



NEW YORK
CITY BAR

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

S.6875

Sen. Myrie

AN ACT to amend the election law and the correction law by enacting the Modern Voter Access for Eligible Citizens in Jails Act.

THIS LEGISLATION IS APPROVED

BACKGROUND

Many citizens detained in jails have the right to vote (e.g., those detained pre-trial or convicted of misdemeanors), yet their access to the ballot is severely limited and recent research reveals that few of these individuals have been able to effectively cast a ballot.¹ A 2023 survey of county sheriffs' offices revealed that one-third of New York counties either have *no* jail voter access program in place or could not provide details of such a program despite persistent inquiry.² While detention by the state qualifies thousands of otherwise-eligible citizens to vote by absentee ballot, in the absence of a voter access policy that facilitates such voting, those ballots are not being cast.

A modern voting access plan for this eligible population of citizens that equitably accounts for the circumstances of confinement, while still ensuring ballots can be cast and counted, would remedy the current voter suppression.³ Without a uniform, minimum voter access policy, the responsibility of facilitating access to the right to vote falls to a coalition of the willing, be it local sheriffs or corrections staff or civic volunteers, rather than bipartisan officials who administer elections. This has led to widely variable access that jeopardizes rights and creates gaps in data and accountability.

¹ Madalyn Stewart, *Voting Rights Behind Bars: Election Accessibility for Voting-Eligible Populations in New York Jails*, Critique (Spring 2022), <https://bit.ly/46RDujJ> (All websites last accessed on Dec. 21, 2023).

² *Voting in New York State Jails: A Qualitative Analysis of Access*, League of Women Voters of New York 7-8 (June 2023), <https://lwvny.org/wp-content/uploads/2023/09/LWVNY-S-Voting-in-Jails-Report-1.pdf> ("Legislation is necessary to ensure uniformity in access to the ballot across the state.").

³ Prison Policy Initiative, *Eligible, But Excluded: A Guide to Removing the Barriers to Jail Voting* (October 2020), <https://bit.ly/44S8D5B>.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 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.

At present, voting is simply under-prioritized at correctional facilities.⁴ Without proactive coordination between elections and corrections officials to facilitate voter access “many counties place the burden on detained individuals” to sort out eligibility and overcome registration barriers and jail-mail delays. Voting can be hindered by the limited access to stamps, internet-based resources like online registration or ballot request and tracking tools, and ballot-casting barriers like compromised privacy or limited language assistance.⁵ And sadly, the disproportionate impact of voter suppressive policies on low-income voters and citizens of color that are too frequently seen outside of correctional facilities⁶ persist just as widely in correctional facilities.⁷ In 2021, 78% of New York’s pretrial population was Black or Latinx.⁸

REASONS FOR SUPPORT

This proposal codifies the right to vote for the thousands of citizens detained pretrial or for lesser offenses in New York’s state and local correctional facilities who have not lost the right to vote. The bill modernizes the elections and corrections laws, prescribing alternatives for local officials to facilitate timely access to at least one method of effective and secure voter registration and balloting for all such eligible persons, regardless of where they are confined.

The Modern Voter Access for Eligible Citizens in Jails Act improves election oversight, uniformity, quality control and intergovernmental cooperation to better protect the fundamental rights at stake. The State Board of Elections will issue non-partisan materials to clarify voter eligibility, key deadlines, and voting options. The bill requires these materials to be distributed in correctional facilities. Local bipartisan election officials are granted new authority and significant flexibility to design voting programs that best meet local access needs, in coordination with local corrections facilities. This bridges the existing access gap by clarifying the role of bipartisan election officials in election-related tasks and the role of corrections facilities to facilitate effective access to the ballot for eligible citizens in their custody.

Programmatically, the bill improves access to voting for detained eligible citizens, wherever those citizens are held. Large corrections facilities in New York’s most populous counties will be included automatically in the existing bipartisan absentee ballot collection program that currently directs bipartisan teams of election officials to conduct in-person visits to large congregate facilities, like nursing homes or hospitals, to distribute and collect voting materials.⁹ If enacted, local election boards serving at least 100,000 registered voters will

⁴ *Voting in New York State Jails*, *supra* note 2, at 1-3.

⁵ *Id.* at 1-3, 9.

⁶ *See, e.g.*, Rachel Landy and Jarret Berg, *Impact of New York’s “Wrong Church” Ballot Disqualification Rule in the 2020 General Election*, at 6-8 (May 20, 2021), <https://secureservercdn.net/45.40.150.47/int.423.myftpupload.com/wp-content/uploads/2021/05/VoteEarlyNY-Report-Impact-of-New-Yorks-Wrong-Church-Ballot-Rule-in-the-2020-General-Election-FINAL-web.pdf>.

⁷ Sarah Monaghan, Michael Rempel & Tao Lin, *Racial Disparities in the Use of Jail Across New York City, 2016-2021*, Data Collaborative for Justice (Feb 2023), <https://bit.ly/3RrzsJv>.

⁸ Envision Freedom Fund, *Pretrial Detention in New York* (April 2022), <https://bit.ly/46DqOfU>.

⁹ N.Y. Elec. Law § 8-407.

proactively develop a recurring program with the leadership for populous correctional facilities in their jurisdiction to facilitate both timely registration and voting, reducing the barriers that can unjustly block legitimate political participation.¹⁰ This statutory formula is estimated to cover nearly two dozen facilities in 17 jurisdictions that currently house more than 9,000 unsentenced individuals.¹¹

If enacted, the bill requires covered boards and corrections facilities to collaborate on written procedures that provide for orderly and secure registration, balloting, language assistance, and delivery and retrieval of voting materials. These procedures will be reviewed for sufficiency and integrity by the State Board of Elections. Bipartisan officials are authorized to offer this program at less-populous facilities if they choose. Additionally, the State Board will develop and issue non-partisan voter education materials for mandatory distribution throughout corrections facilities.

Alternatively, in lieu of the in-person absentee program, bipartisan county election officials may deploy a polling place at populous correctional facilities for at least six hours during the final weekend before an election day, so eligible confined citizens and facility staff can conveniently vote.

Finally, the bill sets a statewide standard for a “residual” voter registration and absentee ballot access program for all citizens detained in less populous facilities and citizens detained outside their home county. At minimum, all such eligible citizens must be provided with effective voter registration and absentee ballot access, regardless of where they are confined, including persons in solitary confinement, no later than 21 days prior to election day. As with the general population, return postage for absentee ballots is prepaid. The bill also, to the extent possible under State law, extends the interlocking programs described above to eligible citizens detained or confined at Federal correctional facilities, pursuant to comparable procedures that may be agreed upon between elections and corrections officials.

¹⁰ Jurisdictions with at least 100,000 registered voters in 2023 include: All five Boroughs of New York City, Albany, Broome, Dutchess, Erie, Monroe, Nassau, Niagara, Oneida, Onondaga, Orange, Rensselaer, Rockland, Saratoga, Schenectady, Suffolk, Ulster, Westchester. NYS Board of Elections, *Enrollment By County*, Feb. 21, 2023, <https://www.elections.ny.gov/EnrollmentCounty.html>. If enacted, it is estimated that, initially, 22 facilities across the state with custody over 75 or more persons will be automatically covered by this program, improving access for thousands of eligible citizens.

¹¹ Division of Criminal Justice Services, *Jail Population in New York State: Average Daily Census By Month*, <https://bit.ly/44nW5BX>. This is based on the number of “Other Unsented” in the New York State Jail Population by Month Report. “Other Unsented” refers to “Individuals who are awaiting arraignment, trial or sentencing by the court or who have violated conditions of parole because they have been re-arrested for a new crime.” We assume that the majority of individuals who are in this category are awaiting arraignment or trial. It is unknown precisely how many presently detained persons meet all of the qualifications to vote. See *Qualifications to Register to Vote*, NYS Board of Elections, <https://bit.ly/44afN4a>.

This policy rectifies an ongoing injustice and improves parity of access to timely, effective, and secure balloting opportunities for eligible citizens in jails. Accordingly, the City Bar urges the Legislature to pass S.6875 to ensure modern, equitable access to voting for all such eligible persons, and to deliver the bill to the Governor’s desk immediately.

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December 2023

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