DEMOCRACY ON THE BALLOT

'Election integrity' proposals do not address most common voting infraction in Wisconsin

*Prosecutors charged just 192 people with election-related crimes since 2012, but more than half of the cases were related to felony probation status*

**By Matt Mencarini**

*Wisconsin Watch*

Election fraud is exceptionally rare: Over the past decade in Wisconsin, it has been prosecuted fewer than 200 times, or about once for every 163,000 ballots cast.

And within that tiny universe, the most common reason for criminal charges is not people voting under dead people’s names, double voting or voter impersonation — the kinds of crimes election skeptics like former President Donald Trump claim happen on a large scale. The main cause is a voter’s probation status, a Wisconsin Watch analysis of every Wisconsin election fraud case since 2012 found.

The analysis, with data compiled by [Court Data Technologies](https://www.courtdatatech.com/), also found Black Wisconsinites, most of them from Milwaukee County, are even more overrepresented in election fraud prosecutions than they are in the court system overall.

The Wisconsin Watch analysis is the most comprehensive accounting of Wisconsin election fraud cases to date. The Heritage Foundation, a conservative think tank, includes in [an online election fraud database only 35 cases](https://www.heritage.org/voterfraud/search?combine=&state=WI&year=&case_type=All&fraud_type=All&page=0) since 2012.

“I would say the allegations are out of scale with the rate at which there are actual crimes committed by voters,” said University of Wisconsin-Madison political science professor Barry Burden, who runs the [Elections Research Center](https://elections.wisc.edu/). “It’s not that there are no crimes committed by voters ... but they’re just minuscule compared to the number of allegations.”

In 2022, the Marquette Law School poll found [81% of Republicans were “very concerned” about accurate vote count](https://law.marquette.edu/poll/2022/11/02/mlsp74-press-release/) — topping the level of concern over issues including inflation, crime and illegal immigration.

The specter of even a scant amount of election fraud has been used to justify the state’s voter ID law, Republican efforts to restrict voting options during the pandemic and Trump’s attempt to overturn the 2020 election results.

Yet [none of the dozens of GOP “election integrity” proposals](https://wisgop.org/election-integrity/) would help prevent or detect the most common voting infraction: people who, knowingly or not, vote while still under Department of Corrections control.

The overheated rhetoric over fraud — and the threat that any voting mistake could lead to jail or probation — can be enough to dissuade a person from voting, said Christopher Uggen, a University of Minnesota sociology professor who co-authored a book about felony disenfranchisement.

“And that’s not to say necessarily that anybody who raises the issue of voter fraud is engaging in these efforts,” he said. “But I do think there is an element, at least, who is more cynically and actively trying to suppress the vote and may raise doubts in people’s minds about the negative consequences of them going out and voting.”

**More evidence that fraud is rare**

Between Jan. 1, 2012, and spring 2022, Wisconsinites cast more than 31 million ballots in contests from president to town clerk.

There were 48 general, primary and special elections, but only 192 prosecutions for election fraud, or 0.0006% of all votes cast.

Wisconsin Watch partnered with Court Data Technologies to compile a database of all felony cases since 2012 that included charges related to election fraud, illegal voting or illegal voter registration.

Of the 192 prosecutions statewide, Wisconsin Watch was able to determine the nature of allegations in all but 11. There were 40 cases that involved the kind of fraudulent voting of the type banned everywhere, such as double voting or voting in the name of a dead person.

In 20 cases, election workers, volunteers or candidates were charged. The most recent and high-profile example is a now-former Milwaukee election clerk who requested [military absentee ballots be sent to a lawmaker](https://www.wpr.org/milwaukee-election-official-fired-after-fraudulently-requesting-military-ballots-and-sending-them) under fake names just before November’s election. Five of those were for candidates who submitted fraudulent nominating papers.

Three Marathon County cases stemmed from a town clerk who signed a random voter’s name in the poll book so the list matched the number of votes cast in the 2020 election. The clerk pleaded guilty in December and received two years of probation, with the condition to have no election involvement. Felony cases against Marathon County poll workers are ongoing.

In seven cases, voters [used improper addresses to register](https://wisconsinwatch.org/2022/07/a-hammer-in-search-of-a-nail-wisconsin-ag-candidate-prosecutes-eligible-voters-for-address-snafus/); three cases involved noncitizens voting; and two involved disorderly conduct at a polling place. Five cases against Fond du Lac voters charged in 2022 for using their UPS Store address are now closed, with prosecutors dismissing one, deferring prosecution in another and accepting misdemeanor plea deals in the others.

More than half of the cases — 109 — involved people voting or registering to vote before their probation ended. And 39 of those came from Milwaukee County.

From 2012 through spring 2022, Milwaukee County prosecutors charged 57 people with election-related crimes — the equivalent of 0.0013% of 4.46 million votes cast.

“There is not a significant number of fraudulent votes being cast,” said Matthew Westphal, the Milwaukee County assistant prosecutor who handles election crimes.

“The fact that we get referrals for illegal voters or fraudulent voters is indicative of the fact that the system is working, because it is catching those people who are voting fraudulently.”

It’s common for prosecutors to bring charges more than a year after an election, particularly for felony disenfranchisement cases. The Wisconsin Elections Commission, by law, does an audit after each election to see if anyone ineligible due to their probation status voted. Cases are referred to local prosecutors, and additional investigation is likely needed.

Court data show at least 52 people received sentences that went beyond fines and fees; only six were ordered to serve more than a month in jail.

**Few cases of double voting, voter impersonation**

Voter fraud cases in Wisconsin include a Fort Atkinson man who voted twice in the 2012 gubernatorial recall election against then-Gov. Scott Walker — once in his voting district in Fort Atkinson and once in the nearby town of Koshkonong, where he used to live. Wisconsin Watch is not naming him and another defendant because both told authorities they didn’t know they were violating the law.

The man initially told police he couldn’t explain why his signature was also in the Koshkonong poll book and denied voting there. However, court records indicate he later told police that while he lived in Fort Atkinson for several years, he continued voting in Koshkonong, which he did not realize was wrong.

He is one of just 21 people charged with voting more than once in an election in the previous 10 years.

Another anti-fraud measure enacted in Wisconsin requires voters to present a photo ID to vote. It was signed in 2011, but legal challenges delayed implementation until 2016.

Burden said the state’s voter ID law was “probably the most significant effort to try to combat either perceptions of vote fraud happening or actual crimes.” However, the only crime it is designed to prevent is voter impersonation.

Of the 192 election fraud prosecutions from 2012 through spring 2022, only five dealt with voter impersonation — with just one of those coming prior to the ID law taking effect, according to the Wisconsin Watch analysis. Those five include the case of Harry Wait, a Racine County political activist who turned himself in to authorities in 2022 [after requesting absentee ballots for elected officials](https://madison.com/news/local/govt-and-politics/racine-county-man-charged-with-fraudulently-requesting-absentee-ballots/article_e6cb236f-0f5d-57df-9814-9f3c251d3ccc.html) to show such fraud was possible.

Critics of Wisconsin’s voter ID law and other restrictions or hurdles to voting have said such measures are not preventing much fraud — but they are keeping many people from voting.

“Voter suppression has been applied differentially throughout the nation's history,” said Uggen, the University of Minnesota sociologist. “We know from the Reconstruction era and the Jim Crow era that there were many efforts taken to suppress the Black vote. And a threat of cracking down on illegal voting can have that same chilling effect.”

**Probation the most common case**

Two-and-a-half months after his release from prison, a Milwaukee man went to a polling place in November 2018 with his mother.

He didn’t go along planning to vote, according to court records, but once at the polls, his mother told him he was eligible. He also remembered hearing something about the government overturning the rule banning people with felony convictions from voting, so he registered that day and cast a ballot.

Two and a half years later, he was charged with a felony for providing false information to an election official. The charge stemmed from checking a box declaring he wasn’t on probation.

Six months later, he pleaded guilty, and a judge ordered him to pay court fines and fees.

That’s what the typical election fraud prosecution in Wisconsin has looked like over the past decade, Wisconsin Watch found.

State law bans anyone convicted of a felony from registering or voting until they’re “off paper,” meaning they’ve completed probation, extended supervision or parole.

**Bill would ban voting until fines paid**

A bill introduced in February by state Sen. Duey Stroebel, R-Saukville; Rep. Shae Sortwell, R-Two Rivers; and 13 other GOP lawmakers would bar voting until they’ve paid “all fines, costs, fees, surcharges, and restitution, and have completed any court-ordered community service.” A similar law passed by Florida’s GOP-run Legislature in 2019 keeps hundreds of thousands of felons — [who regained voting rights in a 2018 statewide referendum — from voting.](https://www.nytimes.com/2020/09/17/us/florida-felons-voting.html)

In a statement to Wisconsin Watch, Stroebel said probation and restitution are as much a part of someone’s sentence as incarceration.

“When a court determines a necessary part of a felon’s punishment and rehabilitation is to make restitution for the harm that felon imposed on others, fundamental fairness demands such debts to society be paid if that person is to be treated the same as the vast majority of Wisconsinites who didn’t commit a felony,” he said.

However, the bill doesn’t include additional safeguards to prevent someone with a felony conviction from casting a ballot, such as improving the system poll workers have to check before such a person registers and votes. Sortwell’s office said the Wisconsin Elections Commission should issue rules to inform local clerks about the changes in voting eligibility.

Uggen said many states are moving to ease voting restrictions on people with felony convictions. Confusion about eligibility is common among formerly incarcerated people, even probation officers or election workers, according to court records and interviews.

Probation can last years, during which someone moves or has new probation officers. They can be misled by false information. In one case, the Department of Corrections incorrectly told a man he could vote again, his attorney said.

Uggen said one way to reduce confusion would be to establish a clearer line for eligibility, such as allowing people to vote after incarceration ends, which happens in Illinois, Indiana and 20 other states.

“It's increasingly hard to justify disenfranchising those who are fit to be in the community in every other way,” Uggen said.

**Racial disparity in the cases**

Black Wisconsinites make up just 6.8% of the state’s population, but 25% of defendants in election fraud prosecutions, the Wisconsin Watch analysis found.

They make up about 27% of everyone on probation or community supervision in Wisconsin, but 33% of those charged with voting while on probation.

In Milwaukee County, which is 28% Black, prosecutors brought charges against Black voters in 70% of its election fraud cases.

Westphal, the Milwaukee County prosecutor, said he doesn’t review demographic information when deciding whether to charge someone, but acknowledged his office is aware of disparities in whom it charges. He cited a recent study as part of the office's efforts to address those disparities.

Keisha Robinson, deputy director of Black Leaders Organizing for Communities Milwaukee, said Wisconsin Watch’s findings don’t surprise her. Felony disenfranchisement cases, she said, have ripple effects for years.

She recounted the story of a woman she knows who was charged in 2007 after voting while still on probation. The woman, who didn’t know she was committing a crime, got nine months in jail.

“When people heard about her being charged and having to do jail time, there were lots of (people saying) ‘That’s why I don’t vote,’ ” she said. “I think a person simply wanting to cast their vote, but is misinformed, shouldn’t be charged with a felony.”

**Editor's note: This story was updated to clarify that a proposed bill does not provide additional safeguards to prevent someone serving probation for a felony from voting. It also corrects that a photo ID is needed to vote, but not to register to vote.**

*Reporting for this story was supported by the Fund for Investigative Journalism. The nonprofit Wisconsin Watch (*[*www.WisconsinWatch.org*](http://www.wisconsinwatch.org)*) collaborates with WPR, PBS Wisconsin, other news media and the University of Wisconsin-Madison School of Journalism and Mass Communication. All works created, published, posted or disseminated by Wisconsin Watch do not necessarily reflect the views or opinions of UW-Madison or any of its affiliates.*