July 2020

Ballots for All:

Ensuring Eligible Wisconsin Voters in Jail

Have Equal Access to Voting

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Introduction

Our democracy works best when all eligible voters participate. The fundamental right to vote is central to the full and equal participation of people in America. Especially in the midst of a global pandemic, it is critical that all eligible voters have a say in who represents our interests. Every vote matters. Unfortunately, too many eligible voters face needless and discriminatory barriers that limit this right. This is particularly true of eligible voters in Wisconsin county jails.

At any given moment, there are about 12,500 Wisconsinites in county jails.[1] More than half of those in jail have yet to be convicted of a crime, but are forced to remain in jail because they are too poor to post cash bail. In Wisconsin, people who are involved in the criminal legal system do not lose their right to vote unless convicted and sentenced to a felony.[2] All individuals convicted of misdemeanors (except misdemeanors for treason or bribery) are able to vote even as they serve their sentence in a county jail. In *O'Brien v. Skinner* the Supreme Court affirmed that people in jail who are eligible voters in their state must be provided access to the franchise, and the manner in which jails do so is up to the state. However, lackluster administrative policies mean that the vast majority of these individuals do not have the opportunity to register to vote, cast their ballot, and have that ballot counted. We refer to this as de facto disenfranchisement. Any form of disenfranchisement is wrong. It can also have electoral consequences. For context, just over 22,000 voters decided the 2016 presidential race in Wisconsin.

The ACLU of Wisconsin and All Voting is Local - Wisconsin researched which Wisconsin County jails are ensuring eligible voters in jail, have equal opportunity to register to vote and cast a ballot in every election. We refer to this broadly as "jail voting". In our research, we looked at:

Policies	Does every Wisconsin jail have a written policy to support voting? How detailed is it?
Procedures	What procedure does each jail use to follow through on stated policies?
Outdated Information	Are there instances where jails need to update their information?
Deadline Complications	What is the process if the deadline for requesting an absentee ballot passed?
History of Supporting Jail Voting	Has each jail supported jail voting in the past?

In February 2020, we submitted public records requests to administrators of all 72 county jails in Wisconsin. The requests specifically sought, "any and all records regarding policies and practices effective as of the date of this request relating to voting for persons incarcerated in your institution." Of the 72 counties, **84.7 percent** (61 counties) responded to our request.[3] In March 2020, we also requested data from the Wisconsin Elections Commission regarding the number of times absentee ballots were sent to Wisconsin county jail addresses in November 2016 and November 2018.

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1. A 2010 report from the Prison Policy Initiative demonstrates this is part of a larger problem of mass incarceration that impacts Black, Hispanic, and American Indian/Alaskan Native Wisconsinites at disproportionately high rates.
2. Under Wisconsin Statute § 304.078(3), once a person has completed the terms of their felony conviction and are 'off paper' (having completed probation, parole, or extended supervision), they are able to register and vote again.
3. Counties that did not responded: Bayfield, Burnett, Calumet, Juneau, Lincoln, Menominee, Oconto, Polk, Richland, Shawano, Winnebago

Findings

1. Policies

Of the 61 counties that responded, and using data from the Wisconsin Elections Commission, we found:

- 🔴 **NO POLICY**
- 🔴 **VAGUE PRIVATE COMPANY POLICY**
- 🔴 **VAGUE POLICY**
- 🟢 **DETAILED POLICY**
- ⚪ **NO RESPONSE**
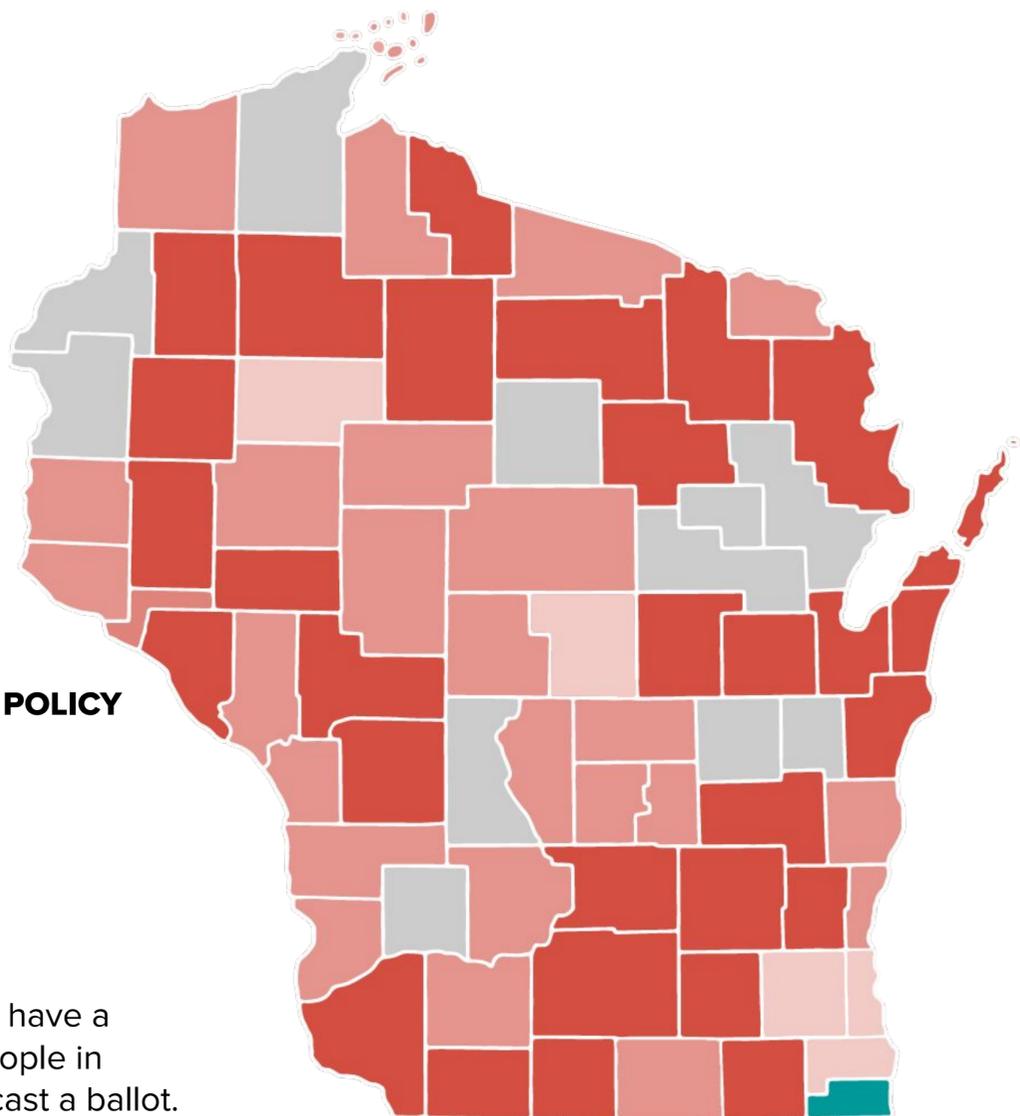
52.5 percent (32 counties[4]) do not have a written policy that specifies how people in their care can register to vote and cast a ballot.

45.9 percent (28 counties[5]) had brief policies with vague language. These policies do not offer helpful guidance. Of these counties, 22 used inadequate policies purchased from a private company called Lexipol. These policies are extraordinarily vague and do not offer helpful guidance or explain what the Wisconsin laws that it refers to are or how jail officials should implement them.[6]

1.6 percent (1 county; Kenosha) had a more detailed policy. While this policy was built from a Lexipol policy, it is more detailed and builds procedural guidance into the process and includes some useful guidance. Specifically, the policy calls for a facility-based inmate voting liaison. It also includes detailed procedures through which that liaison should support access to the ballot. This includes procedures for checking registration statuses, getting individuals registered, and completing absentee ballot applications.

NO POLICY (52.5%)

VAGUE POLICY (45.9%)

DETAILED POLICY (1.6%)
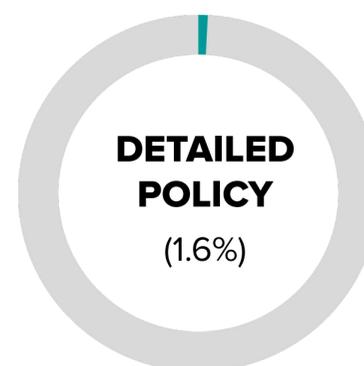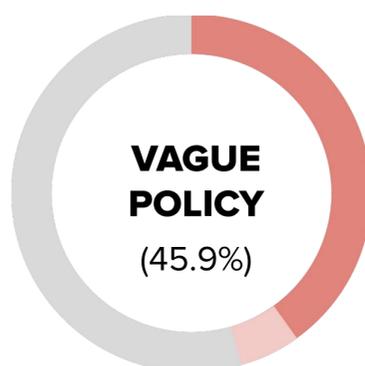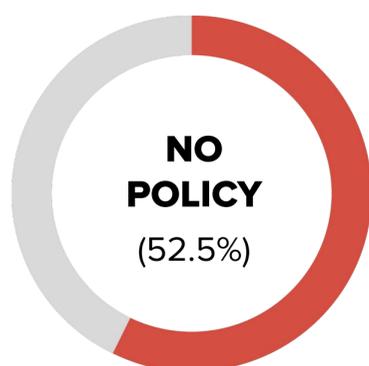
4. Barron, Brown, Buffalo, Columbia, Dane, Dodge, Door, Douglas, Dunn, Eau Claire, Fond Du Lac, Forest, Grant, Green, Iron, Jackson, Jefferson, Kewaunee, Lafayette, Langlade, Manitowoc, Marathon, Marinette, Monroe, Oneida, Outagamie, Price, Sawyer, Walworth, Washburn, Washington, Waupaca
5. Adams, Ashland, Chippewa, Clark, Crawford, Florence, Green Lake, Iowa, La Crosse, Marquette, Milwaukee, Ozaukee, Pepin, Pierce, Portage, Racine, Rock, Rusk, St. Croix, Sauk, Sheboygan, Taylor, Trempealeau, Vernon, Vilas, Waukesha, Waushara, Wood
6. The Lexipol policy states: "Because inmates are unable to access public voting polls the Jail Captain or authorized designee shall develop written procedures whereby the County Clerk allows qualified inmates to vote in local, state, and federal elections, pursuit to election codes. Inmates should be advised of voting methods during inmate orientation." The procedure states: "Prior to each election, the Jail Captain will designate a corrections officer to be a liaison between the Department and the local Registrar of Voters. The designated corrections officer will be responsible for assisting inmates who have requested to vote."

2. Procedures

Only **8.2 percent** (5 counties; Kenosha, Marathon, Milwaukee, Portage, Waukesha) had detailed procedures to facilitate registration and voting from jail.

3. Outdated Information

16.4 percent (10 counties) explicitly relied *on* guidance from a state office that no longer exists.[7]

4. Deadline Complications

Only **8.2 percent** (5 counties; Dunn, Forest, Lafayette, Walworth, Waukesha) had procedures that could help individuals vote after absentee ballot request deadlines passed. Each of these procedures were brief and vague.

5. History of Supporting Jail Voting

No jails indicated they had a system in place to track registration and/or voting requests by individuals in their care.

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7.   The Government Accountability Board provided guidance in 2010, and was disbanded in 2016 and replaced with the Wisconsin Elections Commission.

Jail Administrator
Recommendations

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In order to protect the constitutional right to vote of those in their care, jail administrators should build detailed administrative policies and procedures that can be facilitated by an assigned community relations officer or social worker. These policies and procedures should pay close attention to the following:

1. Access to Information

Jail administrators must provide every eligible voter in their care with relevant election dates and deadlines, as well as opportunities to learn what issues and candidates are on their ballot. Jail administrators should look to the Wisconsin Elections Commission for information related to dates and deadlines. They should provide nonpartisan issue-area and candidate information to interested voters through educational materials; trusted non-partisan voting rights groups like the League of Women Voters make this information publicly available. This information should be provided proactively, and not just in response to requests from individuals in the jail's care. Jail administrators may consider providing information through closed circuit television, fliers, poster displays, and the jail handbook.

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2. Eligibility To Vote

Every jail must have a written policy for informing individuals in the jail about voter eligibility rules, and for verifying whether an individual is eligible to register and vote.

3. Voter Registration Status

Every jail needs to provide voters with opportunities to check their voter registration status at least 30 days ahead of every election in which they plan to vote. The easiest way is to allow access to computers where voters can check their status online at myvote.wi.gov. In jails where individuals are not typically permitted free access to the internet, exceptions should be made for checking voter registration status. Voters should also be provided with the option to make a free phone call to their municipal clerk.

4. Access to Property

To vote in Wisconsin, every voter needs to show proof of residence for the purposes of registering to vote, and proof of identity for the purposes of casting a ballot. Because jails hold personal property after booking, every voter should be provided with an opportunity to retrieve documents they need to register (proof of residence), and documents they need to request an absentee ballot (accepted photo ID). This may mean a voter would be permitted to use the internet and print a relevant document, access property on-site, request retrieval of items from home, or connect with the WI Division of Motor Vehicles to apply for a photo ID.

5. Voter Registration

Every jail needs to provide direct opportunities for eligible voters in their care to register to vote. If it is 20 days or more before Election Day, this process can be facilitated online. In order to register online, voters must have a Wisconsin driver's license or state ID card. In jails where individuals are not typically permitted free access to the internet, exceptions should be made for registering to vote. Jails can facilitate registration by providing access to registration forms and making a photocopy of the voters proof of residence (see item 4). County jails can then either provide envelopes and postage to mail the registration to the corresponding municipal clerk, or hand deliver the registration and proof of residence in person. If it is less than 20 days before Election Day, jail administrators should establish a clear process to allow people in jail to register and vote in person -- either at an early voting site, or on Election Day. This may require that jail administrators work with clerks to establish a polling place within the jail. It may also mean allowing Huber-eligible residents to register in person at their municipal clerk's office, at an early voting location, or at their polling place on election day.[8]

6. Requesting an Absentee Ballot

People who want to vote from jail must be given an opportunity to request their absentee ballot. This is particularly important under the risks associated with COVID-19. In addition to protocols facilities are undertaking to protect the health and safety of persons in their care, jail administrators should ensure voters may safely access the ballot. Jails can facilitate absentee ballot requests by permitting access to myvote.wi.gov. In jails where individuals are not typically permitted free access to the internet, exceptions should be made for requesting an absentee ballot. Voters should also be provided the option of using the Wisconsin Election Commission's paper form. Because Wisconsin law requires that voters include a photo ID in order to successfully request an absentee ballot, jails must allow voters to access their ID (see item 4). For all paper absentee ballot requests, county jails can either provide envelopes and postage to mail the application to the corresponding municipal clerk, or hand deliver the application in person.[8]

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8.   "Huber Law" is detailed in Wisconsin Statute § 303.08, and generally refers to conditions under which certain individuals are permitted to leave jail for "necessary and reasonable hours" (e.g., work, education, medical treatment).

7. Casting a Ballot on Election Day

If a voter is jailed after the deadline by which they can request an absentee ballot, jail administrators must ensure a process by which they can vote at the polls on Election Day. One example that affords this opportunity is allowing Huber-eligible residents to vote in person.

8. Verifying the Ballot Was Counted

Every person who votes from jail must have an opportunity to verify their vote was counted. This ay mean having the opportunity to check the status of their ballot on the myvote.wi.gov webpage 30 days after Election Day, or having the opportunity to call their municipal clerk. In jails where individuals are not typically permitted free access to the internet, exceptions should be made for verifying that their ballot was counted. Voters should also be provided with the opportunity to check that their vote was counted by making a free phone call to their municipal clerk.

Every person who votes from jail must have an opportunity to verify their vote was counted.

9. Tracking Jail Voting Support

Every county jail should have a written process for tracking voter registrations, ballot requests, and ballots returned. While we recognize that some jail-based requests will not be fulfilled due to residents' release, these numbers are important for future analysis.

Wisconsin Decisionmakers Recommendations

In order to protect the constitutional right to vote of eligible voters in jail, it is time for Wisconsin decisionmakers to look at ways to accomplish our proposals listed below. These proposals affirm eligible voters in jail will be provided with an opportunity to register to vote and cast their ballot in every election.

1. Create Election Day Polling Places Within County Jails

Voters in jail shouldn't need to jump through hoops to make sure they can cast a ballot for each election. For individuals jailed after the deadline to request an absentee ballot, this is a particularly difficult (if not impossible) process to navigate. To address this problem, the Wisconsin Elections Commission, county clerks, and municipal clerks should look at what it would take to establish election day polling places within county jails.

2. Extend the Right to Vote via an Agent

Some voters who face circumstances that prevent them from voting at their polling place are already provided assistance. Under Wisconsin Statute § 6.86(3), Wisconsinites hospitalized before an election can elect an agent (e.g., family member, friend) to help them vote. Additionally, Wisconsin Statute § 6.875(6) establishes a process through which special voting deputies (agents of a municipal clerk) can help ensure access to the ballot in qualified retirement homes and special care facilities. Both of these provisions ensure that individuals in care facilities are not denied their right to vote just because of circumstances that prevent them from going to the polls. However, despite facing similar limitations, these provisions are not extended to jailed voters. That needs to change.

3. Expand Options for Proof of Residence and Proof of Identity

To vote in Wisconsin, every voter needs to show proof of residence for the purposes of registering to vote, and proof of identity for the purposes of casting a ballot. Individuals may not have these documents with them when jailed. Furthermore, access to these documents can be complicated after an individual completes their intake. Therefore, decisionmakers should look at ways to expand the list of acceptable proof of residence and proof of identity documents to include those that can be easily procured from within a jail (e.g., jail IDs).

Note: These proposals would be a major step toward making sure eligible voters in jail can register to vote, cast their ballot, and have that ballot counted. It is crucial too also acknowledge and address a related issue that impacts even more Wisconsinites. Under Wisconsin Statute § 6.03, Wisconsinites serving a felony sentence (including probation, parole, and extended supervision) are prohibited from voting. At any given time, this keeps approximately 68,000 Wisconsinites from casting their ballot. Most of these individuals live in the community, work and pay taxes, but are unable to participate in our political process. It is past time to address this issue. Protecting the universal right to register to vote, cast a ballot, and have that ballot counted mandates that we never disenfranchise any voters.

Conclusion

Our democracy works best when everyone participates. The fundamental right to vote is central to this. Particularly during a global pandemic where government decisions have such an immediate impact on the lives of every Wisconsinite, it is critical that no eligible voter be denied this fundamental right. When eligible voters are denied this right, not only are their voices silenced, but also the voices of their families and communities. This further alienates these communities from the political process and increases the number of Americans that have lost faith in our democracy.

Unless something changes, thousands of eligible voters in Wisconsin county jails will continue to be denied their right to register to vote, cast a ballot, and have that ballot counted in the November 2020 election. While some counties have taken important steps to protect access to the ballot, every county jail needs to build better policies and practices. Particularly given that these are procedural changes, this can and should happen now. There is time to make these changes before the November election. Looking ahead, Wisconsin decision makers must look at ways to create election day polling places within county jails, extend the right to vote via an agent, and expand options for proof of identity. Ultimately, no Wisconsinite should ever be disenfranchised. Only then will we move toward a democracy that truly works for us all.

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