199 protects Indigenous students' rights by not allowing school boards and charter schools to prohibit a student who is a member of, a descendent of a member of, or eligible to be enrolled in, a federally recognized American Indian tribe or band from wearing traditional tribal regalia at a graduation ceremony or school-sponsored event. While it passed the Assembly, the Senate Committee on Education failed to hold a public hearing on the bill.

SAFE HARBOR

Despite significant bipartisan support over multiple legislative sessions, AB 48/SB 55 – which would have prevented a young person under age 18 from being prosecuted for “committing an act of prostitution” – failed to receive votes in the Assembly Committee on Criminal Justice and Public Safety and the Senate Committee on Judiciary and Public Safety. Young people should be protected from exploitation, sex trafficking, and abuse – not criminalized.

MONDAY BALLOT PROCESSING

AB 567/SB 685 would allow local clerks to begin processing absentee ballots the day before Wisconsin elections, allowing for a speedier vote-counting process on Election Day.

The bill passed the Assembly, but despite calls from Assembly leaders for the Senate to take up the measure during its final floor session, the Senate did not allow the bill to be voted on, leaving conspiracy theories about “late-night ballot dumps” to flourish.



LOOKING FORWARD

As we celebrate this session’s wins and work to get out the vote in the August and November 2024 elections, the advocacy team at the ACLU of Wisconsin will also prepare to continue **protecting Wisconsinites’ civil rights and liberties** during the 2025-26 legislative session.

JOIN THE FIGHT

The ACLU of Wisconsin does not protect liberty alone. People across Wisconsin are coming together to stand up for what they believe is right. Take your stand — become a card-carrying member of the ACLU.

