

October 17, 2018

## Voting Rights of Certain Incarcerated Individuals

This memorandum discusses the Connecticut's current law on the eligibility to vote of certain individuals who are in the custody of the Department of Correction (DOC). Individuals held in pre-trial detention with no disenfranchising conviction or incarcerated on a misdemeanor charge are entitled to register and vote. However, they may not have registered in their town of residence prior to their detention or may not be aware that they are entitled to apply for and vote by absentee ballot while incarcerated.

Exercising the right to vote for such a person requires (1) completing a voter registration application; (2) completing an application for an absentee ballot; and (3) receiving, executing, and returning an absentee ballot. While currently possible, it is likely that at least some individuals so detained are unaware of their right and ability to exercise this important privilege. A study with recommendations on ways that corrections and state and local elections officials can facilitate voting by eligible detainees would remove some of the obstacles to their participation.

### **CURRENT LAW**

Under existing Connecticut law, individuals forfeit their electoral rights and privileges upon conviction of a felony and committal to the custody of DOC. The law defines custody as commitment to a Connecticut or out-of-state correctional institution or facility or a community or a federal correctional institution or facility ([CGS § 9-46](#)).

Incarcerated persons convicted of a misdemeanor, not a felony, or those awaiting trial prior to any disposition or finding who are subject to detention are still eligible to vote as long as they are registered. According to Ted Bromley, elections attorney in the Office of the Secretary of the State, such individuals who are already registered to vote can apply for an absentee ballot from the town where they lived prior to confinement. If they were registering for the first time, they would probably also register in the town where they lived; however, depending on the likely length of their confinement, they could register in the town where the correctional facility is located. Bromley mentioned that the State Elections Enforcement Commission resolves questions regarding applicants' residency and would decide such a case on its specific facts. An application for an absentee ballot would be to the town where they are registered.

It is likely that a person confined in Town A who is a resident of Town A could qualify for an absentee ballot, even though that person is technically not out of town during the hours of voting. An applicant must swear that he or she is eligible to vote by absentee because they are absent from the town during all the hours of voting. (Connecticut allows absentee voting only for six statutorily-specified reasons, including such an absence from town.) Bromley indicates that yes, such a person would qualify to vote by absentee ballot because he or she would be

physically unable to appear at the polls. The office of the secretary's advice would be to approve such an application.

## **ISSUES TO CONSIDER**

- Because determining some incarcerated individuals' voter registration eligibility may be unclear (due to, for example, confinement for multiple convictions, technical probation violations, or other circumstances), both DOC and state and local elections officials should clarify voter eligibility requirements under precise circumstances.
- Town clerks receive and process applications for absentee ballots. Any plan to facilitate absentee voting by persons who are incarcerated must address current procedures such as those by which applicants can request and receive an application by facsimile or other electronic means then return the original completed application, the clerks' duty to keep a log of everyone who distributes applications, and the distributors' duty to keep and submit a list of prospective absentee ballot applicants.
- Facilitating voter registration and absentee voting from a DOC facility entails meeting deadlines for voter registration (the seventh day before a regular election and the fifth day before a primary) and the submission of absentee voter applications (which are available on the 21<sup>st</sup> day before a primary and the 31<sup>st</sup> day before an election) and absentee ballots (that must be received by the close of the polls on the day of the election).
- Casting an absentee ballot in any DOC facility and returning it to the town clerk must be done in a way that assures security and secrecy, such as under the supervision of the registrars of voters or their designees as is done in certain institutions like nursing homes.

***An Act Requiring a Study of Voting by Eligible Persons in Department of  
Correction Facilities***

The Secretary of the State and the Commissioner of Correction shall jointly study the feasibility of implementing voter registration and voting in the Department of Correction's facilities by those eligible to register and vote. The study shall be conducted in collaboration with the Registrars of Voters Association of Connecticut, the Connecticut Town Clerks Association, the Connecticut Sentencing Commission, and Connecticut Legal Services.

Such study shall examine processes to facilitate voter registration and absentee voting by those persons confined to a correctional institution who want to vote. Such study shall include, but not be limited to, consideration of and recommendations for (1) a process for informing pretrial detainees and offenders convicted of a misdemeanor that they are eligible to register and vote and (2) procedures to facilitate voter registration and voting in correctional facilities such as the supervised absentee voting sessions conducted by registrars of voters or their designees in currently specified institutions.

Not later than October 1, 2019, the secretary and the commissioner shall report their findings and recommendations to the joint standing committees of the General Assembly having cognizance of matters relating to elections and correctional facilities.

The secretary and the commissioner shall conduct the study within available appropriations.

October 12, 2018