



**REPORT ON LEGISLATION BY THE
CORRECTIONS AND COMMUNITY REENTRY COMMITTEE
AND ELECTION LAW COMMITTEE**

**A.4448-A
S.830-B**

**M. of A. O'Donnell
Sen. Comrie**

AN ACT to amend the election law, the criminal procedure law, the executive law, and the correction law, in relation to voting by formerly incarcerated individuals convicted of a felony; and to repeal certain provisions of the election law relating thereto

THIS BILL IS APPROVED

BACKGROUND

This legislation would restore voting rights to formerly incarcerated individuals upon release. The legislation would ensure that all formerly incarcerated individuals have the right to vote upon reentry into society, and it would increase clarity regarding franchise rights by: (1) creating a bright-line rule for the timing of restoration of voting rights; (2) mandating that the court advise a defendant, on the record, of restoration of the right to vote upon release; (3) requiring that an individual released from custody be notified, orally and in writing, that his or her voting rights are restored upon release; and (4) providing incarcerated individuals voter registration forms and registration assistance upon release.

REASONS FOR SUPPORT

A fundamental right underlying American democracy is the right to vote. Yet, America continues to permit pervasive disenfranchisement through, among other things, voting restrictions placed on incarcerated individuals. Such restrictions strip the right from those in our communities most in need of a voice – individuals who have been subjected to government control over every facet of their lives. Disenfranchisement ensures that those most likely to suffer injustices at the hands of the state have no recourse. Moreover, the practice of disenfranchisement, a Jim Crow-era policy enacted to silence black voters, continues to disproportionately affect people of color.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

“One in every 13 voting-age African Americans cannot vote, a disenfranchisement rate more than four times greater than that of all other Americans.”¹

While we question the utility of disenfranchisement in any circumstance, disenfranchisement is particularly inappropriate after an individual has completed his or her sentence and has reentered society. In a rehabilitative system, there is no place for continued punishment after the completion of a sentence. Voting is a form of community engagement, essential to societal re-integration. Continued restrictions on voting post-incarceration compound the isolation of formerly incarcerated individuals from their communities and increase stigmatization of formerly incarcerated individuals, which may lead to increased recidivism.² New York’s election laws continue to prevent New Yorkers who have completed their sentences from fully participating in our democracy. While Governor Cuomo has recognized this injustice and used his pardon power to restore the vote to many individuals released from custody, this impermanent and burdensome solution is not enough.

In 2018, Governor Cuomo issued Executive Order (E.O.) No.181 and began using his pardon power on a monthly basis to restore voting rights to most individuals who have been released from prison and are on parole or post-release supervision.³ The E.O. specifically states that “individuals who are currently under parole supervision will be given consideration for a conditional pardon that will restore voting rights without undue delay.” The E.O. has extended voting rights to tens of thousands of New Yorkers who completed their prison terms and are now on parole or subject to post-release supervision. Yet, the substantive laws have not changed, and the current E.O. process has created confusion to the great detriment of individuals who were unable to register to vote or exercise their vote despite falling under the parameters of the E.O. or who did not realize they could vote under the E.O. Moreover, according to news reports, at least one individual faced potential charges and jail time for inadvertently registering to vote after being provided a registration form from the county Department of Human Services post-release because the E.O. pardon had not yet taken effect in that month.⁴ In addition, the E.O. is not permanent, meaning a future governor could choose to terminate it. Consequently, there is no statutory protection for formerly incarcerated individuals who have served their time.

¹ Erin Kelley, Racism & Felony Disenfranchisement: An Intertwined History, The Brennan Center For Justice, May 9, 2019, <https://www.brennancenter.org/our-work/research-reports/racism-felony-disenfranchisement-intertwined-history>; see also Brent Staples, The Racist Origins of Felon Disenfranchisement, The New York Times, Nov. 18, 2014, <https://www.nytimes.com/2014/11/19/opinion/the-racist-origins-of-felon-disenfranchisement.html>. (All sites last visited April 15, 2021.)

² Jean Chung, Felony Disenfranchisement: A Primer, The Sentencing Project, June 27, 2019, <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>.

³ Executive Order No. 181, Restoring the Right to Vote for New Yorkers on Parole, <https://www.governor.ny.gov/news/no-181-restoring-right-vote-new-yorkers-parole>

⁴ David Andreatta, Grand Jury Refuses to Indict Parolee Jalil Muntaqim on Voter Fraud Charges, WXXI News March 30, 2021, <https://www.wxxi.com/post/grand-jury-refuses-indict-parolee-jalil-muntaqim-voter-fraud-charges>.

A.4448-A/S.830-B would codify and improve upon the E.O.⁵ The bill provides for automatic restoration of voting rights upon release from prison and eliminates the need for a conditional pardon. This bill would also require state and local correction officials to provide notice of the restoration of rights and an opportunity to register upon release, thus increasing the likelihood that individuals will participate in the democratic process. The bill would create a simple, bright-line rule easy to administer and understand: if individuals are living in the community, they are eligible to vote. Denying the right to vote to New Yorkers who work, pay taxes, and support their families serves no legitimate law enforcement purpose and undermines fundamental principles our country purports to value.

For the above reasons, the New York City Bar Association urges that this legislation be approved.⁶

Corrections & Community Reentry Committee
Gregory D. Morril, Chair

Election Law Committee*
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⁵ Senate Bill S.830B, <https://www.nysenate.gov/legislation/bills/2021/s830/amendment/b>; Assembly Bill A.4448A, <https://www.nysenate.gov/legislation/bills/2021/A4448>.

⁶ This report reflects the City Bar's longstanding support for legislation to combat the disenfranchisement of the formerly incarcerated, as most recently articulated at a State Assembly hearing in November 2018 and in the City Bar's 2020 Legislative Agenda. See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/improving-opportunities-to-vote-in-new-york-state-assembly-hearing>. See also Report in support of the New York Voting Rights Notification and Registration Act, Reissued March 2010, <https://www.nycbar.org/pdf/report/uploads/20071767-Commentonacttoamendcriminallawrevotingrights.pdf>; Brief for the Association of the Bar of the City of New York as Amicus Curiae Supporting Appellant, *Muntaqim v. Coombe*, 449 F.3d 371 (2d Cir. 2006), https://www.nycbar.org/pdf/report/Muntaqim_v_Coombe.pdf.

* Jeffrey M. Wice and John Wm. Zaccone abstaining.