

Improving Access to Voting in Connecticut Jails and Prisons

Overview: The Stakes

In the state of Connecticut, incarcerated people who are held pretrial and have not been convicted or who are serving sentences only for misdemeanor offenses retain the right to vote in local, state, and federal elections, so long as they are otherwise eligible to vote under state law.¹ This means that thousands of incarcerated Connecticut residents are eligible to vote: as a snapshot, on July 1st, 2019, there were 640 misdemeanor inmates and 3,677 unsentenced inmates under the custody of Connecticut’s Department of Correction (DOC). Together, these groups constitute roughly 30% of the state’s incarcerated population. While it is unclear what portion of these two groups also meets the other eligibility criteria established in state law, it is believed that a substantial majority of these individuals were eligible to vote.

No data is currently kept regarding the prevalence of voting from Connecticut’s jails and prisons. It is likely, however, that very few eligible voters actually exercise that right while incarcerated. This report, produced by members of the New Haven Legal Assistance’s Reentry Clinic with Yale Law School in partnership with the Connecticut Sentencing Commission, seeks to bring attention to this important democracy deficit so that it might be addressed by policymakers.

The report proceeds in five parts: 1) an overview of the legal and administrative obstacles to voting while incarcerated in Connecticut, including an account of the efforts that have been taken to understand and remedy the problem to date, 2) an assessment of the current system practices that may expose state entities to litigation, 3) a summary of high-level takeaways from other jurisdictions, and 4) a roadmap for further inquiry, proposals describing different models by which the state could improve access to voting for incarcerated people, and some recommendations for next steps.

Facilitating voting for incarcerated people furthers state interests in democracy, rehabilitation, and repudiating a historically racist practice. If a primary goal of incarceration is rehabilitation, jails and prisons should do what they can to facilitate successful reentry to society.

Report produced by Sam Kuhn, Hannah Gross, Alex Fay, Kate Levien, Giovanna Robledo, Amy Eppler-Epstein.

Yale Law School Reentry Clinic at New Haven Legal Assistance and the Connecticut Sentencing Commission.

¹ CGS §9-46 only requires forfeiture of electoral rights for those who have outstanding fines or are serving incarceration or probation resulting from a felony conviction.

Other criteria individuals must meet in order to be eligible to vote in Connecticut include that a person is 1) a U.S. citizen, 2) 18 years of age or older, 3) a resident of Connecticut, and 4) not “mentally incompetent” (CGS §9-12).

There is ample evidence that the ability to vote reduces rates of recidivism for formerly incarcerated individuals. As one study of reenfranchised voters in Ohio and Virginia found, “Treated subjects report stronger trust in government and the criminal justice system, and an increased willingness to cooperate with law enforcement. The results suggest that reversing disenfranchisement causes newly enfranchised citizens to increase their pro-democratic attitudes and behaviors - all of which are predictors of reduced crime and recidivism.”²

Obstacles to Voting While Incarcerated in Connecticut

While the statutory requirements for registering to vote, applying for an absentee ballot, and casting an absentee ballot are the same regardless of whether someone is incarcerated or not, these processes are inherently more burdensome for individuals in Connecticut’s jails and prisons.

Under Connecticut’s election laws, pretrial detainees and incarcerated misdemeanants are treated as absentee voters in their town or city of residence prior to incarceration.³ To vote in an election, inmates must follow the procedures for registering, applying, and voting as an absentee voter in Connecticut. This means they must 1) complete and submit a paper or digital voter registration form to a registrar of voters in their previous town of residence (if they are not already registered), 2) obtain, complete, and submit an absentee ballot (AB) application to their town clerk, and 3) complete and submit their absentee ballot to their town clerk.

Many incarcerated people are likely unaware of their eligibility. For those who are aware, these requirements make it extremely difficult to actually vote. First, those who are not already registered at the time of their incarceration do not have ready access to physical voter registration cards or the online voter registration site.⁴ They must rely on DOC staff, visiting friends or family, or volunteers to obtain a registration card and register. Furthermore, eligible voters may have misconceptions regarding their eligibility to vote and, without proper information, may refrain from

² Shineman, Victoria, Restoring Rights, Restoring Trust: Evidence that Reversing Felon Disenfranchisement Penalties Increases Both Trust and Cooperation with Government (October 25, 2018). Available at SSRN: <https://ssrn.com/abstract=3272694> or <http://dx.doi.org/10.2139/ssrn.3272694>

³ CGS §§9-14 and 9-14a

⁴ Giving incarcerated people access to the appropriate website would not immediately solve this issue, as the online voter registration form needs a registrant’s signature to be valid. This requires registrants to either transfer their driver’s license signature using their license number (which inmates can obtain from their counselor) or print out, sign, and mail the form (which is not a readily available option for inmates). It is not clear whether license numbers for expired licenses can be used to sign an online registration.

registering or voting out of fear that they might commit perjury or voter fraud. There is currently no system in place to inform eligible voters of their rights or the processes by which they can exercise them while incarcerated.

Incarcerated voters face similar limitations with AB application access. Generally, an absentee voter would obtain a ballot application by printing one out from the Secretary of State's website or by picking one up from a town clerk's office. Neither option is readily available to incarcerated individuals. Instead, as is the case with voter registration cards, eligible voters must rely on DOC staff, visiting friends or family, or volunteers to obtain an application. Further, when filling out the application, voters must include their residential address, correctional facility mailing address, and "inmate number" in order for the AB to be properly processed and delivered. Inmates are liable to lack access to some or all of this information. Because the AB application does not include specific instructions for voting from a correctional facility, incarcerated people seeking to vote absentee might struggle to correctly complete the application without additional guidance. Additionally, AB applications must be addressed to the clerk in the voter's town of previous residence – information they are unlikely to know off-hand, and, without ready access to the internet, that they are unlikely to be able to find. Lastly, AB applications do not contain guidance on what voters must do if they are released or convicted of a felony prior to election day. This could lead to inmates either submitting a ballot after having been convicted or failing to withdraw an AB after their release from prison, both of which could violate election law.

Even if eligible voters succeed in registering to vote and applying for an AB, they face additional challenges when they receive and cast their absentee ballot in the mail. Connecticut law requires absentee ballots to be sealed in a signed inner envelope and then again in a serialized outer envelope pre-addressed to the appropriate town clerk. This enveloping procedure must be followed exactly if ballots are to be counted, and state law prohibits DOC staff or volunteers from directly assisting with this process. Further complicating matters, DOC policies prohibit possession of postage stamps. To mail their ballots, incarcerated voters must instead insert their serialized outer envelope into yet another larger, prepaid envelope provided by DOC, and re-copy the town clerk's mailing address. The instructions that are included with the absentee ballot do not include these additional directions.

Additional procedural and informational obstacles make effective exercise of the franchise vanishingly unlikely for Connecticut's eligible incarcerated voters. People incarcerated pretrial

typically do not know how long they will remain incarcerated, which makes deciding whether to engage in this complicated process even more difficult. The emergency ballot application for ABs that may normally be requested 6 days or less before polls close cannot be done by people who are arrested and detained within a week of an election, and likely longer. Limited access to political news may make it difficult for inmate voters to obtain information about candidates, or to develop strong preferences, particularly in local elections with lesser-known candidates. And beyond these “formal” obstacles, incarcerated people face many other, more immediate challenges and stresses that combine with administrative hurdles to effectively undermine their right to vote.

Recent Efforts to Improve Voting Access in Connecticut Correctional Facilities

In August 2019, the Connecticut Sentencing Commission convened a working group composed of representatives from a variety of state agencies, advocacy groups, and law schools to study challenges and possible solutions for eligible incarcerated people trying to vote from correctional facilities. To better understand the logistical challenges inmates face in their efforts to vote, the group ran voter registration and AB application drives at York Correctional Institute (YCI) in Niantic on October 1 and 9, 2019. The working group selected York because, as the facility that houses all of the state’s female inmates, it exposed the working group to the logistical complexities faced in a facility where the population would register and apply for ballots in many different municipalities, and to the experiences of both pretrial detainees and of those convicted of misdemeanors. It was in the course of these registration and application drives that the challenges discussed above were identified.

While the work group met success with certain elements of the registration and application drives, members concluded that such volunteer-based efforts are not a feasible, long-term, scalable solution. The process of distributing, assisting with, collecting, and mailing out registration cards and AB applications was both time- and labor-intensive, and required tedious and time-consuming movement throughout the correctional facility. For such a system to work consistently, a well-trained and thoroughly motivated volunteer corps would need to access DOC facilities every time a municipal, state, or federal election occurred. Volunteers were not given any information about specific prospective voters’ eligibility. The women incarcerated at YCI were only made aware of the opportunity to participate through a general call over the loudspeaker, which seemed likely to miss some potential voters. Furthermore, while the authorities at York in Niantic accommodated it, the

necessity for so much movement within and between buildings by a large team of volunteers might be out of DOC security protocol, depending on the facility and the current restrictions in place. Lastly, volunteers are barred from providing direct assistance with the actual casting of an absentee ballot due to state laws restricting who may handle absentee ballots and envelopes.

The results of the Niantic experiment were clear. Though some role for volunteer groups, including providing voter education materials or acting as impartial observers, may well be appropriate, depending on a group of unfunded volunteers to consistently facilitate inmates' access to voting is not a viable approach.

There is, however, another process in place in Connecticut to assist groups of voters who by necessity are living away from their home voting districts. The "Supervised Absentee Balloting" (SAB) process is currently statutorily mandated for nursing homes, addiction treatment facilities, and other residential healthcare facilities where twenty or more patients are voters. The working group discussed potentially expanding the mandatory SAB laws to include correctional facilities with twenty or more eligible voters. The consensus was that SAB would help ensure AB applications and appropriate assistance were consistently provided to eligible inmates every election.

SAB would ensure that inmates could receive official assistance when completing and submitting their ballot. The working group recognized, however, that in the absence of any alternative staffing arrangement, merely expanding the current SAB law to cover correctional facilities would disproportionately overburden those clerks and registrars in the towns containing correctional facilities.⁵ While other potential policy alternatives have been discussed by the working group, the group has not formally recommended any changes to either the legislature or the Sentencing Commission as of May 2020.

Connecticut's Current Practices May Give Rise to Litigable Claims

While there are robust public policy and equity rationales for pro-actively facilitating prisoners' voting rights, there are also practical reasons for the Connecticut state government to do

⁵ The state's supervised absentee ballot law requires the collection, distribution, and mailing of applications and absentee ballots be done by the clerk and registrars from the town in which a facility is located, regardless of where its occupants are registered to vote. In the case of prisons, this could mean that registrars and clerks in town such as Somers, Enfield, and Niantic would be responsible not only for registering and supervising voters in their town's correctional facilities, but also for collecting and later returning absentee ballots from the clerks in all of the towns represented in a correctional facility's eligible voting population.

so in order to diminish its exposure to litigation. There are a number of avenues complainants might pursue with a reasonable expectation of getting at least a complete—and for Connecticut, expensive—hearing.

The Supreme Court has long recognized the right to vote as a “fundamental political right, because [it is] preservative of all rights.”⁶ Indeed, “the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections.”⁷ Further, equal protection of the right to vote applies to the way it is exercised in practice – not merely to granting the franchise.⁸ More specifically, precedent with respect to the burdens state governments must assume in providing access to eligible incarcerated voters indicates that the state of Connecticut may well be vulnerable to litigation that would require officials to affirmatively facilitate voting access.

The first modern line of cases concerning the voting rights of incarcerated people is derived from three cases decided by the Supreme Court between 1969 and 1974: *McDonald v. Board of Election Commissioners of Chicago*,⁹ *Goosby v. Osser*,¹⁰ and *O’Brien v. Skinner*.¹¹ Together, they stand for the proposition that eligible voters who are incarcerated have a constitutional right to vote while incarcerated. However, they also set a high bar for establishing that a “severe burden” on the right to vote has been imposed, often requiring in-fact absolute deprivation. Over more than 40 years of this doctrine, it has been difficult to establish which fact patterns other than that specifically alleged in *McDonald* (statutory deprivation of an absentee ballot and refusal by officials to provide alternative access to the ballot) entail a “severe burden.”

However, in the last three decades, the Supreme Court has recognized a more flexible standard for evaluating voting rights claims that allows challenges of election procedures that significantly burden eligible jailed voters’ rights, short of a complete deprivation.¹² The *Anderson-Burdick* standard establishes that:

A court considering a challenge to a state election law must weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth

⁶ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

⁷ *Reynolds v. Sims*, 377 U.S. 533, 554 (1964).

⁸ *Bush v. Gore*, 531 U.S. 98, 104-05 (2000).

⁹ *McDonald v. Bd. of Election Comm’rs of Chi.*, 394 U.S. 802 (1969).

¹⁰ *Goosby v. Osser*, 409 U.S. 512 (1973).

¹¹ *O’Brien v. Skinner*, 414 U.S. 524 (1974).

¹² Dana Paikowsky, *Jails as Polling Places: Living Up to the Obligation to Enfranchise the Voters We Jail*, 54 HARV. C.R.-C.L. L. REV. 829, 856 (2019).

Amendments that the plaintiff seeks to vindicate” against “the precise interests put forward by the State as justifications for the burden imposed by its rule,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiff’s rights.”¹³

The *Anderson-Burdick* standard creates a sliding scale: the heavier the burden placed on the voting rights of eligible incarcerated voters, the stricter the scrutiny applied to the government’s justification for applying that burden. Plaintiffs may argue that their right to vote has been unjustifiably burdened without alleging that the right has been completely foreclosed by the government.

In light of Connecticut’s laws and practices, and precedent that has emerged from other jail and prison voting cases, it seems that the state is vulnerable to litigation on the basis of a number of potential claims.

Equal Protection – voting from jails and other institutions:

Differential treatment of eligible voters institutionalized in nursing homes or other residential health care facilities and eligible voters detained in jails and prisons may well give rise to an Equal Protection Claim. Connecticut law requires Town Registrars to supervise absentee balloting in-person at institutions where 20 or more residents are eligible voters, including any “veterans’ health care facility, residential care home, health care facility for the handicapped, nursing home, rest home, mental health facility, alcohol or drug treatment facility, an infirmary operated by an educational institution for the care of its students, faculty and employees or an assisted living facility.”¹⁴ Though all voters in these covered institutions must still complete the standard absentee ballot request process, they do not need to mail their ballots back. Jails and prisons are not included in the definition of covered institutions.¹⁵ Connecticut courts may find, as other courts have, that there is no permissible reason that incarcerated people and people confined in these nine other types of institutional settings should be subject to such unequal treatment.¹⁶

¹³ *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992).

¹⁴ Conn. Gen Stat. § 9-159q(a)(1)

¹⁵ Conn. Gen Stat. § 9-159r.

¹⁶ See, e.g., *Mays v. LaRose*, Case No. 2:18-cv-1376, (S.D. Ohio, Nov. 6, 2019) (holding that hospitals and jails are similarly situated with respect to absentee ballot request deadlines. The decision was recently reversed by the 6th Circuit.)

Equal Protection & Poll Tax– Low-Income Voters:

In Connecticut, financial sureties (“money bail”) may be imposed pretrial to ensure a defendant’s appearance at trial or to protect the public from safety risks posed by the defendant’s release before trial. Connecticut residents of color are less likely to have access to the funds to post bond. Failing to provide ballot access to eligible voters who are incarcerated thus has a disproportionate impact on voters of color and low-income voters, and may give rise to equal protection violations.

Moreover, when a person is detained because they are unable to make bail and are therefore unable to access a ballot, they may allege violations of both the Equal Protection Clause of the Fourteenth Amendment and of the Twenty-Fourth Amendment’s poll tax prohibition. The Twenty-Fourth Amendment claim rests on well-established precedent that the ability to vote cannot be premised on an eligible voter’s ability to pay a fee.¹⁷ Of course, such claims would require plaintiffs to successfully allege both that they have been effectively barred from voting while incarcerated pretrial, and that they are incarcerated because they could not afford to pay the financial surety assigned by the state. The equal protection claim centers on the idea that requiring jail eligible voters to pay bail in order to be able to vote – or at least to vote freely, without the significant burdens placed on doing so while incarcerated – entails an impermissible burden on indigent, eligible jailed voters as compared to voters who are not incarcerated.

Additionally, novel claims may be available flowing from the line of cases holding that where indigent people are deprived of “fundamental interests” due to their indigency, the equal protection and due process clauses converge to ensure access to those rights.¹⁸ Courts have applied this line of cases to find that “indigent defendants have rights to psychiatric expert witnesses for competency evaluations, waiver of some court fees, appellate counsel, and more.”¹⁹

Equal Protection – Absentee Ballots:

Eligible Connecticut incarcerated voters face a number of significant hurdles to voting, including lack of information and a variety of administrative barriers they must overcome. As a

¹⁷ *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 668 (1966)

¹⁸ *E.g., Bearden v. Georgia*, 461 U.S. 660 (1983) (holding that “Due process and equal protection principles converge in the Court’s analysis in these cases.”).

¹⁹ *See* PAIKOWSKY, *supra* note 7, at 868.

result, very few eligible voters in jail or prison successfully cast ballots while incarcerated.²⁰ Outside of last year’s volunteer-led trial registration and absentee ballot process in the York Correctional Institution at Niantic, we are unaware of any formal efforts undertaken by the state to date to facilitate the vindication of this right. As an initial threshold concern, it appears unlikely that most eligible incarcerated voters are aware that they are in fact eligible to vote. They are not currently informed of their right to vote during their period of incarceration, whether at intake or any other time. Further, incarceration is not listed among the screening questions describing appropriate justifications for absentee voting listed on Connecticut’s official state website.²¹ In those rare situations where eligible voters are aware of their rights and motivated to vote, there have been allegations that DOC staff have failed to provide assistance – a claim that a district court in Connecticut supported on an initial review of a *pro se* complaint to constitute the components of a violation of the Equal Protection Clause and *Skinner*.²²

There is insufficient data establishing the frequency of requests made by eligible incarcerated voters for ballots, and whether they are responded to in a timely manner. Tracking such requests and providing DOC staff with simple processes and resources to accommodate them – and affirmatively providing access to voting for those who are eligible – would significantly reduce the risk of litigation.

Voting Rights Act – Minority Voters:

Denials of access to the ballot to Connecticut’s jailed eligible voters of color (“VOC”) may also give rise to challenges brought under Section 2 of the Voting Rights Act. Section 2 “vote denials” violations may be found where voters of color are disproportionately prohibited from the electoral process by a jurisdiction’s jail voting regime. Courts apply a “totality of the circumstances” test to determine whether the challenged voting practice has a disparate impact on racial minorities and whether “the challenged practice interacts with social and historical conditions to diminish minorities’ opportunities to participate in the political process.”²³ Though no data is currently

²⁰ Though Connecticut does not currently collect data on voting from correctional institutions, many DOC staff and nearly all eligible incarcerated voters with whom we met were unaware that much of the incarcerated population was eligible to vote.

²¹ The Office of Secretary of State, *Absentee Voting*, <https://portal.ct.gov/SOTS/Election-Services/Voter-Information/Absentee-Voting> (last visited June 2, 2020).

²² *Hall v. Stamm, et al.*, 2017 WL 3401253, (D. Conn. 2017).

²³ Daniel P. Tokaji, *Applying Section 2 to the New Vote Denial*, 50 HARV. C.R.-C.L. L. REV. 439, 445 (2015).

publicly available that specifically describes disparities in access to voting created by incarceration in Connecticut, the data that is available describes a grim reality of stark racial discrepancies. As of 2016, Connecticut had the sixth highest black/white disparity in its prisons and jails in the nation, with 9.4 black residents incarcerated per 100,000 for every one white resident incarcerated per 100,000.²⁴ The Hispanic/White disparity ranked seventh worst in the nation.²⁵ As a result, the state may be especially vulnerable to Section 2 claims that the rights of VOCs have been impaired in Connecticut.

Equal Protection – Uniform Administration:

Elections must be administered uniformly across jurisdictions so as to avoid “fundamental unfairness” in ballot access.²⁶ The key line-drawing exercise here is between what has been referred to as constitutionally-permissible “garden-variety election irregularity” between election administration regimes and differences that are so different as to undermine the right to vote in some facilities but not others. When jurisdictions lack uniform policies and procedures such that a voter in one jurisdiction is far more likely to have his ballot thrown out than someone in a neighboring jurisdiction, there may be uniformity problems sufficient to give rise to liability under the Equal Protection Clause. These arguments might be particularly useful in the jail voting context, where bail assignment practices, rates of pretrial incarceration, and jail voting infrastructure can vary greatly from jurisdiction to jurisdiction, and may also vary significantly from the voting infrastructure availability to individuals residing immediately outside of the jail or prison.²⁷

Procedural Due Process – Disenfranchisement:

Erroneous deprivation of the right to vote to eligible incarcerated voters may give rise to procedural due process claims under the Fourteenth Amendment.²⁸ This is a particularly potent claim by which voters can allege that a state’s lack of formal procedures to facilitate the right to vote

²⁴ Sentencing Project, *State-by-State Data*, WWW.SENTENCINGPROJECT.COM, <https://www.sentencingproject.org/the-facts/#rankings?dataset-option=BWR> (last visited May 6, 2020).

²⁵ *Id.*

²⁶ See *Bush v. Gore*, 531 U.S. 98 (2000).

²⁷ For example, though state Judicial Branch staff assign bail amounts by reference to Financial Bond Guidelines based on offense characteristics and client risk derived from a risk assessment point scale, cross-jurisdictional variations in the application of these standards and their impact on voting access may give rise to uniformity challenges.

²⁸ See *Griffin v. Burns*, 570 F.2d 1065, 1076 (1st Cir. 1978) (holding that “Circuit courts have uniformly declined to endorse action under § 1983 with respect to garden variety election irregularities”), applied in the Second Circuit in *Hoblock v. Albany County Bd. Of Elections*, 422 F.3d 77, 97 (2005).

combines with failures occasioned by too much discretion allowed to individual officials to a degree sufficient to substantially deprive incarcerated voters of due process. Eligible incarcerated voters may plausibly claim that Connecticut does not provide sufficient process to ensure that they are not erroneously deprived of their right to vote. Such claims would be subject to review under the *Mathews v. Eldridge* three-pronged due process balancing framework, which weighs the private interest at stake in voting against the likelihood of erroneous deprivation of that right, and the government's interest in failing to provide further safeguards. The risk of erroneous deprivation is likely to be significant where, as in Connecticut, there is no formal jail or prison voting process, infrastructure, or education for state officials regarding incarcerated voting eligibility and their duties thereof. Finally, the government's interest in administrative convenience or keeping costs low is unlikely to outweigh the private interest in voting.²⁹

This foregoing is a non-exhaustive summary of Connecticut's vulnerability to litigation based on claims that its jail and prison voting practices give rise to constitutional violations. Others may well exist.³⁰ We hope to help Connecticut mitigate its liability by expanding access to vote in its correctional institutions.

²⁹ See *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 244 (4th Cir. 2014) (discussing “the problem of sacrificing voter enfranchisement at the altar of bureaucratic (in)efficiency and (under-)resourcing”); see also *Fla. Democratic Party v. Detzner*, No. 4:16CV607-MW/CAS, 2016 WL 6090943, 7 (N.D. Fla. Oct. 16, 2016) (“[E]ven assuming that [additional procedures to verify ballots before invalidating them] would be an administrative inconvenience . . . that interest cannot justify stripping Florida voters of their fundamental right to vote and to have their votes counted.”)

³⁰ For example, Connecticut's emergency absentee balloting regime may violate the Constitution: it is unclear whether eligible incarcerated voters may apply for emergency absentee ballots, as Connecticut residents may only seek an emergency application for absentee ballot less than six days before an election when they are unable to vote in person “because of an unforeseen illness or physical disability.” Further, an equal protection claim may arise where eligible voters are considered “similarly situated” to other populations eligible for emergency absentee ballots. Third, the six-day window for requesting such ballots is likely to preclude nearly all eligible voters who are incarcerated in the week before an election. Finally, people incarcerated during election weeks may not expect to remain incarcerated through election day and may therefore decide against submitting emergency ballot requests. Expanding emergency balloting eligibility to include incarceration, lengthening the application window, proactively informing arrestees of their voting rights, and/or providing polling locations inside carceral institutions would help mitigate the risk of vulnerability to litigation on this front.

Learning from Other Jurisdictions' Approaches to Voting in Carceral Settings

This section describes voting processes in other jurisdictions that have actively facilitated voting for eligible incarcerated people. It also highlights experimental programs that cities, counties, and individual jails have developed to improve voting access for incarcerated citizens. It is a non-exhaustive list; other jail and prison access voting initiatives are underway in Cleveland, OH, Harris County, TX, Pike County, MS, New Orleans, LA, Philadelphia, PA, Puerto Rico, and elsewhere. Recently, Arizona and Colorado's Secretaries of State have adopted rules requiring local election officials to design and implement plans to provide ballots to eligible voters in jails. We hope that Connecticut can learn from these other jurisdictions to create an effective and efficient voting system in our prisons and jails.

Cook County, Illinois

In 2020, Illinois passed a law requiring Cook County Jail, the third largest jail in the country, to become a polling place. Voters can complete same day registration and access polling machines directly in the facility. Local professors and non-profits, including Chicago Votes and the ACLU of Illinois, have volunteered to provide information on candidates for people who are incarcerated. Other incarcerated people in the state vote by mail and are provided with registration and mail-in ballots. Additionally, the Illinois Department of Corrections and each county jail are required to provide eligible citizens released from their custody with a voter registration application and detailed information about their voting rights.

During the 2020 primary, the first election after the jail voting infrastructure was implemented, 1,200 votes were cast from the Cook County Jail.³¹

Los Angeles, California

In Los Angeles, Custody Support Services personnel coordinate voting for people who are incarcerated. Individual inmates can complete a request for voting materials and are then contacted by the voting coordinator and provided a voter registration card and a vote by mail application. The

³¹ Don Babwin, "Detainees Walk Out of Cells, Into Voting Booths in Chicago." (March 16, 2020), USA Today, <https://www.usnews.com/news/politics/articles/2020-03-16/detainees-walk-out-of-cells-into-voting-booths-in-chicago>.

voting coordinator sends in the applications, provides the ballots, and sends them back through the US Postal Service. In addition, in 2018, Los Angeles undertook a “Free the Vote Campaign” which attempted to improve voter registration in jails and to provide more opportunities for civic engagement. Additionally, the Registrar and Sheriff’s office announced a new “We All Count” campaign in February 2020 at the Century Regional Detention Facility for women. The program includes registering eligible voters in the facility, providing civic education classes and providing ballot marking devices that allow women to vote inside of the jail.

New York City, New York

In August 2018, Mayor DeBlasio directed the City’s DemocracyNYC office to launch a voter registration drive in New York City’s correctional facilities. The initiative allows incarcerated people to register to vote and pick up absentee ballots directly from jail, rather than through the mail. Under the initiative, people who are incarcerated list their home address or previous residence in their absentee ballots, and ballots are mailed through a separate, expedited mailing system reserved specifically for voting mail. In addition, volunteer groups such as the Legal Aid Society are permitted to conduct voter education campaigns in jail, which include hanging posters and handing out flyers with information about registering to vote, as well as providing information about candidates in jail libraries.

Washington D.C.

In Washington, D.C. the Board of Elections is heavily involved with the jail voting process. First, every person is given a voter registration card when they are admitted to jail. Then, the DC Board of Elections, along with volunteers, goes into jails and helps inmates fill out absentee ballots. Incarcerated people use their home address or the address at which they currently reside (including the address of the jail – particularly important for those with transient or unstable housing) as their address on absentee ballots.

Colorado

As of 2019, Colorado’s Election Rules were amended such that the Secretary of State now requires county clerks to submit a plan developed with county sheriffs describing the process by

which eligible incarcerated voters may register and vote from jail.³² A non-profit, the Colorado Criminal Justice Reform Coalition (CCJRC), works with the Denver Elections Division and the Sheriff's Department to register eligible jailed voters.³³

The Secretary of State also posts a "Voters with Convictions FAQ" document on its website, describing voter eligibility, state obligations for making formerly incarcerated people aware of their voting rights ("at your initial meeting with the division of adult parole, the division must provide certain voter information to you"), and other pertinent information.³⁴

Massachusetts

Massachusetts jails do not require detainees to register before completing an absentee ballot. Incarcerated Massachusetts voters are considered "specially qualified" for this purpose.³⁵

Maine

Maine is one of only two states in which all incarcerated people are eligible to vote. In jails and prisons, people vote via absentee ballot and list their address prior to incarceration on their ballots. According to Maine's Secretary of State, Matthew Dunlap, he and his deputy visit Maine State Prison annually and update voter registrations to account for the shifting population and transfers inside the prison. Dunlap also reports that he gives those who are incarcerated absentee ballot request forms, assists in their preparation, and sends them back to the town clerks where each citizen had previously lived. In addition, organizations such as the NAACP and the League of Women Voters engage in voter registration and education campaigns in both jails and prisons.

Vermont

In Vermont, as in Maine, all people who are incarcerated are eligible to vote. Registration is primarily conducted by volunteers and inmates vote via absentee ballot, listing their most recent residence as their home address.

³² 8 Colo. Code Regs. § 1505-1-7.4.1

³³ Nicole D. Porter, *Voting in Jails*, The Sentencing Project, 8 (May 2020)
C:/Users/Sam%20Kuhn's%20PC/Downloads/Voting-in-Jails.pdf.

³⁴ Colorado Secretary of State Jena Griswold, *Voters with Convictions FAQs*, (last accessed June 22, 2020),
<https://www.sos.state.co.us/pubs/elections/FAQs/VotingAndConviction.html>.

³⁵ *Supra* note 33, at 6.

Takeaways from Other Jurisdictions

Voting by Absentee Ballot

Absentee ballot systems coordinated by the Department of Corrections and Board of Elections can be successful. Most incarcerated voters who vote do so by mail. In a strong absentee voting plan, registration must be systematic. Such a plan could learn from the Washington, D.C. model, which distributes voter registration cards upon arrival to the jail or prison. If registration upon arrival is not feasible, an absentee voting plan could use volunteer labor for regularly scheduled registration drives. For the distribution and submission of ballots, the plan should consider New York City's expedited election mail. A separate, expedited mail system for election materials to and from detention and correctional facilities could help streamline the voting process. Voting while incarcerated should be free – postage should not be required. In most jurisdictions, incarcerated voters are required to register using their last place of residence, rather than their carceral address. Thus, jail voting does not electorally affect the district that houses the detention facility. Despite adopting this rule, Los Angeles does allow homeless people to vote without providing an address. A good absentee voting plan would similarly accommodate people with unstable housing. Finally, Departments of Corrections should follow the State of Illinois in providing voters with information about their eligibility and registration forms upon release.

Voting at a Polling Place

Although most jurisdictions follow the absentee voting model, Cook County has demonstrated that providing temporary polling places for election-day voting is not only feasible, but advantageous.. Voting is simple and effective in the Cook County Jail. Since Illinois offers same-day registration, people detained at the Cook County Jail can register and vote in person at the jail polling places. Poll officers manage both registration and voting, and volunteer labor is only needed for voter education. Since Connecticut also offers election-day registration, the state's incarcerated population could similarly benefit from the combined process. This may be particularly useful in jail settings, where people are incarcerated in their home districts.

A Note on Volunteer Labor

Most of these jurisdictions rely on volunteer labor to assure access to voting in their jails and prisons. This prevalence of volunteer participation suggests that a voting plan for Connecticut could also rely on volunteer labor. However, volunteers should be working within an institutionalized voting system, and should not be responsible for creating new plans for registration and voting. Access to voting at any particular facility should not depend on the relative zeal or resources of local volunteers, or the openness of specific jail or prison administrations.

Conclusion: Challenges, Proposals, and Next Steps

Providing Detainees with Information on Candidates and Policies

One reoccurring issue that some jurisdictions have addressed with varying degrees of success is how to ensure that detainees have the knowledge and resources to make informed decisions about who and what they're voting for. Engaging with the policy issues relevant to one's community is as central to the voting process as sending in a ballot, and forges a new connection between incarcerated voters and their communities. As one woman who the working group helped to apply for an absentee ballot at YCI-Niantic said, "This will give me something new to talk about with my dad. I want to know what he thinks about who's running for town council." Restrictions on access to outside information and the internet in carceral settings, and the relatively high rates of illiteracy among prison populations, make this difficult. Connecticut officials should consider which organizations and institutions are best-suited to help provide this important information in ways that are both impartial and will galvanize interest and investment in elections of all kinds.

Overreliance on Volunteer Labor

Most of the "voting while detained" initiatives described above have been spearheaded by and continue to rely heavily on volunteer labor, which would most likely be available to at least some extent in Connecticut as well. However, volunteers should be working within an institutionalized voting system, and should not be made responsible for creating new plans for registration and voting. Though volunteers can play important roles – as election monitors, poll workers, or

providers of information – access to voting at any particular facility should not depend on the relative zeal or resources of local volunteers.

As the ACLU has argued, jurisdictions should consider pushing for voting initiatives in jails and prisons to be spearheaded by the jurisdiction’s local election agency instead of volunteers as this not only lends credibility to the initiative but also ensures that the election agency itself complies with their legal responsibility to ensure that those who have a right to vote are able to do so.³⁶

Institutionalizing Voting in Jails and Prisons

Connecticut’s voting and corrections officials should recognize facilitating voting for incarcerated people as central to their mandates. Making targeted investments in capacity-building and education will allow corrections officials, registrars, and others to actively encourage legal voting, thereby vindicating a right recognized in the American Constitution and Connecticut statute and forging a new connection between incarcerated people and the communities to which they will inevitably return.

These officials have a key role to play, from facilitating voter education to identifying eligible voters to supervising ballot submission and administering the new logistical regimes that will be required by expanded voter access. The working group recognizes that any incarceration-based voter initiative will require officials to contribute their deep reserves of experience and knowledge of these systems to a creative process of developing new voting access infrastructure. Registrars, corrections staff, the Secretary of State, and others should be consulted throughout this process to ensure that voting access is expanded safely, responsibly, and pragmatically to all eligible incarcerated voters.

Previous efforts have found that certain administrative issues make voting from jails or prisons particularly challenging. One example is the security issue that arises with materials needed to fill out

³⁶ See ACLU, *Voting While Incarcerated: A Tool Kit for Advocates Seeking to Register, and Facilitate Voting By, Eligible People in Jail* (2005) at 11 <https://www.aclu.org/other/voting-while-incarcerated-tool-kit-advocates-seeking-register-and-facilitate-voting-eligible>, arguing that it is better for volunteers to monitor jail and prison voting processes rather than carry them out themselves because then volunteers are better suited “to help institutionalize programs that will not be contingent on your volunteer resources or the goodwill of a single jail official.”

an application or ballot. Some wardens consider a pen a dangerous weapon and have objected to the distribution of a stylus (for jurisdictions that have a punch card ballot). Moreover, filling out voter registration and AB applications often requires detainees to provide a lot of personal information that they may not have access to, including official forms of identification and their driver's license number. Thus, working with wardens of the facilities beforehand to go over these logistical challenges is of paramount importance.

Protecting Against the Violation of Election Law

Connecticut election law states that “[a]ny elector who has returned an absentee ballot to the municipal clerk and who finds he is able to vote in person shall proceed before ten o’clock a.m. on election, primary or referendum day to the municipal clerk's office and request that his ballot be withdrawn.”³⁷ Future efforts should seek to mitigate against the possibility that incarcerated people inadvertently violate state election law, either by 1) voting in person after they submit an absentee ballot from prison and are released, or 2) failing, upon release after voting by absentee ballot but before election day, to request that their ballot be withdrawn by election day. At the very least, this should entail targeted education for individuals who have filled out absentee ballots and are to be released. A more failsafe approach would involve ensuring that no person who voted while incarcerated may be held liable for failing to withdraw their ballot and/or for voting in person after submitting an absentee ballot.

Further, it should be clarified that no incarcerated person who is ineligible to vote – particularly, those serving sentences for a felony conviction – may be held liable for inadvertently misrepresenting their eligibility and seeking to apply for an absentee ballot. State officials should maintain lists of voting-eligible incarcerated people. People who apply for an absentee ballot at a time when they are eligible to vote (i.e. pre-trial), may subsequently become ineligible if they are convicted of a felony. This particular problem can be addressed by updated voting eligibility lists combined with on site voting within jails and prisons.

³⁷ Conn. Sec. 9-159o.

Data Collection

A variety of data should either be made available or collected for the first time in order to help officials effectively track how resources are spent, track progress, and help other jurisdictions:

- Track the voting-eligible population in all facilities, and cross-reference by race and income level.
- Track the proportion of incarcerated population that is registered and whether they have voted in the past.
- Track the numbers of incarcerated people who register and submit ballots at each facility\after each cycle's voting initiative.
- Share any information regarding existing voter education or facilitation processes or programs in CDOC facilities, including one-off events and inquiries made by incarcerated people.
- Track the number of people incarcerated after the AB request deadline and before election day (the six days before election day).
- Track how long the ballot request process takes, from submission to completion, in DOC settings.

Recommendations for Further Inquiry

Though this report is far from conclusive, its authors are convinced that Connecticut must act to improve voting access for its eligible incarcerated populations. Other jurisdictions have approached this goal with a variety of legal regimes tailored to their particular administrative, legal, and political contexts. Connecticut should be no different. Below are some promising options that seem worthy of further consideration as stakeholders develop an approach that is responsive to Connecticut's specific landscape.

DOC Registrar

Recognizing the importance of institutionalizing these efforts and the centrality of Connecticut's Registrars of Voters to statewide election processes, stakeholders should consider implementing a Department of Corrections Registrar of Voters. The Registrars' deep knowledge of election processes, voter education, maintaining the accuracy of the voter registry lists, maintaining election and polling place equipment, supervising balloting, and every other process attendant to voting in Connecticut would be crucial to expanding voter access in jails and prisons. Jails and prisons clearly face challenges that are specific to the carceral setting and to each individual facility; investing in a statewide position to facilitate the Registrar's goals in the DOC setting seems like an effective approach to developing the institutional knowledge, infrastructure, and accountability necessary to ensure that this vulnerable population can vote. Each municipality has a local voter registrar that is legally required to strive to increase voter enrollment and participation, maintain voter files and conduct elections. By establishing a DOC Voter Registrar specifically tasked with increasing the enrollment and participation of eligible persons in prisons and jails, we can better ensure that the specific and unique challenges of voting from prison/jail are institutionally addressed by the relevant stakeholders.

Another approach – one that could either work in support or in lieu of a DOC Registrar position – could involve allocating registrars from towns without correctional institutions to support registrars from towns with correctional institutions. Registrars who the working group consulted in writing this report underscored that simply requiring the registrars with jails and prisons in their jurisdictions to expand their work to those facilities is untenable without additional staffing and funding support. One way to address this staffing gap would be to develop teams of registrars – perhaps selected by region, or from towns whose residents make up a larger proportion of the jailed population – who support the registration and absentee balloting efforts. Another way might be to provide additional state funding to each municipality that houses a jail or prison over a certain size, to provide the funding that would enable that municipality to operate on site voting as in other “institutions” within their jurisdictions, without unduly and unfairly burdening such municipalities.

A 2-Track System: Jails as Polling Places, Strengthened Absentee Balloting in Prisons

One productive approach could involve implementing a two-track system, with different processes for large jails and prisons. Prisons are more likely to house misdemeanants who are incarcerated for longer periods, and from jurisdictions throughout the state, and can therefore reasonably complete the absentee ballot process. In jails, where periods of incarceration are shorter and release dates are less certain, and where most people are likely to reside in and thus should be registered to vote in the same community in which they are incarcerated, it is important to allow incarcerated people access to voting from the facility (as has been allowed at Cook County Jail in Illinois).

Incorporate Detained People in Efforts

The ACLU has emphasized the importance of incorporating detained and formerly incarcerated people in voter initiatives.³⁸ They argue that interested people in the facilities should sign up to attain trainings on how to assist others in the registration and voting process, thus simultaneously passing on necessary information and increasing their investment in the electoral process while also training new leaders. Moreover, they will presumably be able to connect with and understand their fellow detainees, the questions they are likely to have, and the challenges they face in ways that others cannot, thus increasing the efficacy of the initiative as a whole.

Conclusion

At every election, thousands of eligible Connecticut voters are effectively precluded from exercising the right to vote that the state legislature has conferred on them, even as they live in state custody. The state should have a special interest in facilitating voting by this particularly vulnerable population, especially in light of the good evidence that doing so is likely to strengthen their connections to their communities and improve prospects for successful reentry. The New Haven Legal Assistance's Reentry Clinic is enthusiastic about the prospect of continuing to work with the Sentencing Commission, the Registrars of Voters, the Department of Corrections, and any other state officials and advocacy groups to develop a more specific proposal and ultimately expand access to voting in Connecticut prisons and jails.

³⁸ See ACLU, *Voting While Incarcerated* at 7, 10.