State of Wisconsin \ Government Accountability Board

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DATE: January 9, 2014

TO: Dan Kleinmaier
Legislative Audit Bureau

FROM: Michael Haas
Elections Division Administrator

Ann Oberle
SVRS User Acceptance Testing - Lead

SUBJECT: LAB Data Request Regarding Voter Felon Audit and Duplicate Vote Verification Processes

On December 18, 2013, you requested copies of the previous post-election Voter Felon Audits completed by the Government Accountability Board (G.A.B.), and an estimate of when the November 2012 Voter Felon Audit will be completed. In addition, you requested information about the process used by clerks to perform the audit to ensure that no person had voted more than once in the 2012 General Election and detect if that happened.

We are providing lists containing the number of individuals referred to various district attorneys as the result of the Voter Felon Audit after the 2008 Presidential and General Election as well as the 2009 Spring Primary and Spring Election. The status of the Voter Felon Audits for subsequent elections, including the 2012 Presidential and General Election, is described below. Due to the restrictions in Wis. Stat. §§5.05(5s) and 12.13(5), which we have previously discussed with LAB staff, we cannot disclose specific information regarding the individuals who have been referred to a district attorney for investigation or prosecution.

This memorandum provides background and context regarding the documents we are including and regarding the status of Voter Felon Audits for the November 2012 election and previous elections. It outlines the steps for completion of the November 2012 Voter Felon Audit, and summarizes the Board's previous Voter Felon Audits as well as the G.A.B.'s plan for future audits using its newly-developed automated processes and tracking system. The memorandum also describes the process clerks use to identify persons who may have voted more than once in the same election.

<u>Post-Election Voter Felon Audit Process and 2012 Audit Results</u>

The Voter Felon Audit requires significant collaboration between local election clerks, G.A.B. staff, district attorneys, and law enforcement, and the G.A.B. does not control the performance or

timing of some of the required steps. Wis. Stat. §6.56(3m) requires that the G.A.B. conduct a post-election audit only of voters who register on Election Day to determine whether any of those voters are ineligible because they are convicted felons whose sentence or supervision is not completed. In the interest of thoroughness and efficiency, however, the G.A.B. has included all registered voters, not only Election Day registrants, in the Voter Felon Audit.

Before conducting the Voter Felon Audit, the G.A.B. must wait until all registration information for the election is entered in SVRS (the Statewide Voter Registration System). It may take clerks 45 days or longer after an election to update all voter registration information in SVRS. See Wis. Stat. §6.33(5)(a). But because of improvements made to the SVRS daily HAVA match process and the process for providing clerks with the list of the names and addresses of felons which is used at the clerk's office and polling places, the G.A.B. and local clerks have been able to identify potential voter felon matches before all the registration information for the election has been updated in SVRS and the G.A.B. begins the Voter Felon Audit process.

Specifically, the SVRS matching process required by the Help America Vote Act of 2002 (HAVA) occurs on a daily basis as clerks enter new registrations and record voter participation. As part of the HAVA match, information regarding newly registered voters is compared to information from Department of Transportation or Social Security Administration databases. The voter information is also compared to the list of ineligible felons provided by the Department of Corrections (DOC) as well as the list of deceased records provided by the Department of Health Services Vital Records Office. Lastly, voter information is compared to other existing voters to identify potential duplicates.[1]

Often a voter felon match is identified through the SVRS daily HAVA matching process long before all of the registration information for the election has been entered and the G.A.B. begins the Voter Felon Audit. In effect, the post-election Voter Felon Audit has become a secondary and back-up tool for detecting whether an ineligible felon has registered or voted in an election.

After all of the voter registration and voter participation information was entered for the November 2012 General Election, the G.A.B. used a new automated matching process to identify 92 names as potential matches with the ineligible felon list. During this first stage, DOC staff reviewed those names and determined that 46 of the 92 names were actually felons as of Election Day. DOC updated the status of the other 46 names from the list provided on Election Day to reflect the fact that those individuals were not felons on the day of the election because the offender had been discharged or had his or her sentence terminated or vacated prior to Election Day. Because DOC data entry is often not up to date on Election Day, an initial DOC review of any potential matches is a necessary quality control step in the audit process to ensure that a voter was not erroneously identified as ineligible to vote.

The second stage in the Voter Felon Audit process is a G.A.B. staff review of the updated records returned from DOC. This review is currently in progress for the 46 names identified by DOC in stage 1. G.A.B. staff compares the list of names returned from DOC to determine whether any of the names were previously matched to DOC records during the SVRS daily HAVA matching. As stated above, the SVRS daily HAVA matching includes a comparison

[1] For more information on the SVRS daily HAVA matching, please refer to the SVRS Application Training Manual, Chapter 005 HAVA Interfaces, available on the GAB website at SVRS Manual Chapter 5. Please also see the SVRS List Maintenance training webinar and materials posted December 4, 2013, available on the GAB website at http://gab.wi.gov/node/3029.

between a monthly file of all felon records generated by DOC and voter records in SVRS. SVRS identifies potential matches, which are reviewed by clerks to determine if the felon and the voter are in fact the same person. If the SVRS daily HAVA match has been reviewed by a clerk and marked as either a "confirmed match" or "not a match," G.A.B. staff will contact the clerk to get more information.

If the daily match has been marked as "not a match," this indicates that the clerk has already investigated the potential match and concluded that it is not the same person as the person under DOC felony supervision. In this case, G.A.B. removes this potential match from the Felon Audit process and does not refer the name to the District Attorney. If the daily match has been marked as a "confirmed match", this indicates that the clerk has already investigated the match and determined that the felon and the voter are in fact the same person. In this case, G.A.B. staff will check with the clerk and other sources including the Consolidated Court Automation Program website (wcca.wicourts.gov) to determine whether there is already an existing court action or conviction for voting in this election while serving a felony sentence. If there is an active court action or a conviction, or the name has already been referred to the District Attorney by the clerk, the G.A.B. will not forward the name to the District Attorney as part of the Felon Audit process. All other names remaining on the list following DOC's review are then forwarded to clerks for further investigation.

In the third stage of the Voter Felon Audit process, G.A.B. staff sends the list of potential felon voter matches that require investigation to the appropriate municipal clerk. Clerks are asked to check the list for accuracy. Clerks are instructed to look for clerical errors in the voter's registration and to check the poll list for the election to ensure that voter participation was correctly recorded. The clerks are asked to contact their county clerk to verify the voter participation is also recorded on the copy of the poll list provided to the county for that election. If the clerk finds that there were no clerical errors, the clerks are instructed to provide the G.A.B. with a copy of the poll list page showing the voter's participation in the election, and a copy of the voter's registration form (GAB-131). Clerks are asked to respond to the G.A.B. within 10 days of receiving the list of potential voter felon matches.

In the fourth stage, G.A.B. staff and legal counsel review all of the supporting documentation provided by clerks for each match and adjust the list of potential felon matches based upon the municipal clerks' review. The matches and supporting documentation are sorted by county so that staff counsel can prepare and consolidate the appropriate communications to the district attorneys to accomplish the referrals. Staff counsel sends the list of voters and supporting documentation to the district attorney for the county where the individual appears to have voted.

Pursuant to Wis. Stat. §5.05(2m)(c)18., the district attorney is required to report to the board any action taken regarding the matter within 40 days of the referral and every 30 days thereafter until final disposition of the matter. G.A.B. staff tracks the reports provided by the district attorney through final disposition. Once the referrals are made, G.A.B. staff needs to follow up with each of the district attorneys who received a referral if they do not proactively report to G.A.B. by the statutory deadlines. The results of each referral, including the final disposition must also be tracked by G.A.B. staff.

In the past, this has been a largely paper-based manual process. Over the past year the G.A.B. has been developing a new tracking system to improve and facilitate the Voter Felon Audit procedures, which is being used for the first time for the November 2012 audit. As mentioned

above, for this audit G.A.B. is currently investigating 46 potential matches between voters and felons. The G.A.B. expects to send the list of potential matches to the municipal clerks shortly and plans to make referrals to district attorneys by the end of this month.

For past voter felon comparisons, the G.A.B. was required to send the DOC file to the Department of Administration's (DOA) Division of Enterprise Technology (DET). DET would take the DOC file and translate it into a format that could be used by the G.A.B. for comparison. The improved tracking system will allow the G.A.B. to perform the Voter Felon Audit without having to first send the file to DET for formatting.

However, the review and referral process will continue to involve many hours of staff time for tracking and record maintenance under the newly automated procedures. No degree of automation can eliminate the need for DOC and G.A.B. staff and local clerks to analyze and verify voter and felon information. All staff and officials involved recognize the potential impact an incorrect referral to a district attorney could have on a voter. Being accused of an election fraud crime has a serious impact on an individual, and staff takes great care in ensuring that a referral is based on sound information and that due diligence has been completed prior to making a referral. Also, if the G.A.B. makes referrals without sufficient investigation and based upon minimal facts or solely on the automated matching process, it wastes valuable time and resources of district attorneys and law enforcement, and diminishes the confidence of district attorneys in the credibility of future referrals.

Audit Challenges and Lessons Learned

Issues that arose in the post-election Voter Felon Audit for the November 4, 2008 Presidential and General Election and other elections illustrate the challenges related to the referral process, and demonstrate the importance of G.A.B.'s due diligence prior to making a referral. As a result of the November 2008 Voter Felon Audit, the G.A.B. sent letters to 37 district attorneys regarding 124 referrals. Subsequently, the G.A.B. sent letters to 17 district attorneys regarding their failure to file forty-day status reports affecting 60 referrals. The G.A.B. received no response from a district attorney for 51 of the referrals.

The Dane County District Attorney reported no action on 23 referrals and sent a letter stating that he interpreted the statutes to require reporting only after that office had taken action in the matter. The District Attorneys of Juneau and Kenosha Counties reported that they were not taking any action on the referrals because they did not believe that the information the G.A.B. provided was sufficient to establish grounds to suspect that a crime had been committed or that the voter was in fact the same person as the ineligible felon.

Following a referral to Winnebago County, the District Attorney investigated and determined that the person who had voted in the election was not the same person as the felon on the DOC list. In the report sent to the G.A.B. the Winnebago County District Attorney pointed out that the same voter felon match had been referred as part of the November 2006 General Election Voter Felon Audit. Frustrated by having to investigate the same potential match in two different elections, the District Attorney wrote the following to the G.A.B.:

> **PLEASE ENSURE THAT MEASURES ARE PUT INTO PLACE TO ENSURE THAT FALSE REPORTS WILL NOT BE SENT TO OUR OFFICE IN THE FUTURE AS THIS IS THE SECOND TIME OUR OFFICE HAS HAD TO**

EXPEND UNNECESSARY AND VALUABLE RESOURCES INVESTIGATING THIS PARTICUALR FALSE REPORT FROM THE GOVERNMENT ACCOUNTABILITY BOARD.

The Winnebago County example illustrates the challenges created by false matches which have been detected in previous audits. The new tracking system will enable staff to quickly eliminate known false matches resulting from previous audits from the list of names referred to a district attorney.

In many cases the information on the DOC list has been incomplete or inaccurate. Many records contain no address or addresses of correctional facilities. The G.A.B. also receives up to nine aliases for each offender name. Additional investigation is needed when matches are made based upon a first name, last name and a date of birth. After the April 7, 2009 Spring Election Voter Felon Audit, G.A.B. staff counsel recommended using the middle initial or middle name whenever possible to eliminate false matches for people with different middle initials. More accurate data matches will help eliminate some false matches, but will not eliminate the need for investigation by the G.A.B. prior to referring names to a district attorney.

Referring a false match can be a serious issue when the district attorney files charges before conducting a separate criminal investigation. In the November 4, 2008 Presidential and General Election Voter Felon Audit, the list of names sent to the Chippewa County District Attorney included a match that should have been removed because the municipal clerk had confirmed that the voter had incorrectly been recorded in SVRS as having voted. Due to a computer database error the name remained on the list sent to the District Attorney and the individual was charged with voting illegally. Charges were dismissed after the G.A.B. notified the District Attorney of the error. The G.A.B. sent a formal apology to the voter, but not before the charges were reported in the local newspaper. The incident prompted the G.A.B. to review post-election voter felon comparison protocol, and put in place stricter review of the information used to make referrals.

The goal of the felon audit automation project is to make it easier for G.A.B. to manage and complete the comparison after every statewide election. The new technology will improve monitoring, tracking and reporting, will allow staff to perform audits much more quickly than in the past, and will help prevent innocent people from being accused of committing a felony.

Status and Results of Previous Voter Felon Audits

The G.A.B. has completed post-election voter felon comparisons for the November 2008 Presidential and General Election, the February 2009 Spring Primary, and the April 2009 Spring Election. For the November 4, 2008 Presidential and General Election, 124 referrals were made to 37 District Attorneys, and 6 individuals were convicted. For the February 17, 2009 Spring Primary the G.A.B. made two referrals, and the audit for the April 7, 2009 Spring Election resulted in six referrals and the conviction of one individual. The G.A.B. has on file reports from two district attorneys regarding the disposition of the referrals for the February and April 2009 elections. One referral was still under investigation and one referral had been dismissed because it was determined that the person who had voted was the father of the felon who was listed on the poll list with the same name. G.A.B. staff corrected the participation record for the father and son in SVRS.

Given other intervening agency priorities including a series of unprecedented recall elections, a statewide recount, and numerous legislative changes that required significant time and resources, the G.A.B. is still in the process of conducting the Voter Felon Audits for elections after the April 2009 Spring Election. The G.A.B. plans to complete all of the audits for regular elections held between the 2010 Spring Primary and the 2014 Spring Election, as well as the statewide gubernatorial recall election, before the August 12, 2014 Partisan Primary, and subsequently will focus on audits for the recent recall and special elections involving State Senate and Assembly offices.

The focus of G.A.B.'s program staff and IT team on developing the new tracking system in conjunction with the DOC over the past year has also diverted staff resources from more timely completion of the audits after recent elections. However, due to other felon detection procedures described on page 2 of this memorandum, felons who may have registered and voted have been identified by clerks. This is particularly true in the case of Election Day registrants who are the subject of the felon audit statute.

The new Voter Felon Audit system created by the agency's IT team will streamline the matching process and will allow staff to complete felon audits and monitor the disposition of referrals for past elections more efficiently and effectively instead of the previous process that relied mainly on manual tracking methods.

Identifying Voters Who May Have Voted Twice in an Election

HAVA requires all states to set up a single, uniform, centralized and computerized voter registration database. This centralized single database, through its matching functionality, is designed to identify voters who may have voted more than once in an election. Clerks enter voter registration and participation information into SVRS, which prohibits more than one vote being recorded for a single voter record at an election. The matching functions of SVRS help to reconcile duplicate voter records and identify instances when an individual may have voted more than once. This is accomplished through both the ad hoc matching process which is performed immediately upon entering each new voter application in SVRS, as well as the SVRS daily HAVA matching process.

When a new registration form is entered into SVRS, the ad hoc matching process alerts the clerk to review any matching records that already exist in SVRS. Clerks must review the potential matches before they can process the new voter application. If the clerk believes that the new registration is the same person as the existing record, the clerk "links" the new application to the existing voter record. This updates the existing voter record with the new information and transfers their registration to the new address (and new municipality if applicable).

As soon as possible after an election, municipal clerks or their SVRS provider clerks enter Election Day voter registration data and record voter participation into SVRS. If the voter application is linked to a voter who already has a vote recorded for that election, SVRS will immediately generate an error message notifying the user that the voter has already been marked as having voted. The clerk will then investigate further. If the second vote was recorded in a different municipality, the clerk will contact that municipality and have the clerk check their records. The clerks will determine whether the two records are in fact the same person, whether the votes were recorded properly, and whether they believe the voter did in fact vote twice in that election.

The daily HAVA matching process includes a comparison between voter records to identify potential duplicates. Periodically, clerks check their duplicate voter match queue in SVRS to verify that they have not missed a likely match when entering a new application, and to deal with existing duplicate voter records. The duplicate voter match process is part of the routine data quality checks conducted by SVRS users.

Clerks also use the daily duplicate voter record matching to identify voters who may have voted twice in an election. The G.A.B. instructs clerks to check for matches at least once a month, and more often in the weeks before an election. G.A.B. staff conducts data quality checks to monitor clerks' compliance with these instructions. Clerks review any duplicate matches and either mark the record as a "confirmed match" or as "not a match." If the clerk determines that two records match, the clerk "merges" the duplicate records. When the clerk attempts to merge the records SVRS immediately alerts the clerk if the voter has multiple votes recorded in the same election. At that point the clerk will contact the clerk in the municipality where the matching duplicate record is located to determine whether the voter is in fact the same person and did vote twice.

Both the ad hoc and the daily HAVA matching process identify individuals who may have voted more than once in the same election. In that case, the clerk sends the person a required mailing and forwards the information to the district attorney.

For example, on October 17, 2013, a Milwaukee County voter was sentenced to 6 months in jail and 2.5 years of probation after pleading guilty to voting twice in the November 2012 election. Another Milwaukee County voter was charged on March 21, 2013 for voting more than once in the November 2012 election, along with several other acts of voter fraud. He pleaded guilty to voting five times from an address in West Milwaukee where he no longer lived, and still faces charges for double voting and other fraud charges. His trial is scheduled for January 2014. G.A.B. staff, local clerks, and law enforcement used SVRS data and these matching functions as key tools for detecting and proving the voter fraud charges in both cases.