

# League of Women Voters of Dane County Forum, January, 2024

## Voting Rights and the Criminal Justice System

**Location:** Online at your convenience

▶ Election Matters 2023: Voting Rights and the Criminal Justice System

This do it yourself forum is a video of a program held on October 13, 2023 at the University of Wisconsin-Madison and co-hosted by the UW-Madison Elections Research Center and the State Democracy Research Initiative.

### Panelists

- **Naila Awan**, Interim Co-Director of Policy, New York Civil Liberties Union
- **Michael Massoglia**, Professor of Sociology, UW-Madison
- **Michael Morse**, Assistant Professor of Law, Penn Carey Law School
- **Michael Leo Owens**, Professor of Political Science, Emory University

### Moderator

- **Barry Burden**, Director, UW-Madison Elections Research Center

Whether and how to afford the right to vote to incarcerated and formerly incarcerated individuals are questions that have long generated legal and policy controversy. This panel discussion addresses current approaches and challenges to offender re-enfranchisement and voting in correctional facilities.

### Discussion Questions

1. What conditions, if any, should be put on the voting rights of convicted felons?
2. Wisconsin has the highest rate of incarceration of all states among its Black residents with 1 of every 36 Black residents in prison. [Wisconsin imprisons 1 in 36 Black adults. No state has a higher rate.](#) How should that affect voting rights of prisoners?
3. How can the voting rights of those in jail, who have not been convicted of a felony, be protected?
4. The position of the LWV of Wisconsin is to support restoration of the voting rights of felons who are not currently incarcerated. [Citizens' Rights | MyLO](#) Should this position be changed?

**League Discussion Units** will meet to discuss this case during the third week of January. If you aren't already a member of a discussion unit, [you can find contact information here](#).

## The Scope of the Problem

In 2022, an estimated 4.6 million Americans, representing 2% of the voting-age population, will be ineligible to vote due to these laws or policies, many of which date back to the post-Reconstruction era. In this election year, as the United States confronts questions about the stability of its democracy and the fairness of its elections, particularly within marginalized communities, the impact of voting bans on people with felony convictions should be front and center in the debate.

A 2022 report chronicled the scope and distribution of felony disenfranchisement in the United States. [Locked Out 2022: Estimates of People Denied Voting Rights - The Sentencing Project](#) These are the key findings of the report:

- An estimated 4.6 million people are disenfranchised due to a felony conviction, a figure that has declined by 24% since 2016.
- One out of 50 adult citizens – 2% of the total U.S. voting-eligible population – is disenfranchised due to a current or previous felony conviction.
- Three of four people disenfranchised have fully completed their sentences or remain supervised while on probation or parole.
- Among the adult African American population, 5.3% is disenfranchised compared to 1.5% of the adult non-African American population.
- Although data on ethnicity in correctional populations are unevenly reported and undercounted in some states, a conservative estimate is that at least 506,000 Latinx Americans, or 1.7 percent of the voting-eligible population, are disenfranchised.
- Approximately 1 million women are disenfranchised, comprising over one-fifth of the total disenfranchised population.

## What Does The Constitution Say?

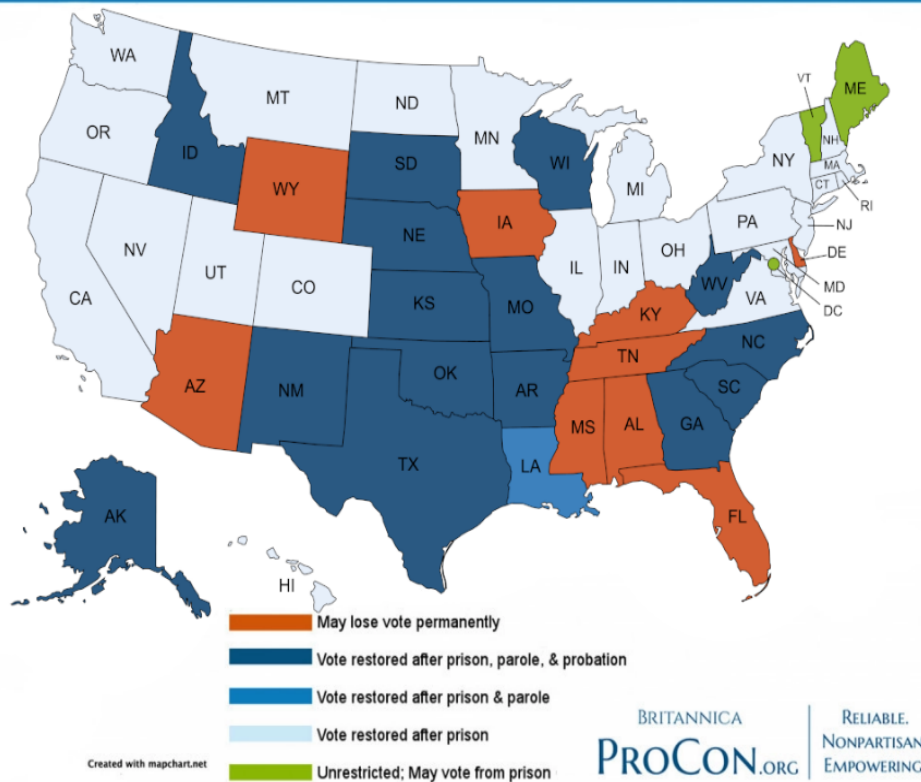
U.S. election laws began with Article 1 of [The Constitution of the U.S.](#) which gave states the responsibility to oversee federal elections. The following Constitutional amendments affecting voting rights:

- 8<sup>th</sup> Amendment: Excessive bail shall not be required, excessive fines imposed, or cruel and unusual punishments inflicted.
- 14<sup>th</sup> Amendment, Section 1: All persons born or naturalized in the U.S. are citizens of the U.S. and the State where they reside. States may not abridge

the privileges or immunities of citizens; or deprive any person of life, liberty, or property, without due process of law; or deny equal protection of the laws.

- 15th Amendment Section 1: The right to vote shall not be denied or abridged on account of race, color, or previous servitude.
- 19th Amendment: The right to vote shall not be denied or abridged on account of sex.
- 24th Amendment , Section 1 The right to vote shall not be denied or abridged by reason of failure to pay poll tax or other tax.
- 26th Amendment, Section 1 The right to vote shall not be denied or abridged on account of age for citizens over 18.

## State Felon Voting Laws & Policies



[State Voting Laws & Policies for People with Felony Convictions - Felon Voting - ProCon.org](https://www.procon.org)

## The Disenfranchised in Wisconsin

State	Disenfranchised	Voting Population	Percent disenfranchised
Wisconsin 2021	69,344	4,347,413	1.6%
Wisconsin 2022	65,394	4,392,490	1.49%

[Number of People by State Who Cannot Vote Due to a Felony Conviction - Felon Voting - ProCon.org](#)

### What is the difference between a misdemeanor and a felony in Wisconsin?

A felony is a crime punishable by imprisonment in a state prison, generally for a term of more than one year. All other crimes are misdemeanors for which imprisonment may be imposed, but normally in a county jail. [Statutory Felonies in Wisconsin](#)

### Voting rights of those in prison or jail

The right to vote is lost upon conviction of "treason, felony, or bribery" and is automatically restored upon completion of the term of imprisonment or probation. [Wisconsin Legislature: 304.078\(3\)](#).

The right to vote is not lost upon conviction of a misdemeanor (except for misdemeanor treason or bribery). This means that those convicted of misdemeanors may vote even if they are in jail or prison, or "on paper" (on probation, parole or extended supervision).

Those charged with a felony, including those in jail awaiting trial, do not lose the right to vote unless and until they are convicted. [VOTING RIGHTS FOR PERSONS WITH CRIMINAL CONVICTIONS | ACLU of Wisconsin](#)

### [Wisconsin Elections Commission Voter Guide.](#)

- You need an acceptable photo I.D. to request an absentee ballot and vote. If you had a photo I.D. when you were incarcerated, you will have to ask the staff of the institution to make a copy of that I.D. for you. If you do not already have an acceptable photo I.D. and cannot leave the institution to obtain one, you cannot vote.
- You may request an absentee ballot by mail, email, or fax. A copy of your photo I.D. must be included with the absentee request and submitted to the municipal clerk. You must ask the institution staff to make a copy of your photo I.D. or allow you to use a copy of your photo I.D. provided by someone else. You must also sign an absentee ballot request form, which can be mailed by the staff of your institution or a third party. Individuals who are

incarcerated but still eligible to vote do not qualify to receive absentee ballots permanently for every election.

## Actions You Can Take:

1. Contact or support these groups:
  - [EXPO Wisconsin](#)
  - ACLU of Wisconsin - [Police, Prisons, and Criminal Reform](#)
  - The [Legal Action Center](#) is the only non-profit law and policy organization in the United States whose sole mission is to fight discrimination against people with histories of addiction, HIV/AIDS, or criminal records, and to advocate for sound public policies in these <https://elections.wi.gov/areas>.
  - [WI Elections Commission](#)
  - [The Sentencing Project](#)
2. Use the resources available in this LWV WI toolkit [Equal Access to the Ballot is Smart Justice | MyLO](#)
3. Your suggestions?