



Ballots for All

Ensuring Wisconsinites in Jail
Have Voting Access

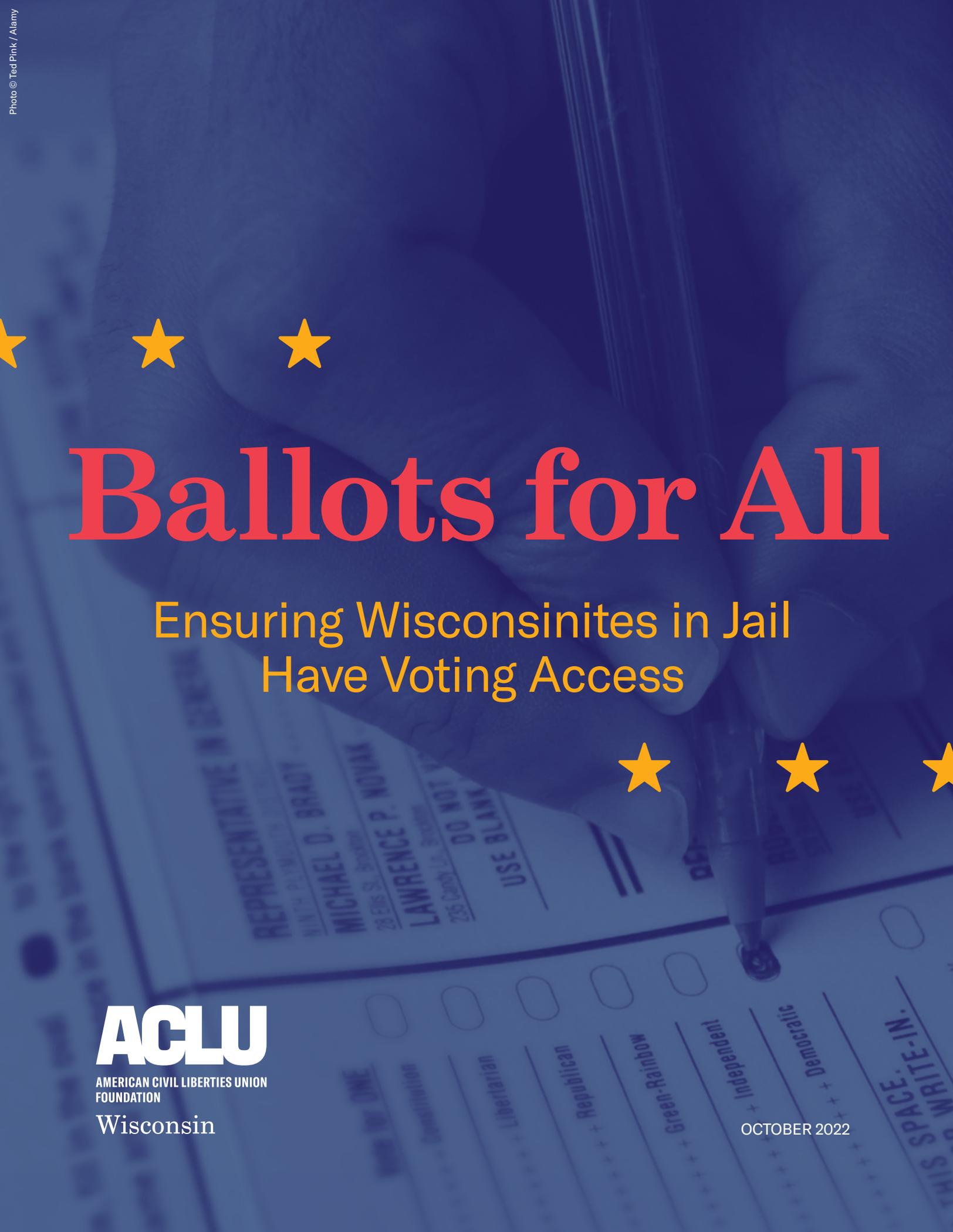


ACLU

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

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Introduction



Exercising the right to vote is a fundamental cornerstone of our democracy and a critical means of protecting our civil rights and liberties. However, many structural, systemic, and discriminatory barriers prevent Americans from actively participating in the voting process, especially in the case of eligible individuals enmeshed in the carceral system via county jails

As seen in the [2020](#) and [2021](#) “Ballots for All: Ensuring Eligible Wisconsinites in Jail Have Equal Access to Voting,” many of Wisconsin’s county jails lacked documented, robust, and practiced jail voting policies, which in turn resulted in unacceptable jail-voter participation in the 2020 presidential election. In Wisconsin alone, there are approximately 13,000 individuals in county jails; stunningly, only 50 of whom cast their ballot in 2020.^{1,2}

This report aims to analyze previous steps taken and any progress by Wisconsin jail administrators to address formerly identified challenges and shortfalls in their respective jail voting policies, which can itself facilitate widespread de facto disenfranchisement in Wisconsin. Furthermore, this update aims to highlight the fundamental and intersectional barriers that prevent eligible Wisconsinites, both within and outside of the carceral system, from *fully* participating in the voting process.

Full participation in the voting process includes four fundamental pillars: 1) readily available access to educational resources from trusted, nonpartisan voting rights organizations, 2) simple and inclusive voting registration and eligibility-check processes, 3) clear and uncomplicated options for receiving, completing, and casting of the ballot, and 4) accountability for maintaining the efficacy and fairness of the voting process. Fundamentally, this means considering many different kinds of barriers to voting—and putting impacted individuals at the center of the work—to address systemic blockages and be truthful and forthright about the different kinds of intervention required to protect these rights.

This 2022 report offers updated data analysis of current jail voting policies in Wisconsin.



Background



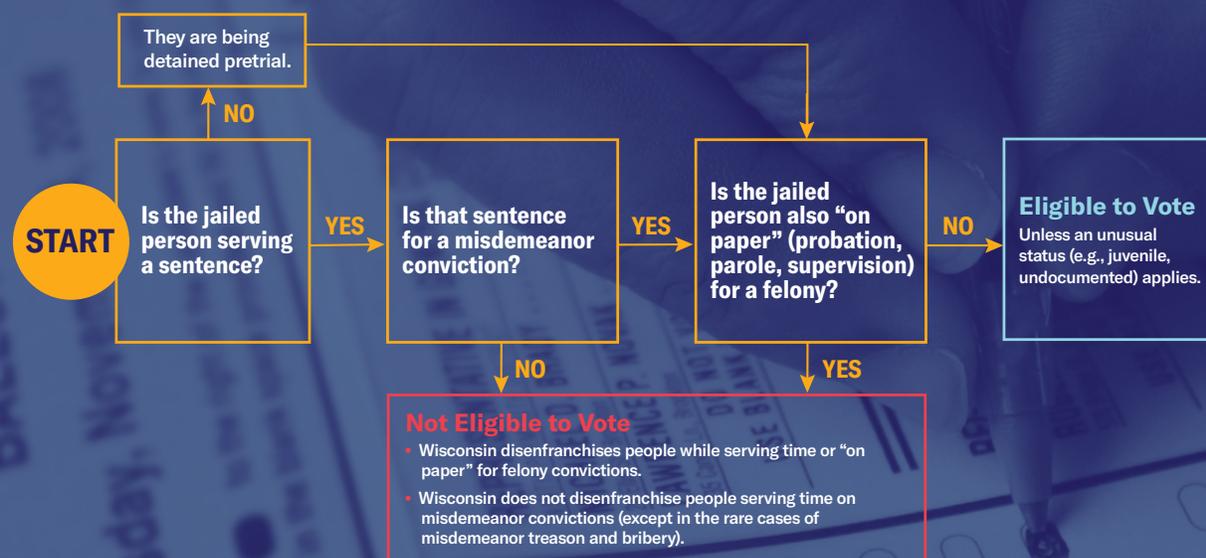
As we review and analyze Wisconsin’s jail voting policies, it is important to note the distinct differences between Wisconsin jails and prisons, most notably the dichotomy in voting policies for Wisconsinites within these facilities. Under Wisconsin law, pretrial detainees and those in jail for misdemeanors remain eligible to vote. Moreover, state law allows any voter to vote absentee by mail, including persons in jail.

In Wisconsin, county sheriffs are responsible for overseeing the policies and practices of voting within the jail. Thus, Wisconsinites in prison or jail due to felony convictions are *not* eligible to vote based on Wisconsin’s felony disenfranchisement law; however, we estimate that the majority of individuals in Wisconsin county jails remain eligible to vote (Fig. 1—Most People in Wisconsin Jails are Eligible to Vote). County sheriffs have a solemn responsibility to actively produce solutions to ensure that voters under their purview retain their rights when eligible.

As previously noted in the 2020 and 2021 “Ballots for All: Ensuring Eligible Wisconsinites in Jail Have Equal Access to Voting,” social, racial, and economic inequities disproportionately jail Black, Hispanic, Native American, other communities of color, and low-income individuals in Wisconsin. This is further exacerbated in part by stringent cash bail requirements prior to conviction of a crime—meaning that these individuals, who remain in jail pending trial, still possess the right to vote. This deeply rooted intersection of race, class, and privilege has fueled disturbing trends in Wisconsin’s

FIGURE 1

Most People In Wisconsin Jails Are Eligible To Vote





criminal justice system, where the state ranks as the second highest rate in the country of Black: white incarceration and the seventh highest rate of Hispanic: white incarceration and Native American Wisconsinites are jailed at seven times the rate of white Wisconsinites.^{3,4} The conversation of voting rights, and specifically jail voting rights, unsurprisingly requires an intersectional approach at the crossroads of race, class, gender, and other identities and an understanding of the issues faced by Wisconsinites, both inside and outside of the criminal justice system, including housing, food insecurity, and access to ID.

Furthermore, according to the Prison Policy Initiative,⁵ a significant barrier to jail voting is a lack of knowledge or clear information about eligibility, criminal disenfranchisement laws, how to register, and quality election materials to help people navigate the process. To address this nexus of issues, several factors include accessible

and clear information that is frequently reviewed, updated, and checked for accuracy, training for elected officials, including sheriffs, on how to provide accurate voter registration information to the public.

This report aims to educate the public on how incarcerated individuals face other, more compounding challenges than simply requesting a ballot—ranging from basic needs left unmet due to undignified and inhumane living conditions, lack of access to critical voting resources (ie. valid ID, valid proof of residence, ability to securely return a completed ballot), and intellectual and emotional support to empower individuals to exercise one of their fundamental rights, even when many others have been stripped away through incarceration.

Results from the 2022 Outreach



Procedures

In May and June of 2022, the ACLU of Wisconsin sent public records requests to each county sheriff and/or jail administrator to follow up on the progress of past jail voting surveys. Our goal for this round of open records requests was to determine if any jails had improved their jail voting policies and procedures since the 2020 and 2021 publications. Since we had made suggestions for improvement in prior reports, we had hoped to receive records correlated to positive change. Our request asked for the following nine records:

1 Any policies and practices related to voting and voter registration in the jail.

The key information that we wanted to obtain was whether each jail had a written policy for voting. Having a policy that is accessible and documented assists in compliance with that policy.

2 Any visitation policies and procedures for community members and family members interested in registering eligible voters and assisting them with the absentee voting process from within the jail.

This information was vital to us in determining whether jails would allow people in the community to assist and provide information to those in jail who wanted to vote. Most of the jails provided us with their basic visitation policy, but almost none referenced visiting policies for assisting voters who were incarcerated. This does not mean that the jails do not allow these types of visits to occur, but rather that there is no formal procedure for doing so.

3 Any policies and procedures regarding phone and internet or tablet access for individuals in the jail.

Records reflecting access to the internet and tablets helped us determine whether individuals who were incarcerated had a means of accessing the Wisconsin Voter Registration website to determine voter eligibility. Access to phones allowed us to determine whether someone could accessibly call family, friends, or county clerks for information on voter registration.

4 All jail mail policies and procedures including but not limited to any policies and procedures for voting.

This information was vital in helping us understand what the process is for mailing absentee ballots while incarcerated. None of the mail policies provided to us included information about sending in an absentee ballot, which is problematic as there are specific procedures to be followed when mailing these types of ballots. Details regarding mailing absentee ballots while incarcerated could be found in some of the more comprehensive jail voting policies, but the number of jails with these types of policies were minimal.

5 Any and all data reflecting voter participation rates in the jail.

One of the key ways to determine whether the written voting policies are being implemented is by access to and reviewing data that reflects voter participation in jails. We found that only five jails* kept track of records pertaining to whether someone was able to submit their absentee ballot.

6 Any and all data that reflects the number of individuals in your care who requested an absentee ballot or who were provided with information on requesting an absentee ballot.

This information was vital in determining voter interest within the jail and comparing it with voter participation rates from request #5 above. However, we found that the same five jails* that kept track of voter participation were the only jails to keep track of this request.

* Forest, Lacrosse, Marathon, Milwaukee, Vilas

7 Any and all data that reflects the demographics of individuals in your care, including, but not limited to, race and gender.

Analyzing the demographic definitions and demographics of those in jail allowed us to determine who may be the most disenfranchised when it comes to voting while in jail. An interesting piece of data found in these demographic reports was that reports often listed the different classifications of crimes within the jail. From this, we could determine that X number of people were in jail for misdemeanors, which may mean they may be eligible to vote. From this, we hoped that we would be able to compare this with voter participation rates, but due to the lack of data, this was inconclusive.

8 Any and all data reflecting home residence or lack thereof of individuals when they entered your care.

We know that not having a home residence can make obtaining a Voter ID almost impossible. We wanted to obtain information that demonstrated whether individuals had an address when they entered the jail, so that we could have a better grasp of how many

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individuals may be able to vote, but are unable to due to lack of home residence. While some jails cited confidentiality, others provided information, and most did not keep records. This inconsistency of record keeping and sharing across Wisconsin jails can increase the likelihood of inaccurate counts of eligible voters and policies. Such inconsistencies add to the chances of a voter becoming disenfranchised.

9 Any and all records evidencing communications about voting or voter registration in the jail.

This data was important to collect as we wanted to determine how jail administrators and sheriffs handled requests to vote, requests for information to vote, requests from community members interested in presenting about voting, and any other communication that would help us better understand the attitude towards jail voting. This was one of the most difficult records to obtain, as most jails stated this request was unreasonable and too broad in scope. If jail officials indicated they had records pertaining to this request, they either responded with hefty cost-prohibitive stipulations to receive this information, or they requested we significantly narrow the scope of the request. Many jails did not have any shareable communication records.

Wisconsin law requires that requested documents be produced “as soon as practicable and without delay.” Wis. Stat. § 19.35(4)(a). The Wisconsin Department of Justice policy is that 10 days is ordinarily a reasonable time for a response to an open records request. Wisconsin Department of Justice, Wisconsin Public Records Law Compliance Outline at 15 (October 2019). After sending these requests out in May and June of 2022, more than half of the jails did not respond within ten days of receiving the request as outlined by the Wisconsin Department of Justice Policy; outreach included several follow-up attempts to collect data from non-responsive counties. When they did respond, we found that they did not provide us with the full records requested for data collection, nor did they explicitly state the records did not exist. After multiple follow-ups, we were able to gather most responses by the end of August, with some requests outstanding. Our records requests for this year demonstrate the ongoing educational work

and public reporting regarding jail voting—inclusive of communication, transparency, openness, and drive to not actively or passively disenfranchise Wisconsinites who are eligible voters. While we did see some jails taking initiative to keep track of these records and improve their efforts for jail voting, the number is minimal compared to how many jails exist in Wisconsin.

Jail Responses and Discussion

Responsiveness

Overall, we are pleased to see an upward trend in responsiveness from county sheriffs and jail administrators. We received replies from 66 counties in this year’s request, as compared to 29 counties in 2020 and 39 counties in 2021. Of the 66 responding counties, 47 shared materials or correspondences indicating they have jail voting policies in place; regrettably, the remaining 19 responding counties failed to provide adequate proof or verification of jail voting policies with measured outcomes. Six counties—Iron, Marinette, Sawyer, Trempealeau, Waupaca, and Wood—did not respond to any aspect of the public records request by the time this report reached completion.



91.7%
of counties
responded
to our open
records request.

Policy Review

Within the 47 counties with jail voting policies in place, a wide degree of variability in the robustness and thoroughness of the policies exist between counties. Several counties, including Eau Claire, La Crosse, and Jackson County, provided independent voting protocols and practices that could be utilized as models based on their current data collection and monitoring of voting inquiries for people within their respective facilities. An additional 12 counties provided independent policies that include more information specific to the particular voting operations in the county jails. The total of Wisconsin jails with independent/more detailed voting policies in place results in 15 of 72 counties.

Unfortunately, many jails continue to rely upon non-specific policies purchased from private companies, such as Lexipol. Nearly half of the responding counties (32) utilize something along the lines of the Lexipol policy example below:

Inmate Voting

610.1 PURPOSE AND SCOPE
This policy establishes the requirement for providing eligible inmates the opportunity to vote during elections, pursuant to election statutes.

610.2 POLICY
Because inmates are unable to access public voting polls, the Jail Administrator or the authorized designee shall develop written procedures whereby the County Clerk allows qualified inmates to vote in local, state and federal elections, pursuant to election codes.

Inmates should be advised of voting methods during the inmate orientation.

610.3 PROCEDURES
Prior to each election, the Jail Administrator will designate a deputy to be a liaison between the Office and the local Registrar of Voters. The designated deputy will be responsible for assisting inmates who have requested to vote.

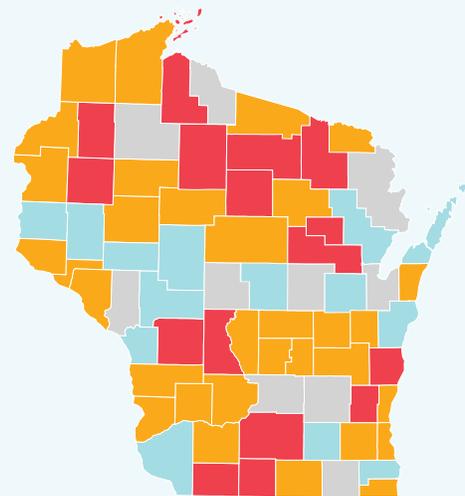
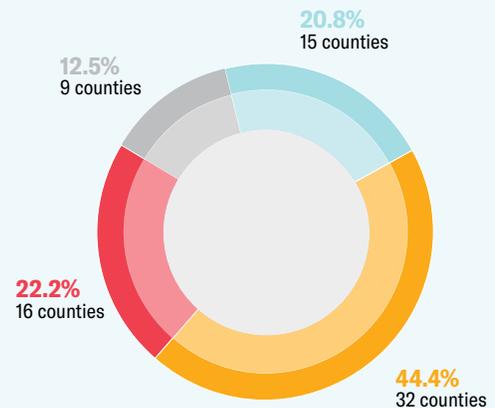
In some instances, jail administrators have added brief additional steps to this policy; however, as noted in 2021, such policies do not offer useful guidance on how jail officials are expected to implement voting practices in jails under Wisconsin law. Thus, we classify these policies as “brief with vague language.”

Disappointingly, 16 of the responding jail administrators indicated that they did not have any written policies pertaining to jail voting. Responses of this nature varied widely: some county jails simply stated they have no written policies regarding voting, whereas others indicated that while no written protocol exists, it is a person’s “individual responsibility” to express their interest in voting while in jail to begin the voting process

This type of *ad hoc* response to voting requests can create an undue burden on the incarcerated individual to not only *initiate* the voting process but may suggest it is

FIGURE 2

Policy Type by County



- No written policy regarding jail-based voting
- Brief policies with vague language
- More detailed policies
- No response

Racine County Response Quotes

“ It is 100% on the inmate to facilitate this in a timely manner...

Inmates are responsible for filling out their own absentee ballot and for the cost of mailing the ballot back to the municipality...

No outside agency or group will be allowed into the jail to issue absentee ballots to the inmates or register inmates to vote. ”

also their lone responsibility to hold jail officials accountable for honoring their request without any mechanisms, procedural support, or basic needs required to do so. Furthermore, this approach operates under a gross assumption that all jail residents are inherently aware of their potential eligibility to vote and procedural knowledge to vote, as well as the many detailed steps required to update or complete their voter registration, access a ballot and return their ballot with minimal guidance. For this to be true, individuals in county jails would need to have regular access to educational voting information, assistance in accessing the proof of residence required for voter registration and the identification needed to request an absentee ballot by mail, support for returning an absentee ballot while incarcerated—including properly completing and signing the ballot, as well as obtaining the signature and address of a witness—and ample lead time to complete these steps to ensure their votes are counted and their voices are heard. Recent court decisions regarding how to return ballots add to the confusion, particularly regarding whether and how people in jail are able to deposit their ballots in the mail.⁶

One jail administrator went as far as suggesting that “... incarcerated people have access to TV, newspapers, and are in contact with friends and family which ‘offers plenty of opportunity to know about elections.’” This response overlooks the many barriers created through the dehumanizing experience individuals face on a daily basis when incarcerated in well-documented understaffed,

and severely under-resourced county jails.⁷ We maintain that individuals within Wisconsin jails have a right to more than simply basic awareness of elections taking place and likely require assistance to fully exercise their right to vote while enmeshed in the carceral system.

The results of our 2022 public records requests reaffirm the consistent conditions of jail voting for eligible Wisconsinites: immense variance exists among jail voting policies and practices across all 72 counties of Wisconsin. The alarming lack of protocol across existing procedures creates a voting environment rife with inconsistency and confusion. This high degree of variability is one of the many compounding factors that can exacerbate the barriers faced by individuals who attempt to vote within a jail.

Conclusion



Democracy prioritizes and centers the voice of the people, with voting at the core as an unequivocal and fundamental right. As we have observed through our examination and analysis over the past three years, consistent yet surmountable barriers to the ballot in Wisconsin’s county jails can lead to mass disenfranchisement of eligible voters.

While we are heartened by the increased responsiveness of some Wisconsin county sheriffs, jail administrators, and state officials to inquiries pertaining to jail voting policies and practices, this responsiveness has not translated to meaningful systemic change to address the core issues that prevent incarcerated individuals from exercising their right to vote. The first step of initiating change is awareness, and the second is educating

the public about it—we have illustrated how Wisconsin’s systems fail to consistently enable and empower eligible people in jail to vote. Creating systemic and long-standing change to rectify this disenfranchisement will take intentionality, partnership, education, and an unwavering commitment to upholding the rights and dignity of *all* Wisconsin residents.



Citations



1. 2020 Ballots for All: Ensuring Eligible Wisconsinites in Jail Have Equal Access to Voting. ACLU of Wisconsin, All Voting is Local Wisconsin. July 2020.
2. 2021 Ballots for All: Ensuring Eligible Wisconsinites in Jail Have Equal Access to Voting. ACLU of Wisconsin, All Voting is Local Wisconsin, League of Women Voters of Wisconsin. July 2021.
3. "State by State Data". The Sentencing Project. 2019.
4. "Incarceration Trends in Wisconsin." The Vera Institute. 2019
5. "Eligible, but excluded: A guide to removing the barriers to jail voting". Prison Policy Initiative. October 2020.
6. People in jail with disabilities are allowed to request assistance from anyone of their choosing other than employer/union in returning their ballots. Wisconsin Elections Commission. September 7, 2022.
7. "Jails and prisons have always struggled to find and keep workers. COVID-19 and a nationwide labor shortage made it worse." Wisconsin Public Radio. December 2021.

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AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Wisconsin

Commonwealth of Massachusetts

STATE ELECTION

**OFFICIAL
ABSENTEE
BALLOT**

Tuesday, November 4, 2008