

# VOTING IN JAILS



**THE  
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RESEARCH AND ADVOCACY FOR REFORM



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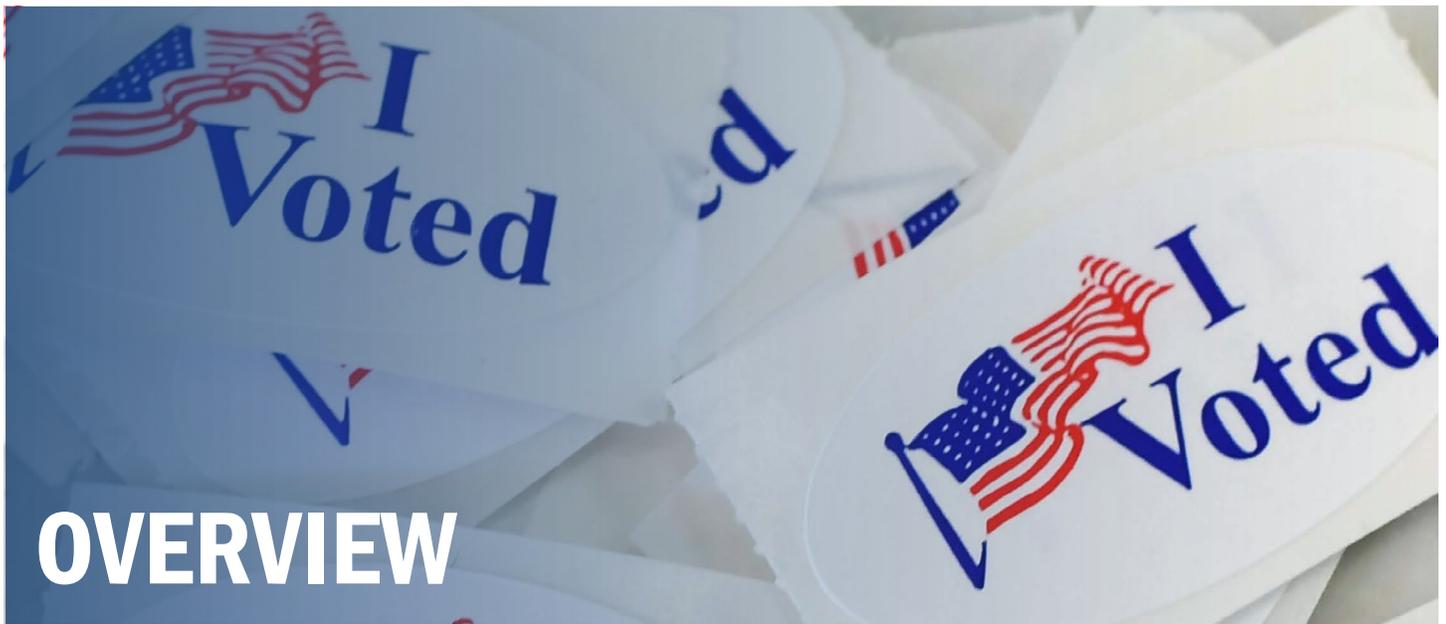
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## OVERVIEW

Felony disenfranchisement laws bar millions of Americans from voting due to their felony conviction. Among those excluded are persons in prison, those serving felony probation or parole, and, in 11 states, some or all persons who have completed their sentence. While these disenfranchisement laws have been closely documented for years by advocacy organizations, academics, and lawmakers, the de facto disenfranchisement of people legally eligible to vote in jails has received less attention.

In local jails the vast majority of persons are eligible to vote because they are not currently serving a sentence for a felony conviction. Generally, persons are incarcerated in jail pretrial, sentenced to misdemeanor offenses, or are sentenced and awaiting transfer to state prison. Of the 745,000<sup>1</sup> individuals incarcerated in jail as of 2017 nearly two-thirds (64.7%), or 482,000, were being held pretrial because they had not been able to post bail. Of the 263,000 who were serving a sentence, the vast majority had been convicted of a misdemeanor offense that does not result in disenfranchisement.

Despite the fact that most persons detained in jail are eligible to vote, very few actually do. Jail administrators often lack knowledge about voting

laws, and bureaucratic obstacles to establishing a voting process within institutions contribute significantly to limited voter participation. Indeed, acquiring voter registration forms or an absentee ballot while incarcerated is challenging when someone cannot use the internet or easily contact the Board of Elections in their community. In addition, many persons in jail do not know they maintain the right to vote while incarcerated, and there are few programs to guarantee voting access.

Problems with voting in jail disproportionately impact communities of color since almost half (48%) of persons in jail nationally are African American or Latino. Other racial groups, including Native Americans and Asians, comprise about 2% of the jail population, or 13,000 persons as of 2017.

In recent years, some jurisdictions have adopted policies and practices to ensure voting access for persons incarcerated in local jails because of initiatives developed by jail leadership and advocacy organizations. This report examines six programs designed to expand voting access for eligible incarcerated citizens. The success and expansion of these efforts will improve democracy.



# JAIL VOTING POLICY & PRACTICE

A 1974 Supreme Court decision in *O'Brien v. Skinner*<sup>2</sup> affirmed the voting rights of certain incarcerated persons without government interference, though a federal appeals court recently upheld an Ohio law that established a more restrictive timeframe for persons confined in jail to request an absentee ballot than for individuals confined in a hospital.<sup>3</sup> In practice, the limited efforts to reach voters in jail have encountered logistical complications. Consequently, implementing a voter registration and absentee ballot collection system is a challenge in spaces where many residents are detained for relatively short periods of time. For example, most individuals incarcerated in a jail in the early months of a calendar year will not still be there by the time of a fall election, as they will have either posted bail, been acquitted of their charges, served their jail term, or been transferred to prison following a felony conviction.

Nevertheless, jurisdictions have flexibility and ways to address these challenges when implementing a voting program. Practices vary by jurisdiction:

- California and Texas jails enable individuals to submit a voter-registration form and absentee or vote-by-mail request in the jail through coordinated voter registration initiatives.
- Massachusetts jails consider detainees to be “specially qualified” and they do not have to register before completing an absentee ballot.
- Residents in Chicago jails benefit from a policy that supports voter participation among homeless residents, who can vote if they include the address of a recognized shelter.<sup>4</sup>
- Cook County (Chicago), Los Angeles County, and the District of Columbia facilitate in-person voting in their jails.

To improve access to voting, some states require county election officials to develop procedures and plans to deliver ballots to voters in jails. For example, in 2019 the Colorado Secretary of State implemented a rule mandating the state’s 64 sheriffs to coordinate with county clerks to facilitate voting in jails.<sup>5</sup> Arizona officials enacted a similar rule in 2019.<sup>6</sup>



# JAIL VOTING MODELS

## COOK COUNTY (ILLINOIS) JAIL

The Cook County (Chicago and environs) Department of Corrections operates one of the largest jails in the country. Approximately 100,000 individuals are booked into the jail each year; the daily jail population averages 6,100.<sup>7</sup> Groups like the Chicago Lawyers' Committee for Civil Rights, Chicago Votes, League of Women Voters, and Rainbow PUSH Coalition have anchored efforts at the jail in support of voter registration and participation.

Jail administrators submit a list of eligible voters to the Chicago Board of Elections which prepares ballot applications to be distributed to those in jail. Persons released before they receive their ballot are able to sign an affidavit and vote at their home polling location.<sup>8</sup>

In recent years Illinois has taken steps to improve voter access for incarcerated residents. Legislation enacted in 2019 authorized the Cook County jail as an official early polling location. Lawmakers authorized Senate Bill 2090 to require election authorities in a county with a population over three million to collaborate with the primary county jail where eligible voters are confined to enable in-per-

son voting. This process allows for same day voter registration. As written, the law applies to only Chicago. For persons in a jail in a county with under three million people, jail officials are required to coordinate with the local election authority to support absentee voting. Drafted in collaboration with Chicago Votes, Illinois Justice Project, ACLU Illinois, the Sargent Shriver National Center on Poverty Law, and other advocacy groups, the measure may help up to 20,000 people per election vote from Illinois jails. The bill also requires a voter registration form upon release and a "know your voting rights" guide.

The legislation went into effect in 2020 with a goal of having the necessary infrastructure in place by the primary and general elections. During the 2020 primary, about 1,200 residents participated in early voting from the Cook County Jail.<sup>9</sup> Lawmakers also enacted House Bill 2541, the Re-entry Civic Education Act, which requires persons released from state prisons or juvenile facilities to participate in civics workshops led by peer educators. The curriculum was developed in conjunction with incarcerated people and partner organizations, including Chicago Votes and the Chicago Lawyers' Committee for Civil Rights.

## **DENVER (COLORADO) COUNTY JAIL AND DOWNTOWN DETENTION CENTER**

Colorado law authorizes voting for persons held pretrial or sentenced to a misdemeanor. Denver's jail system consists of two facilities. The Downtown Detention Center has a capacity of 1,500 beds and detains residents who are unable to post bail. The Denver County Jail has a capacity of 850 beds and detains sentenced residents and persons awaiting transfer to state prison.<sup>10</sup>

The Colorado Criminal Justice Reform Coalition (CCJRC), started partnering in 2016 with the Denver Elections Division and the Sheriff's Department to register eligible voters detained in the jails. The group's jail-registration initiative is part of their broader voter education effort for persons with criminal convictions, Voting with Conviction. Since 2016, CCJRC has registered more than 1,000 eligible voters in the city jail system.<sup>11</sup>

Colorado's Secretary of State requires county clerks to submit a plan developed with county sheriffs on how eligible incarcerated persons will be able to register and vote from jail. CCJRC along with other coalition partners leveraged the state rulemaking process and approached the Colorado Secretary of State's Office to mandate that county clerks and jails across the state work together on getting voter registration and ballots to and from incarcerated residents. The effort led to 2019 amendments to the Colorado Election Rules so that county clerks are mandated to include coordination plans for mail ballots and ballot drop boxes in local plans.<sup>12</sup>

## **HARRIS COUNTY (TEXAS) JAIL**

The Harris County Jail has a capacity of more than 10,500 persons and is one of the largest jails in the country.<sup>13</sup> Harris County includes Houston, the fourth largest city in the country.

Harris County relies on the efforts of community groups to register incarcerated voters and facili-

tate voting by mail. Groups like Houston Justice and the Texas Organizing Project have worked for several years to register and support voting for incarcerated residents. The Houston Justice group launched Project Orange in 2018 and reported registering more than 870 persons in 2019<sup>14</sup> and more than 1,300 persons in 2018. In 2018, more than 300 persons voted by mail from the Harris County Jail.<sup>15</sup>

Inspired by efforts in Illinois, local officials and advocacy groups are working to expand voter access to incarcerated residents. The Harris County Commissioners Court authorized a proposal to place a polling location in the county's jail in 2019.<sup>16</sup> The County, however, has not implemented this measure yet due to objections made by the County Clerk, Diane Trautman.

Trautman raised several obstacles that she claimed barred her from establishing a polling location at the jail, including incarcerated residents' lack of identification necessary to cast ballots and the county jail's lack of internet access which would complicate the duties of election workers. She also insists that any polling place—including one at a jail—would be required to be open to the public at large, meaning the general public must be able to enter the jail and have access to the proposed polling location for voting purposes. Trautman also suggested that creating a polling place in the jail would risk violating the rights of the public, because jail security would bar them from a polling place they should be entitled to enter.<sup>17</sup>

The Campaign Legal Center and Demos countered Trautman's objections by asserting that the state and county have an obligation to accommodate the voting rights of incarcerated residents and suggested accommodations. For example, to overcome the lack of identification among jailed voters, the Clerk's office could accept inmate identification.<sup>18</sup>

## **LOS ANGELES COUNTY (CALIFORNIA) JAIL**

The Los Angeles County Jail had an average daily population of 16,335 in December 2018.<sup>19</sup> California law authorizes voting rights for persons not currently in state or federal prison or on parole.<sup>20</sup>

Community organizations like A New Way of Life Reentry established civic education efforts for formerly incarcerated residents with partners including the ACLU of Southern California and the Anti-Recidivism Coalition. This advocacy led to county-run initiatives that facilitated voting in L.A. jails including the “L.A. Free the Vote” campaign managed by the County Board of Supervisors and the Sheriff’s Department. During 2020, county officials launched the “We All Count” initiative that allows persons at the Century Regional Detention Facility (CRDF) to cast ballots inside the local jail. Sheriff Alex Villanueva reported that 2,200 persons detained at CRDF registered and cast ballots as part of the initiative.<sup>21</sup> These county efforts, which included a partnership with the ACLU of Southern California’s Jail Project, worked to raise awareness about the right to vote among incarcerated jail residents.<sup>22</sup>

The ACLU of Southern California is authorized to monitor conditions at the jail through a court order and includes monitoring adherence to voter access as part of its responsibilities. Residents can designate the jail as their mailing address or their home prior to incarceration. Jail residents who were homeless prior to incarceration are able to use cross streets of locations where they lived. To facilitate voting in jail, persons are provided a request form by the jail voting coordinator. Completed forms must be submitted 15 days before election day and result in a voter registration card and absentee ballot to vote by mail. If residents are not provided with the necessary request forms, they can file a grievance for an expedited review. Officials use a resident’s booking number to distribute absentee ballots if voters are transferred to another jail facility.<sup>23</sup>

Building on voter participation efforts in L.A. County, the Board of Supervisors directed officials to develop a task force and countywide plan for voter education and registration among justice-involved residents.<sup>24</sup> The Taskforce supported efforts to distribute information on voting eligibility for justice-involved residents and helped coordination among county and community-based voter registration initiatives.

## **PHILADELPHIA (PENNSYLVANIA) JAILS**

Four jail facilities comprise the Philadelphia Department of Prisons, holding approximately 4,000 individuals. The current voter registration process is managed through the jail’s Community Justice and Outreach Department. Agency officials work with the City Commissioner’s Office to provide access to absentee ballots for eligible voters.<sup>25</sup>

The history of voting inside Philadelphia’s jails dates back to at least 2002, when the warden established a voter registration initiative in one of the jail facilities.<sup>26</sup> The Jewish Employment and Vocational Services (JEVS) worked with the warden to establish the voter registration effort. JEVS was a community partner that administered other programs at the jails including computer training, welding, and horticulture.

Under the direction of John Lieb, the JEVS initiative was established following a meeting with the jail’s Block Representatives – persons who serve as liaisons to jail administrators. JEVS obtains voter registration forms from the local election commission, delivers them to the jail, and returns completed registration forms to the Elections Commission. The Block Representatives work to register persons in jail. John Lieb expanded the programming offered at the jail to include voter registration training for Block Representatives as part of his vocational training programs.<sup>27</sup>

Key practices that standardized jail voting efforts included designating correctional staff responsible for jail voting education and registra-

tion. Current practices in the jail system include voter education for detained persons through public service announcements shown on closed circuit television. Social workers also visit cell-blocks to distribute voter registration and absentee ballot information.<sup>28</sup>

## **WASHINGTON D.C. DEPARTMENT OF CORRECTIONS**

An average of 2,059 individuals were incarcerated at the District's Department of Corrections (DOC) in 2018.<sup>29</sup> In Washington, DC, residents with a felony conviction who are not in custody can vote.

Currently, the DC jail serves as a polling location for incarcerated voters.<sup>30</sup> Several local groups work to ensure voter participation among the District's incarcerated voters. Citizens United for the Rehabilitation of Errants (CURE), a national prison reform organization, has worked for nearly 20 years to register persons to vote. CURE initially established a registration program following talks with the local election agency and corrections officials. Other organizational partners include the League of Women Voters DC and Women Involved in Reentry Efforts.

These efforts helped establish an ongoing relationship between local election officials and jail staff. The DC Board of Elections (BOE) distributes voter registration applications and voter information pamphlets to jail staff for dissemination. The targeted brochures explain voting rights for incarcerated residents and emphasize the importance of voting. In 2018 the BOE also hired a Public Affairs Outreach Coordinator to specifically develop and facilitate a public outreach and awareness campaign to ensure that returning citizens and DOC staff know BOE is available to assist them.<sup>31</sup> The process has been institutionalized with a staff person responsible for managing voter registration, absentee voting

efforts, and voter education. The BOE also provides absentee ballot request forms to persons at the DC jail.<sup>32</sup>

Advocacy from CURE and other civic groups has led to regular collaboration between the BOE and jail administrators to train volunteers, register eligible voters at the jail, and help registered persons in jail complete absentee ballots.



# ADVOCACY

## **EFFORTS TO PROTECT VOTING RIGHTS IN JAILS**

Residents detained in jail may legally vote in every state, and a number of advocacy organizations have been engaged in efforts to enact processes to make this possible. Frequently, they partner with local jail and election officials to facilitate voter registration and absentee voting. In Massachusetts, the group Ballots Over Bars (BOB) coordinated over 30 volunteers to facilitate jail voting in five counties in 2018. BOB volunteers assisted voters in submitting absentee ballot applications for the primary and general election.<sup>33</sup> In Ohio, an advocacy coalition that includes All Voting is Local and Northeast Ohio Voter Advocates registered jailed voters in three counties and assisted them in completing absentee ballots.<sup>34</sup>

Returning residents are leading jail voting efforts throughout the country. The Ordinary People Society (TOPS) has led the “Let My People Vote” campaign since 2003 and worked to facilitate voting among incarcerated residents in Alabama, Georgia, Florida, Mississippi, and Tennessee. TOPS organizers train volunteers to register eligible incarcerated voters, helps them complete absentee ballots, and aids in submitting ballots to local election officials.<sup>35</sup> In Maryland, Out for Justice and Life after Release have supported ballot access for jailed voters while Voices of the Experienced in Louisiana has long championed similar initiatives.

## **MOVEMENT TO REFORM FELONY DISENFRANCHISEMENT LAWS**

People in prison are banned from voting in all but two states – Maine and Vermont. Alabama and Mississippi allow imprisoned persons with certain felonies to vote. During 2019, lawmakers in at least eight states<sup>36</sup> and Washington DC introduced legislation to expand voting rights to persons in prison. These proposals build on efforts to expand voting rights to residents with criminal convictions. Since 1997, 25 states have modified felony disenfranchisement provisions to expand voter eligibility and/or inform persons with felony convictions of their voting rights either through legislative or executive action. Millions of justice-involved residents have regained the right to vote because of these reforms.<sup>37</sup>

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Since 1997, 25 states have reformed  
felony disenfranchisement laws to  
expand voter eligibility

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Civic participation has been linked to reduced recidivism and supports public safety goals. This is particularly important because most incarcerated persons return home. Ensuring voting while incarcerated maintains continuity for electoral participation and supports lifelong voter participation. Persons with strong connections to the community are more likely to have successful reentry following incarceration.



# RECOMMENDATIONS FOR VOTING IN JAIL

The prevalence of criminal justice involvement in the United States has led to record levels of disenfranchisement. Most residents incarcerated pretrial or sentenced to a misdemeanor are eligible to vote while in jail.

In recent years, there has been significant momentum for expanding voting rights to citizens with prior justice involvement. Supporting an expansion of voting while in local jails builds on those efforts.

## **ESTABLISH JAIL POLLING LOCATIONS**

One means of improving voter access is establishing a polling location at the jail. During 2019, Illinois lawmakers enacted legislation for this to

take place in Cook County (Chicago), the state's largest county. Los Angeles County and Washington DC allow certain persons to cast ballots while detained in jail. Stakeholders in other jurisdictions, such as Harris County, Texas, are exploring a similar policy.

## **REQUIRE COUNTY JAIL VOTER REGISTRATION PLANS**

Some states require county officials to submit plans ensuring voter registration efforts and ballot access for incarcerated residents. The Colorado Secretary of State adopted a rule covering this practice for the state's 64 counties, and a similar rule was adopted in Arizona.<sup>38</sup>

## **AUTHORIZE SPECIAL STATUS FOR INCARCERATED VOTERS**

Massachusetts grants special voter protection status to incarcerated residents. The status ensures the ability to register and participate in the electoral process.

## **DESIGNATE A JAIL VOTING COORDINATOR**

Organizers in Philadelphia and Washington, DC support designating voter coordination responsibilities to jail or local elections staff. Designated staff can coordinate voter education materials and absentee voter efforts, and serve as a community liaison to partner with civic organizations.

Strengthening voting in jail practices ensures electoral participation for residents most at risk of being disenfranchised. The adoption of state and local policies helps momentum for reform. This report documents efforts to protect the voting rights of justice-involved residents and offers policy and practice measures for stakeholders to adopt. These solutions can be achieved through various mechanisms, including legislative reform, local actions, and civic group leadership.



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