

Jail-Based Voting in Wisconsin

An Introduction to the Issue, by Tiara Badie

Importance of the Issue.....

Most people in Wisconsin jails are eligible to vote, but often face barriers that make casting a ballot difficult, if not impossible. The following brief provides an overview of this issue and zeroes in on three primary barriers related to voting from jail: (1) elections administration and voter registration, (2) identification requirements and casting a ballot; and (3) accessing voter education materials and technology.

Why does this matter? Our democracy works best when every eligible voter participates, but participation is difficult for voters in jail. Barriers to the ballot associated with jail-based voting disproportionately affect Wisconsinites of color, specifically Black Wisconsinites. While Black Wisconsinites make up 7% of Wisconsin’s population, they make up roughly 29% of the State’s jail population.¹ When jailed voters (particularly Black jailed voters) are denied their freedom to vote, this is de facto disenfranchisement.² It is important for individuals impacted by our criminal legal system to have an equitable opportunity to have their voices heard in our elections. Only then can we build a democracy that works for everyone.

Background.....

In Wisconsin, most individuals do not become ineligible to vote unless they are serving a sentence for a felony conviction (including parole, probation, and extended supervision), or a misdemeanor for treason or bribery.³ In fact, a good portion of jailed individuals are incarcerated pretrial, or sentenced to misdemeanor offenses. In 2015, pretrial detainees constituted 47% of Wisconsin’s total jail population.⁴ Furthermore, based on a 2019 study, in Wisconsin, one-third of all county jail inmates from 2009 to 2013 only remained in jail because they could not pay low-cash bail.⁵

As of 2018, roughly 13,000 people were incarcerated in county jails each month.⁶ Based on the above statistics, we know most of these individuals are eligible to vote, but often face barriers. This issue is further complicated by the fact that most jails do not have a policy or procedure in place for supporting eligible voters in their care -- whether that means assisting with voter registration, getting an absentee ballot, or accessing information about upcoming elections.⁷

Elections Administration and Voter Registration.....

The voting system in Wisconsin is unique. Elections in Wisconsin are managed by municipal clerks in 1,852 local governments. These municipal clerks oversee 2,800 polling places and 30,000 poll workers. In fact, Wisconsin has 1/6th of all the election officials in the country.⁸

Unlike Wisconsin elections, Wisconsin jails are overseen at the county level. This raises the question: Who has the authority and/or responsibility to ensure that voters have the opportunities to cast their ballot from jail? Since these two systems are run by two different authorities, there is a lack of clarity around who has the power to make decisions regarding jail-based voting. It becomes difficult to effect change when one party insists that the power lies in the hands of the other party (and vice versa).

This issue is further complicated by the fact that the Wisconsin Elections Commission does not provide clear guidance on elections administration responsibilities when it comes to jail-based voting.⁹ This makes things particularly difficult when it comes to voter registration within county jails. Without clearer direction on how officials can support access to proof of residence documents for the purposes of registering to vote, these challenges will remain.

Identification Requirements and Casting a Ballot....

In Wisconsin (as a result of Act 23, signed into law in 2011), a valid photo ID, or acceptable substitute, must be provided when voting by absentee ballot or at a polling place, unless you are a voter who is exempt by statute.¹⁰ Act 23 created even more discriminatory barriers to voting for Wisconsin voters, and jailed voters are not included in the statutory exemption mentioned above. In many cases, this means an eligible voter taken into custody without their photo ID may not be able to vote.¹¹

This rule is needless and discriminatory considering the fact that when individuals are taken into custody they have their photographs and fingerprints taken. Their name, sex, race, and date of birth is recorded. They are also given an identification number. In some counties, fingerprints are also transferred to a forensic section that processes and further verifies them for positive identification.¹² The requirement for additional identification of incarcerated individuals disenfranchises jailed voters.



This brief was developed by Tiara Badie and in partnership between Marquette University’s Center for Urban Research, Teaching & Outreach (CURTO), and All Voting is Local - Wisconsin. Badie is a law student at Marquette University, and a research intern with CURTO. She also serves as a Democracy Fellow with the Campus Vote Project, a project of the Fair Elections Center.



For most voters, the deadline to request an absentee ballot in Wisconsin is 5pm the Thursday before the election.¹³ This rule presents an issue for those taken into custody after this deadline. What happens to an eligible voter who is taken into custody on the Friday or Saturday before an election? Most jails, when asked, do not seem to have a policy or procedure in place for addressing this issue.¹⁴ In fact, it seems that the subject of “late-jailed” voters is a major oversight. While Wisconsin statute protects other voters who are unable to cast their ballot on election day (e.g., hospitalized voters ¹⁵), this protection is not extended to voters in jail.

So far, it seems that those who are taken into custody after the absentee ballot request deadline simply are unable to vote. By All Voting is Local and the ACLU of Wisconsin’s 2020 assessment, only two counties had procedures in place that could potentially assist with voting after absentee ballot request deadlines. Those procedures were not detailed.¹⁶

Accessing Voter Education Materials and Technology.....

Jailed individuals often do not have sufficient and reliable access to information on candidates and their policies. Furthermore, access to technology is important for more than just providing reliable information on candidates. As processes become more streamlined and advanced, access to technology for jailed individuals is also about being able to register to vote, request a ballot, and verify that the ballot was counted. Jailed voters need technology to be able to do all of those things just like anyone else. To ensure eligible voters’ freedom to vote, we must ensure equitable access to voter education materials and technology.

Conclusion.....

As previously stated, it is crucial for individuals impacted by our criminal legal system to have an equitable opportunity to have their voices heard in our elections. Addressing this issue is also part of the larger conversation around reforming our criminal legal system. Much of the conversation about criminal justice and voting in the past has been about those with felony convictions. However, as time goes on, more of the nuanced effects of mass incarceration are coming to light. People in jails are often overlooked and difficult to reach. Access to the ballot is typically limited by logistical challenges, not legal ones.¹⁷ It is past time to adequately address this issue.

Stay tuned for the next brief on jail-based voting in Wisconsin, which will dive deeper into barriers to the ballot that are specific to elections administration and voter registration. For other updates from All Voting is Local and CURTO, follow @VotingIsLocal and @CURTOMarquette.

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