



Voting in Jail Project

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League of Women Voters of New York State
The Blake, 1 Steuben Place
Albany, NY 12207
www.lwvny.org
lwvny@lwvny.org

Introduction

The Need to Know

This project grew out of a need to know how county jails across New York are handling access to the ballot for American citizens serving misdemeanor sentences and those awaiting trial. Unlike citizens with felony convictions, citizens serving a misdemeanor sentence or awaiting trial while in jail are entitled to vote.

The League of Women Voters and the many organizations with whom we partner in criminal justice reform advocacy did not know the extent to which county jails were permitting and even facilitating voting. We only had anecdotal reports. We knew that some county sheriffs, and the NYC Department of Corrections at Rikers Island, have allowed outside groups to visit facilities to register eligible detained individuals and, when appropriate, help them apply for and complete absentee ballots. In addition, we knew that some of these groups have conducted civics classes to place voting within a context of civic engagement and self-empowerment. On the other hand, we have heard other stories about sheriffs, especially in the wake of the Covid pandemic, refusing access to outside groups to register voters and not bothering with any aspect of voting. Overall, we and our many program partners did not know the status of voting while in jail statewide.

The League of Women Voters of New York State Criminal Justice Reform Committee (Committee) devised this project employing law school students to canvas each county sheriff's office to gather more information about the status of voting. The purpose of this survey was to determine whether there was a need for:

- legislation or an executive order mandating sheriffs to implement programs to inform detained persons about their right to vote and facilitate voting upon arrival, while detained, and upon release;
- funding to the local Boards of Elections and/or sheriffs' offices, and training; and/or
- offering models to sheriffs to implement jail registration and voting programs appropriate for the size and composition of their jail populations.

Barriers to Jail Voting: There are systemic and structural barriers to jail voting.¹ The most pervasive barrier is that voting does not appear to be a priority for many sheriffs; public safety is their main responsibility. With limited staff and resources, voting is peripheral, especially if detained individuals do not request registration or absentee ballot applications. In addition to a reluctance by sheriffs to make voting more visible, there are other factors:

- Confusion about eligibility to vote
- Registration barriers: changing registration deadlines, limited access to registration materials, lack of a permanent address, jail mail delays, and limited access to Internet and phones to verify registration status
- Ballot-casting barriers: compromised ballot privacy, limited access to informational voting guides, neutral help with application and ballot questions
- Population churn in jails

¹ Ginger Jackson-Gleich and Rev. S. Todd Yeary, Eligible, but excluded: A guide to removing the barriers to jail voting, October 2020 https://www.prisonpolicy.org/reports/jail_voting.html.

Who Has the Right to Vote While in Jail: American citizens are eligible to register to vote in New York State unless that right has been legally abridged. A felony conviction will curtail the right to vote until released from prison. Recent legislation restores the right to register to vote while on parole. American citizens serving a misdemeanor sentence or awaiting trial, even on a felony indictment, remain eligible to vote.

Demographics: As of [March 2023](#), there were 16,138 men and women in New York State jails. The vast majority of these detained people—over 11,544—are unsentenced, meaning that they are awaiting trial and therefore, presumed innocent. Almost 2,493 of these detained individuals have been sentenced. We do not know how many of these men and women are citizens and therefore, eligible to vote.

The census for New York City jails for March 2023 finds 5,845 men and women in jail. 5,137 are unsentenced, with only 468 were actually sentenced.

In considering the racial makeup of jailed individuals, 49% of the jail population is Black, 24% is Latinx, and 23% is White, and women are being jailed at ten times the level in 1970, driven mostly by rural counties.² On the other hand, the majority of county sheriffs (92%) in the United States are White with 90% of those sheriffs being White men; 5% of sheriffs are Black men and 2% are women.³ There is no demographic data available specific to New York State.

Recent Changes to Registration Periods Makes Jailhouse Registration More Effective: In 2022, New York State shortened the time between the deadline for completing voter registration and Election Day. All voters will be eligible to vote in an election if they register in person by 10 days prior to an election, or for those registering by mail, postmarked at least 15 days prior to the election and received by the Board of Elections by 10 days prior to the election.

This change to registration helps improve access to the ballot for detained individuals in jails; programs can be more effective in registering voters, knowing who will be released by Election Day and who will need to apply for an absentee ballot.

Acknowledgements

The idea for this project came from Vivione Marshall, Co-Chair of the League’s Criminal Justice Reform Committee. Vivione, with Hazel Weiser, Project Manager, came together to conceive of a survey using law school students. The League of Women Voters of NYS’s Criminal Justice Reform Committee supported the creation and implementation. The Co-chairs of the Committee are Vivione Marshall and Richard Rivkin. The law school externs and interns who worked with the Project Manager on gathering the data were Ann Curatolo, Peter Friedrichs, Alex Khan, Gwenyth Szabo. The final report was written by Hazel Weiser.

² Vera, *Incarceration Trends: New York*, (Feb. 2023) <https://trends.vera.org/state/NY>.

³ Reflective Democracy Campaign, *Confronting the Demographics of Power: America’s Sheriffs*, (June 2020) <https://wholeads.us/research/americas-sheriffs/>.

Executive Summary

A precise quantitative analysis of the survey answers is not feasible for several reasons. Some sheriffs' offices stated outright that they have no program in place. Other sheriffs' offices reported that they had a voting program in place. However, follow up questions revealed that the program in place was either solely initiated by detained individuals, limited to signage, voter registration materials were on site but without a systematic way for detained individuals to access them, and/or there was no specific staff person in charge. In other responses, often by email, sheriffs' offices stated that they had programs but failed to answer all of the questions that would have identified more details about how the programs operate. In one instance, a sheriff's office claimed to be working with the local LWV, but the local LWV said there was no current activity with that jail.

What we learned from the survey is that the availability of voting depends on the authority of the sheriff, not on the current law.

Many counties place the burden on detained individuals to take the initiative to request registration materials and an application for an absentee ballot. Sixteen (16) counties admitted that they have no existing programs to facilitate voter registration or voting in jail. Five (5) counties said they had a program but gave few details as to how it works or whether these "programs" were limited to signage and availability of materials without more. Four (4) counties limit their activity to placing posters about voting in housing units, the law library, or common areas. Six (6) counties put some effort into soliciting voter registration and voting around election times, although it is not clear that primary elections and local elections are included in these efforts.

Three (3) counties include information in a handbook, on an electronic tablet, or on electronic kiosks around the jail but do not have any organized activity around voting. Eleven (11) counties and New York City Department of Corrections have affirmative programs that include offering voter registration materials upon arrival, designating an officer or staff person to be responsible for distributing timely information, and sometimes work with outside organizations like the LWV or local community-based or faith-based organizations to offer voter registration services. However, the extent of these efforts varies greatly. Most jails do not record the number of registrations or requests for absentee ballots. One jail relied on the LWV to maintain those records. Two (2) other counties said they maintained records, but that registration and voting were rare. Although these jails provide information on registration and voting in handbooks, electronic tablets, or on electronic kiosks, we do not know whether this information is highlighted or whether and how registration and voting are actively solicited. In smaller county jails, the registration and voting process can be as simple as a quick canvas around the jail to see if anyone is interested in voting. Many counties expressed that voting has never been requested in its facilities, implying a lack of awareness for detained individuals. In the wake of Covid and the isolation of county jails during the pandemic, programs are only now being reopened. Some sheriffs' offices were open to inviting the LWV to provide voter registration and education services inside.

Access to help to determine eligibility and complete the registration and absentee ballot application forms is mostly limited to sheriffs' deputies, social workers, administrative staffing, or law library staff, if one is available. Because these designated or informally assigned staffers have authority over the jail population, detained people might not feel comfortable seeking their help. Access to privacy, too, remains an issue unless the jails have single cells or rooms designated for private use to complete these confidential forms.

With few exceptions, sheriffs' offices maintain relationships with the local Boards of Elections.

In 2021 the New York State legislature returned the right to vote to convicted felons upon their release from prison even while serving parole. In passing this legislation, which was signed by the governor, the legislature understood that successful reentry of formerly incarcerated individuals involves seizing the responsibility of citizenship: participating in civic life and voting. This right to being a full citizen is considered so important that jails and prisons are required to present voter registration materials to people as they are released from their felony sentences. This mandate should be extended to people released from county jails.

Methodology

The Committee devised a project that employed law school students as externs or interns to conduct a survey of New York State sheriffs' offices. The students were supervised by two retired lawyers, Hazel Weiser and Mary Berry, who are LWV members. The project encompassed the Spring 2023 semester, ending in late April to accommodate exams.

Law School Students: We posted a job description on the Social Justice job board which is available to law school students across the country. We focused on hiring law school externs, and interns because of their maturity, education, and understanding of the need for precision in their use of words. Externs received credit for their participation in a supervised externship. Interns either earned the right to include participation in this project on their resumes or could count participation towards any graduation requirement for *pro bono* hours.

Four students were hired, two as externs and two as interns:

- Ann Curatolo—St. John's University School of Law
- Peter Friedrichs—University of Connecticut School of Law
- Alex Khan—Columbia University School of Law
- Gwenyth Szabo—American University Washington College of Law

Prior to contacting any county sheriffs, students participated in class sessions focused on:

- History and mission of the League of Women Voters
- What is required to preserve the nonpartisan status of the LWV
- Brief history of voting in New York State
- Felony disenfranchisement
- Eligibility to vote while serving a misdemeanor sentence or detained awaiting trial
- Impact of bail reform on access to the ballot

- How the absentee voting works in New York State with a comparison with other states, especially states that have universal mail-in ballots

The law school students were trained to:

- use the survey questionnaire
- conduct an interview mindful of the LWV, its nonpartisan status, and its working relationships with public officials
- accurate notetaking
- how to deal with frustration, if they find the sheriffs' offices non-responsive
- maintain a Google doc to record each county sheriff's responses or non-responses
- follow up all contact with sheriffs' offices in a professional manner

In addition to individual supervisory sessions, law students attended weekly group meetings to discuss their progress, share experiences and seek advice, receive additional assignments, including research, and maintain the professionalism of the project. In executing the survey, contacting the sheriffs' offices required a balance in persistently soliciting information, using appropriate language that would invite sheriffs' responses, and navigating unique local circumstances affecting each county.

The Survey: The Committee developed a simple questionnaire intended to identify what programs might be in place to accommodate voting by citizens while in jail serving a misdemeanor sentence or awaiting trial.

1. Is detainee registration and voting a part of your jail program? If yes, please explain how your program works. For example:

- *Are voter registration materials available to detainees upon arrival?*
- *Are voter registration materials given out upon release?*
- *Is there a designated deputy or other staff member assigned to this function?*
- *Do you record how many detainees register to vote during any given year?*
- *Is assistance available to help complete voter registration forms, applications for absentee ballots, or completion of absentee ballots?*
- *Is there a private and secure place within the jail to complete voting materials?*

2. Would your jail benefit from training sheriff's deputies or other staff on the rules of voter registration, how to complete voter registration forms, applications for absentee ballots, and completing ballots within the required time frames?

3. Do you have a relationship with your county Board of Elections to receive information and materials about registering and voting for staff and detainees?

4. Do you work with outside groups, such as the League of Women Voters, local community or faith-based organizations to help educate and encourage voter registration and voting? If not, would you like to be connected to a local group or organization to help?

5. What funding and/or staffing do you believe you might need to implement voting in your facility?

Each LWV chapter in the state was sent a query asking whether there is an existing or anticipated relationship with its county's sheriff. Some local chapters had recently received grants from LWV-US to initiate jailhouse voting projects. Other chapters are eagerly

reestablishing programs curtailed by Covid. Where the local LWV chapter had a relationship with the sheriff or was already conducting voter registration, we negotiated with the local LWV chapter to determine the best way to complete the questionnaire: contact the sheriff together, have the local LWV complete the questionnaire, or proceed independently.

Where there was no current LWV activity, students identified the appropriate person in the sheriff's office, and introduced the questionnaire by emailing it for review and completion, or reviewing in on the phone. Prior to contacting any sheriff, students determined the size of the jail, the longevity of the sheriff's administration, whether there were any pending lawsuits against the sheriff, or other indicators of the sheriff's attitude towards voting or programming for the benefit of those detained.

The Data

No Responses: There are sixty-two (62) counties in New York State. We removed the five New York City counties from the project because we had information on the Rikers Island program in New York City jails. Therefore, the remaining fifty-seven (57) counties were surveyed. The response rate was exceptionally high.

Only twelve (12) counties failed to respond. Multiple attempts were made to identify and interview the appropriate officials in each of these county sheriff's offices. However, despite multiple attempts, as many as eight (8) phone calls and follow up emails, we were unable to ascertain any information on voting in these counties. With this kind of response rate—78.9% — we are confident that we have revealed a true picture of the status of voting services in New York State jails.

Some interpretation is inherent in categorizing sheriff's offices responses. There were often contradictory responses. For example, a respondent might say there is a program, but later in the conversation disclose that detained individuals had to initiate any voting activity. Or a respondent might say there is a program but failed to provide any further information that would describe the details of the program. What we learned from a qualitative analysis of the responses is that sheriffs have enormous discretion in informing detained persons about their voting rights and facilitating exercise of those rights.

New York City is comprised of five counties, all of which send detained persons to Rikers Island. An organized effort to register voters on Rikers Island⁴ has evolved from the work of several organizations within the Vote in NYC Jails Coalition, which includes impacted persons and their families along with The Legal Aid Society, The Office of the Public Advocate, Latino Justice, NYCLU, Freedom Agenda, PROP, National Action Network, Legal Action Center, and Halt Solitary. This coalition conducts monthly voter registration drives throughout Rikers Island. They are also working with NYC Votes (an initiative of the NYC Campaign Finance Board) to devise a voter education program at Rikers Island that will be taught by formerly incarcerated individuals. There is now a designated Department of Corrections staff member, a formerly

⁴ This information was collected from a representative of The Legal Aid Society, not from the NYC Commissioner of Corrections.

incarcerated individual, who is responsible for coordinating these efforts. Some volunteers have been issued permanent volunteer passes to ease the security process. Over 800 voter registrations were completed over a two-year period with 170 completed absentee ballot applications. These registration and applications forms are taken to each of the various Board of Elections offices for verification and completion.

Jail Voting Summary

No Program	No details on program	Postings Only	Postings Election Time	Tablet, Handbook, Kiosk	Fuller Program
16	5	4	6	3	12 ⁵

Jail Voting Programs By Jail Population (excluding NYC Department of Corrections)

Jail Population (<i>March 2023</i>)	No Program	No details on program	Postings Only	Postings Election Time	Tablet, Handbook, Kiosk	Fuller Program
Under 20	2	0	0	0	0	0
21-50	3	2	1	0	0	4
51-100	3	2	2	3	0	3
101-200	3	0	1	3	3	2
201-up	5	1	0	0	0	3

Most sheriffs' offices rejected the idea that they required additional training to facilitate voting.

Training for Voting in Jails

Yes, open to training	No training needed	Unsure	No response
12	27	6	1

Additionally, most sheriff's offices did not see that additional funding was necessary to facilitate voting. One office said they needed funding to buy stamps to mail in applications and absentee ballots.

Funding for Voting in Jails

Yes to funding	No to funding	Unsure	No response
8	29	7	1

This reluctance to seek funding and training might derive from seeing the sheriff's role as limited to law enforcement and not seeing voting as an opportunity to facilitate an empowering connection for detained individuals to community and civic responsibility.

⁵ The five counties that comprise New York City are treated as a single entity here, with a description of the voting program at Rikers Island.

Recommendations

Few county jails have fully functional and staffed programs to facilitate voter registration and voting for citizens detained on a misdemeanor sentence or while awaiting trial. Many sheriffs' offices do not prioritize voting and devote few resources to identifying which detained citizens might be eligible to vote and then facilitating registration, application for an absentee ballot, and actual voting, whether in jail or upon release. Successful programs require effort and collaboration. An example of a successful program is the current one at Rikers Island, a carefully developed collaboration between the NYC Department of Corrections, the Campaign Finance Board, and a coalition of community-based organizations, including impacted people and their families. To actually facilitate jail voting, there needs to be more than signage and the availability of registration forms. We need to invest in helping these people rise out of their cycle of helplessness by helping them understand that they have something to contribute to our society. We need impacted people's understanding of their lives and experiences to construct a fair and equitable post-mass incarceration criminal justice system.

In reviewing the data, we have developed several recommendations, some of which require legislation, whereas others could be immediately implemented.

There is a pragmatic concern with even considering legislation as a way to mandate that sheriffs facilitate registration and voting by eligible detained individuals. Since the right to vote already exists, some sheriffs might continue to resist voting activities, claiming that they await a legislative mandate. Yet the people who are detained in our county jails are perhaps our most vulnerable residents and, as a result of over-policing, disproportionately Black and Brown. An opportunity to empower these people in having their voices help devise post-mass incarceration policies should not be missed, not now, not when we more fully understand the horrendous consequences of the war on drugs and racism upon our criminal justice system.

- The LWV-NYS should immediately design an accurate and timely jail voting guide and distribute the guide in paper and digital form to every sheriff's office in New York State. Wherever possible, we should encourage local LWV chapters to coordinate civics classes and voter registration drives with other local organizations in the county jails. Forming these relationships with the local sheriff and Board of Elections can raise the visibility and possibility of voting on a local level empowering this often ignored population.
- Comprehensive Voter Eligibility Screening Tool: eligibility for voting not only encompasses national and New York State elections but detained people might be eligible to vote in tribal elections and/or elections outside of New York State depending on the communities from which detained people are taken. To equip jails in serving diverse populations, a comprehensive tool for assessing voter eligibility would be helpful to screen those entering and being released from jail facilities.
- Fund the NYS Board of Elections to develop an informational voting program with posters, updated annual informational pamphlets in paper and digital form, a video and/or PowerPoint presentation on voting to be distributed to all county jails along with a timetable for presentation and use of these materials to encourage registration and

participation in all elections, primaries and general elections on a local, state, and federal level. This informational voting program will explain the eligibility to vote, how to register, how to apply for an absentee ballot, how to complete an absentee ballot, and how to get everything delivered to the Board of Elections in a timely manner. Most importantly, this informational voting program should include the basics on why voting is so important. Local Boards of Election and local community-based organizations should be encouraged to help local jails with these presentations and provide the help needed to complete forms and absentee ballots.

- Include information about eligibility to vote, registration applications and deadlines, application for absentee ballot, and election dates in all handbooks, electronic tablets, and electronic kiosks with signage posted in common areas throughout the jail, and in the intake and release areas.
- Language Access: many detained individuals face language barriers in correctional facilities. Only one sheriff respondent mentioned access to translation services in its facility. Based on the demographics of each county, voter registration, applications, postage, informational resources, etc. (including the recommendations mentioned in the last two bullets) should be published in the commonly used local languages, including Native American languages, for limited English proficient eligible voters to receive accessible voting information and materials.
- Have sheriffs' offices designate a specific staff member, unaffiliated with the county jail and independent from the jail's leadership, to be responsible for informing detained people of their voting rights, distributing information in a timely fashion, arranging for help from neutral individuals, such as staff from the BOE or LWV, with completing forms, and maintaining records on the number of detained persons who register to vote while incarcerated.
- Provide a safe and private space to complete registration and ballot materials, especially the absentee ballot itself. Some jails have single cell residencies, so the cell might work. However, dormitory-styled facilities often do not have the private spaces required for thoughtful completion of a ballot. Temporary private spaces can be constructed during election times.
- At arrival, screen detained people for eligibility to vote and provide registration materials. Information about voting should be included in any handbook, electronic tablet, or electronic kiosk and available in the law library, if one is in the facility.
- At release, screen for eligibility to vote and provide registration materials, just as jails and prisons do for released convicted felons.
- Encourage sheriffs' offices to work with outside non-partisan organizations to provide civics education and neutral information about voting, candidates, and issues.

Conclusion

What we learned from conducting this survey is that many citizens detained in jails do not have consistent access to their right to vote. This is a missed opportunity to encourage behaviors that have been linked to better reintegration back into society and decreased recidivism. Although there is not a lot of research on the relationship between voting and recidivism, we do know from limited studies that “ex-felons who are able to re-enter society with stable work and familial relationships are less likely to engage in criminal activity.”⁶ Furthermore, research has demonstrated that “active participants in the democratic process are more likely to adopt the shared values of their broader community.”⁷ The men and women moving in and out of our county jails, often plagued by racism, substance abuse, domestic violence, a lack of education, mental illness, and excluded from possibilities, would benefit from the empowerment and sense of belonging that accompanies an understanding of civics and the act of voting.

Sheriffs and people in their custody would benefit from a fuller, more complete understanding of voting eligibility, a more effective relationship with the local Board of Elections and local community-based groups, access to timely and accurate materials, and a stake in preparing the detained people in their care for a productive life upon release.

We thank the sheriffs across New York State for their cooperation and candor. This report would not be possible without their dedication and service.

⁶ Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 196 (2004), cited in Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 LA RAZA L.J. (2015).

⁷ *Id.* at 198.