



**INDIANA**

*State excerpt from*

**Dēmos**

# Protecting Voter Registration

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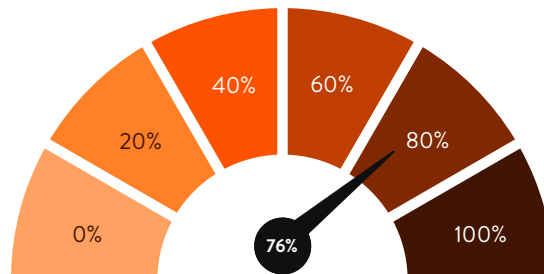
An Assessment of Voter  
Purge Policies in Ten States

# Indiana

## Removal Practices

**FIGURE 17**

**Indiana Removal Practices**



Indiana scored 76% for its removal practices, the highest of any state we analyzed. Indiana’s relatively strong notice procedures and high score among the states we analyzed are, in part, the result of several years of litigation over previous faulty procedures that violated the National Voter Registration Act.<sup>97</sup>

On the positive side, Indiana does not initiate a removal process solely based on failure to vote in a certain number of elections. Instead, in every odd-numbered year, the registrar checks on eligibility by sending a non-forwardable mailing to all registered voters.<sup>98</sup> If the postal service returns the mailing as undeliverable, the registrar does not immediately move the voter to the inactive list but instead sends the voter a second, forwardable confirmation notice.<sup>99</sup> Such voters are moved to the inactive list only if they fail to confirm their address in response to the second, forwardable notice.<sup>100</sup> Using forwardable notices is preferable because such notices are far more likely to actually make it to the voter, who is then alerted that they may need to update their voter registration.

In addition, Indiana does not use alleged mental incapacity as a basis to deny the right to vote.<sup>101</sup> State law clearly enumerates the reasons for which counties may initiate removal and does not grant election officials the authority to remove voters for other, unspecified reasons; i.e.; election

<sup>97</sup> See *infra*, Current Political Context.

<sup>98</sup> Ind. Code § 3-7-38.2-16.1

<sup>99</sup> Ind. Code § 3-7-38.2-17

<sup>100</sup> Ind. Code § 3-7-38.2-17. Indiana does move voters to the inactive list if the registrar receives direct information from the U.S. Postal Service or other reliable sources that the voter no longer resides at the listed address, but only if the voter does not respond to a confirmation mailing, or the Postal Service returns the notice as undeliverable. Ind. Code § 3-7-38.2-2(d)-(i). Once on the inactive list, voters may continue to vote, and will be removed only if they fail to vote during the next two federal general elections. Ind. Code § 3-7-38.2-2.2(j), (k).

<sup>101</sup> Ind. Code §§ 12-26-2-8, 12-27-2-3. See also “State Laws Affecting the Voting Rights of People with Mental Disabilities,” Bazelon Center for Mental Health Law, 2016, available at [http://www.bazelon.org/wp-content/uploads/2017/11/2016\\_State-Laws-Affecting-Voting-Rights-of-PWD.pdf](http://www.bazelon.org/wp-content/uploads/2017/11/2016_State-Laws-Affecting-Voting-Rights-of-PWD.pdf) (last visited April 20, 2023).

officials do not have “catch-all” removal authority.<sup>102</sup> Indiana does not allow for mass challenges to voters’ registrations outside of an individual voter’s precinct. However, Indiana does allow for individual challenges at the voter’s precinct by a third party or a member of the precinct election board.<sup>103</sup> The state does have some restrictions on what types of challenges can be made<sup>104</sup> and voters may sign an affidavit and vote using a provisional ballot if their qualifications are challenged.<sup>105</sup>

On the other hand, Indiana lacks notice procedures when a voter is removed from the voter list because the voter is believed dead, and state law only indicates which criteria must be considered but does not require that specific data points match.<sup>106</sup> Such a notice provides an important way for voters to learn if they have been erroneously removed. Indiana law also lacks specific procedures for contesting wrongful removals. Moreover, the statutory provision on removing voters based on felony convictions does not include any matching criteria that must be met before removal.<sup>107</sup> The state does send notices of disenfranchisement to all those whose registration records are purged due to such convictions, thereby potentially alerting those whose records may have been erroneously removed; however, this notice is only sent after the voter that has been deemed ineligible is already purged.<sup>108</sup>

**Table 17: Removal Practices**

Reason for Removal	Felony Conviction	Death	Citizenship Status	Adjudication of Mental Incapacity <sup>109</sup>	Other Reasons for Removal
Matching Criteria	0	2	4	4	Inactivity   20
Notice of Removal	2	0	4	4	Catch-all Removal Authority   4
Procedures to Contest	0	0	4	4	Caging / Mass Challenges   20
Notice of Restoration to Voter	0	n/a	n/a	2	<b>Total</b> 76/100 = 76%
Notice of Restoration to Elec. Official	0	n/a	n/a	2	

<sup>102</sup> Ind. Code § 3-7-26.3-11; Ind. Code § 3-7-38.2-2(d)-(h); Indiana Election Division, 2020 Indiana Voter Registration Guidebook 41-44 (2020).

<sup>103</sup> Ind. Code § 3-11-8-19 through 8-21

<sup>104</sup> Ind. Code § 3-5-4.5-2 and 3

<sup>105</sup> Ind. Code § 3-11-8-23.5 and 27.5

<sup>106</sup> See Ind. Code § 3-7-45-2.1, 3-7-45-3 (on registration removal for death). But note that if a county registration officer determines that information regarding a deceased voter is in error the office “may decline” to remove the voter, or may reinstate a voter incorrectly removed. Ind. Code § 3-7-45-7. The law does not specify how such a determination is made.

<sup>107</sup> See Ind. Code §§ 3-7-46-1 through 46-9.

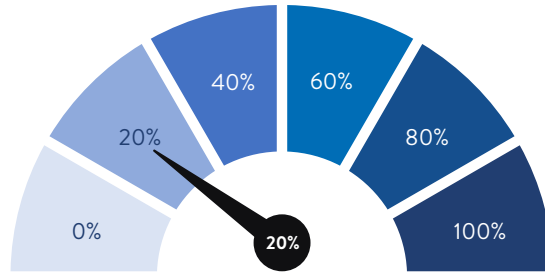
<sup>108</sup> Ind. Code §§ 3-7-45-3, 3-7-46-8, 3-7-46-9.

<sup>109</sup> State law does not disenfranchise voters based on a judgment of mental incapacity to vote, so we have given Indiana full points.

## Safeguards Against Erroneous Removal

**FIGURE 18**

### Indiana Safeguards from Removal



Indiana scored only 20% for its safeguards to protect voters who learn that their registrations have been canceled or marked inactive only when arriving in person to vote. The chief reason Indiana scored poorly is that it does not offer same-day registration during early voting or on Election Day, which would allow an eligible voter whose registration was canceled to re-register and vote on site.<sup>110</sup> The state received points for its policy of allowing voters who have been marked inactive based on a suspected change of address to cast a regular ballot by affirming that they continue to reside at the same address.<sup>111</sup>

**Table 18: Safeguards Against Erroneous Removal**

Safeguard	
Scope of Same-Day Registration (SDR)	0
SDR Identification Requirements	0
Regular or Provisional Ballot for SDR Voter	0
Regular or Provisional Ballot for Correcting Inactive Status	20
<b>Total</b>	<b>20/100 = 20%</b>

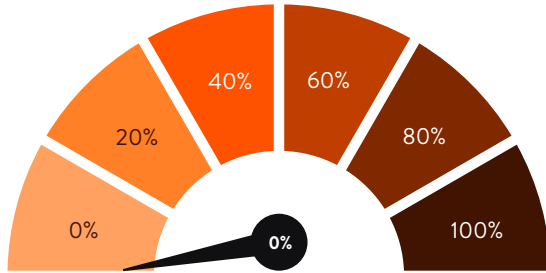
<sup>110</sup>See Ind. Code § 3-7-13-11 (setting registration deadline at close of business on 29th day prior to election); see also National Conference of State Legislatures, Same Day Registration, at <https://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx> (last visited April 20, 2023).

<sup>111</sup>Ind. Code § 3-7-48-5.

## Data Accessibility

**FIGURE 19**

### Indiana Data Accessibility



Indiana also scored 0% for data accessibility. Although the voter file is technically free to the public, only a restricted version is available, containing only names, addresses, and the voters' election district.<sup>112</sup> The complete file is available only to political parties, independent candidates, a member of the media for publication in a news broadcast or newspaper, the chief justice of the supreme court and clerks of U.S. district courts for administering the jury management system, the speaker and minority leader of the house of representatives, the president pro tempore and the minority leader of the senate.<sup>113</sup> Political parties, candidates, and members of the media must pay an annual subscription fee of \$5,000 for this file.<sup>114</sup> Indiana does provide the restricted voter file as an electronic text file, but the data are so limited it is essentially useless to researchers and advocates monitoring improper purges.<sup>115</sup>

**Table 19: Data Accessibility**

Indicator of Accessibility	
Complete File Publicly Available	0
Who Can Request File	0
Cost	0
Timeline	0
Format	0
<b>Total</b>	<b>0/100 = 0%</b>

<sup>112</sup> Ind. Code §§ 3-7-26.4-4 and 26.4-8.

<sup>113</sup> Ind. Code § 3-7-26.4-6. Individual counties may also provide their own electronic voter files to members of the public, but are entitled to require a fee for this service. Ind. Code § 3-7-26-6(c). Counties may impose the same restrictions on the contents of the file as the state itself does. See St. Joseph County, Indiana, Election Board Resolution No. 2017-01, available at <http://sjcindiana.com/DocumentCenter/View/11573/Resolution-on-Access-to-Electronic-Data?bidId=> (last visited April 20, 2023).

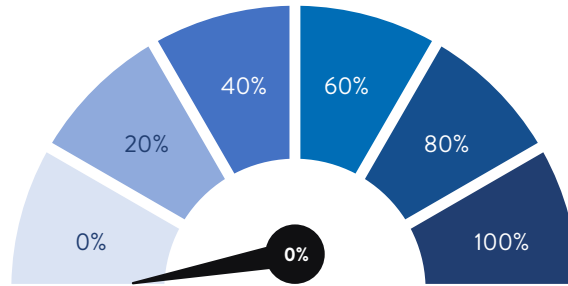
<sup>114</sup> Ind. Code 3-7-26.4-12.

<sup>115</sup> Ind. Code § 3-7-26.4-6. The electronic file must be provided within 5 days of the request, but, as mentioned, it is available only to the specific entities listed above.

## Data Transparency

**FIGURE 20**

### Indiana Data Transparency



Indiana scored 0% for data transparency, the lowest of any state we analyze. The publicly available file contains only names, addresses and election district and excludes basic information like Voter ID number, voter status, voting history, and all other data researchers and advocates need to monitor for improper removals.<sup>116</sup> Although a limited number of entities can access a file with some of the data points we evaluate, most members of the public cannot access that private file.<sup>117</sup>

**Table 20: Data Transparency**

Indicator of Transparency	
Race	0
Voter ID Number	0
Voter Status	0
Status Reason Code	0
Date Last Voted	0
<b>Total</b>	<b>0/100 = 0%</b>

### Current Political Context

Indiana had extensive litigation over its purge practices from 2017-2021. A law enacted in 2017 adopted what the Seventh Circuit termed “an aggressive new strategy” which allowed Indiana immediately to remove a voter from the rolls based on information received from a third-party database

<sup>116</sup> Ind. Code §§ 3-7-26.4-4 and 26.4-8.

<sup>117</sup> Ind. Code §§ 3-7-26.4-6 and 26.4-8.

indicating that the voter might be registered in another state.<sup>118</sup> Although the third-party database, known as Crosscheck, was notoriously inaccurate, the 2017 law would have allowed Indiana automatically to remove a voter from the rolls if the voter was identified as a database “match,” without any advance notice to the voter.<sup>119</sup> The Seventh Circuit enjoined this practice for violating the NVRA. Indiana’s replacement law, adopted in 2020, did not entirely cure this problem, and was again enjoined by the federal courts as a violation of the NVRA.<sup>120</sup>

A bill was introduced in the legislature in January 2022 that would have allowed same-day registration, but it did not advance out of committee.<sup>121</sup> The sponsor has re-introduced the bill in the 2023 session.<sup>122</sup> A bill that has already advanced in the legislature in 2023 would increase the period of disenfranchisement of persons convicted of a voting fraud felony to 10 years after completion of the sentence, and require removal of such persons from the voting rolls.<sup>123</sup>

Indiana also elected a new Secretary of State in 2022 who has questioned the validity of the 2020 presidential election, calling it “flawed” and a “scam that was perpetrated upon the citizens.”<sup>124</sup> He has not yet pursued specific voting legislation at the time of this report.<sup>125</sup>

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<sup>118</sup> Common Cause of Indiana v. Lawson, 937 F.3d 944, 946 (7th Cir. 2019).

<sup>119</sup> Id. at 948-949.

<sup>120</sup> League of Women Voters of Indiana v. Sullivan, 5 F.4 th 715 (7th Cir. 2021). Demos, along with several partner organizations, served as counsel to Common Cause Indiana in these consolidated lawsuits.

<sup>121</sup> IN HB 1364 (2022), available at <https://iga.in.gov/legislative/2022/bills/house/1364#document-838ce297> (last visited April 20, 2023).

<sup>122</sup> IN HB 1427 (2023), available at <https://iga.in.gov/legislative/2023/bills/house/1427#document-fdbe59a1> (last visited April 20, 2023).

<sup>123</sup> IN HB 1116 (2023), available at <https://iga.in.gov/legislative/2023/bills/house/1116#document-100899e1> (last visited April 20, 2023).

<sup>124</sup> Diego Morales, OPINION: “Holli Sullivan Dodges on Election Sanctity: I Will Lead,” Hoosier State Today, April 20, 2022, <https://hoosierstatetoday.com/stories/621591355-opinion-holli-sullivan-dodges-on-election-sanctity-i-will-lead>.

<sup>125</sup> Zachary Roth, Five election deniers who are controlling state voting systems, NC Policy Watch, The Pulse, February 19, 2023, <https://pulse.ncpolicywatch.org/2023/02/19/five-election-deniers-who-are-controlling-state-voting-systems/#sthash.o467VcdK.dpbs>.

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