

# **Overcoming Barriers that Prevent Eligible Incarcerated People from Voting in Massachusetts**

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Ballots Over Bars, a project of the Emancipation Initiative**

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## Executive Summary

Under Massachusetts law, all citizens incarcerated pre-trial, incarcerated on misdemeanor convictions or civilly committed retain the right to vote. On any given day, roughly 10,000 eligible voters are behind bars in the Commonwealth. However, Massachusetts has no system to protect or even monitor each incarcerated voter's access to the franchise, and as a result, it is routinely violated by local and state actors.

In 2016, the Suffolk and Middlesex county sheriffs invited the League of Women Voters Arlington and Boston chapters to help eligible incarcerated voters cast ballots for the first time.<sup>1</sup> In 2017, formerly incarcerated people informed Ballots Over Bars that there were structural barriers preventing incarcerated voters from voting, as well as widespread misinformation in jail amongst qualifications for the right to vote.<sup>2</sup>

In the lead up to the 2018 elections, Ballots Over Bars contacted sheriffs around the Commonwealth to learn current jail voting practices and offer assistance to comply with the voting law. Protecting the rights of the most vulnerable members of society is essential to a functioning democracy. The results expose structural barriers that prevent incarcerated voters from voting and the absence of a system to protect their franchise.

The following report describes:

- County sheriffs' reported policies on jail voting in Massachusetts;
- Structural barriers preventing incarcerated voters from voting; and
- Recommendations for passage of two bills (**S. 392 and H. 669**), currently before the Joint Committee on Election Laws; and proactive steps local and state actors can take to promote access to the right to vote.

<sup>1</sup> Kirby, Colleen, "Registering Voters—in Jail," League of Women Voters of Massachusetts, 2018. <https://lwvma.org/registering-voters-in-jail/>; Marc Jacobson, League of Women Voters of Massachusetts, "Voting Project Final 2016," 2018, <https://lwvma.org/wp-content/uploads/2019/08/Voting-Project-Final-2016.pdf>.

<sup>2</sup> Barthel, Margaret, "Getting Out the Vote From the County Jail," November 4, 2018. <https://www.theatlantic.com/politics/archive/2018/11/organizers-fight-turn-out-vote-county-jails/574783/>

## Historical Background

Under state law, any Massachusetts resident who is a U.S. citizen and 18 years or older is entitled to vote in municipal, state and federal elections, except while incarcerated on a felony conviction, or in cases of election fraud. As a result, there are up to 10,000 voters incarcerated in Massachusetts on any given day who retain the right to vote on paper.<sup>3</sup>

Furthermore, although Massachusetts does not report demographics of incarcerated voters (people incarcerated on non-felony sentences), available evidence suggests people of color, who make up 56% of the state's prison population, are most impacted by these policies, as well as poor people (who are more likely to be detained pre-trial), and women (due to Massachusetts' penal structure).<sup>4</sup>

In the 1970s and 1980s, voters incarcerated in Massachusetts sued the Secretary of State because they were being prevented from voting. The Massachusetts Supreme Judicial Court ruled in their favor and ordered the legislature to create a pathway for incarcerated voters to cast their ballot without physically going to the ballot box.<sup>5</sup>

As a result, legislators incorporated language specifying that people who are otherwise eligible to vote but are "confined in a correctional facility or a jail" [amended after 2000 with, "except if by reason of a felony conviction,"] are specially qualified voters who are entitled to vote by absentee ballot, and are not required to register to vote.<sup>6</sup>

As this report documents, however, most eligible incarcerated voters are unable to vote in practice due to a lack of systems and accountability.

<sup>3</sup> Massachusetts Department of Correction, Weekly Count Sheet, September 30, 2019. [https://www.mass.gov/files/documents/2019/10/01/Weekly\\_DOC\\_Count\\_09302019.pdf](https://www.mass.gov/files/documents/2019/10/01/Weekly_DOC_Count_09302019.pdf)

<sup>4</sup> Ibid. For more on the unique barriers incarcerated women voters in Massachusetts face, see p. 17.

<sup>5</sup> *Evers v. Davoren*, SJC, Suffolk, s.s., No. J74-118C1 (1974); *Cepulonis v. Secretary of the Commonwealth*, 452 NE 2d 1137 (1983)

<sup>6</sup> Massachusetts General Laws Ch. 50, §1

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVIII/Chapter50/Section1>

## Findings

The majority of eligible incarcerated voters in Massachusetts are incarcerated at the county-level, in either jails or Houses of Correction. There is no set process across the Commonwealth's 14 counties for coordinating jail voting, and sheriffs' and clerks' awareness and understanding of the law varies greatly.

In the summer and fall of 2018, Ballots Over Bars began to mobilize individuals passionate about voting rights across the state to contact their county sheriff and election officers and offer to help incarcerated voters get the materials and information they need to vote.

Ultimately, with the help of 31 volunteers, Ballots Over Bars facilitated voting in five counties (Essex, Franklin, Hampden, Middlesex and Norfolk), and spoke with correctional officials about their jail voting protocol in five additional counties (Barnstable, Hampshire, Plymouth, Suffolk and Worcester counties). Ballots Over Bars was not able to reach volunteers, or collect information on jail voting, from the remaining four counties (Berkshire, Bristol, Dukes or Nantucket), so they are not included in this report.

### **Key findings include:**

- Five counties (Barnstable, Hampshire, Plymouth, Suffolk and Worcester) reported that they have a regular practice of notifying voters that they incarcerate of their right to vote, and declined Ballots Over Bars' offer to send in volunteers to facilitate jail voting.
- Five counties (Essex, Franklin, Hampden, Middlesex and Norfolk) accepted Ballots Over Bars' offer to send in volunteers to facilitate jail voting.
  - Within these counties, Ballots Over Bars assisted 52 voters in submitting absentee ballot applications for the primary and 154 for the general election.
  - Beyond the application stage, it is not known how many ballots from incarcerated voters were ultimately mailed in and counted.

- Across the state, town clerks' offices lacked clarity about how to assess an incarcerated person's residence, which resulted in the rejection of numerous absentee ballot applications from incarcerated voters who chose to use the jail address as their place of residence. Additionally, some clerks, such as in Franklin County, held onto absentee ballot applications for up to 3 weeks while they made residency determinations, before ultimately rejecting applications just 4 days before the absentee ballot deadline, making it logistically impossible for voters to request an absentee ballot using a previous address in time for the election.
- Most sheriffs and town clerks we spoke with reported that they do not track data regarding jail voting. Only Hampshire County offered data on past voting, reporting that one incarcerated voter cast a ballot in 2016. Additionally, Suffolk reported that 268 incarcerated voters registered to vote in 2016 (120 men at the Nashua Street Jail, and 148 men and women at the Suffolk House of Correction).
- Our findings strongly suggest that very few incarcerated voters are able to exercise their voting rights in Massachusetts.

# Structural Barriers

In the course of this project, Ballots Over Bars uncovered significant barriers that, year after year, prevent thousands of incarcerated Massachusetts citizens from voting. These barriers impact a wide range of voters - people who are arrested in the days leading up to Election Day, people incarcerated awaiting trial, and people who have been convicted of misdemeanors or civilly committed. These barriers can be broadly categorized into two categories:

- Obstruction of voting by state and local government; and
- Residency determinations by town clerks.

## Obstruction of Voting

- **Absence of systems to enable voting**

Incarcerated voters, by definition, face substantial day-to-day restrictions beyond those faced by other voters. For example, without access to the Internet or government offices, it is not easy to gather voting essentials such as:

- Verification of voter eligibility and registration status
- Absentee ballot application forms
- Deadlines for submitting applications and ballots
- Information on candidates and elected offices

As a result, incarcerated voters must depend on state and local government authorities in order to vote. However, the lack of education, coordination and communication amongst county sheriffs, town clerks, and the Secretary of State's office results in thousands of incarcerated voters being de facto disenfranchised.

## Residency Determinations

- **Previously registered voters who do not know they are registered**

Multiple applicants in the Franklin and Middlesex County jails did not believe they had been previously registered to vote, and did not know which address they would have been registered at. Ballots Over Bars advised them to request



absentee ballot applications using a previous address or the jail's address. In multiple instances, town clerks rejected their applications on the basis that they were already registered elsewhere. Applicants have no way of checking this in advance on their own, and were told they must either submit a voter registration application or re-apply for an absentee ballot from wherever they previously registered.

- **Voters whose past residency cannot be confirmed**

In three instances, applicants submitted absentee ballot applications listing addresses that the jail had on file as their previous residences. However, when volunteers delivered the applications to town clerks in Franklin, Middlesex, and Suffolk counties, the clerks said they could not confirm the voter's previous residence, and so refused to send them absentee ballots.

- **Voters who chose the jail as their place of residence**

In Greenfield, the Town Clerk rejected ballot applications from applicants who opted to use the jail as their place of residence, rather than their last free-world address. The Clerk held onto 15 applications for 3 weeks, and then mailed rejection letters 4 days before the primary, such that applicants did not have time to re-submit applications to the town clerks of their previous residences. The jail staff spoke with the city clerk, who again insisted that all eligible incarcerated voters had to apply using the place of residence where they were living at the time of arrest, an incorrect application of Massachusetts election law.

## Recommendations

Incarcerated voters' right to vote must be better protected in Massachusetts. Ballots Over Bars recommends passage of two jail voting bills, **H.669** and **S.392**, both of which are currently before the legislature. Additionally, Ballots Over Bars recommends that local and state actors implement policy changes to facilitate jail voting until legislation is enacted.

### Legislation

**S.392, An Act to Increase Voter Registration, Participation, and to Help Prevent Recidivism** is a bill filed by Senator Sonia Chang-Diaz.<sup>7</sup> **H.669 An Act Increasing Voter Registration and Participation to Help Prevent Recidivism**<sup>8</sup> is a bill filed by Representative Russell Holmes, and drafted by the African American Coalition Committee at MCI-Norfolk, based on model legislation from the Brennan Center for Justice.<sup>9</sup> Both bills are currently before the Massachusetts Joint Committee on Election Laws, and were heard at a public hearing on June 20, 2019.

The bills require that:

- Judges routinely inform defendants facing disenfranchisement of the potential loss of their voting rights upon incarceration for a felony conviction and restoration of their voting rights upon release.
- Offices of correction, as well as probation and parole officers, inform people incarcerated for felony convictions of their eligibility to vote following release, and offer pre-registration forms prior to release.
- The Secretary of State develop a single publication providing accurate and complete information for the public regarding criminal justice system impact on a person's voting rights.<sup>10</sup>

<sup>7</sup> <https://malegislature.gov/Bills/191/S392>

<sup>8</sup> <https://malegislature.gov/Bills/191/H669>

<sup>9</sup> <https://www.brennancenter.org/publication/restoring-right-vote#recommendations>

<sup>10</sup> Note: We recommend amending this language in S. 392 to include all eligible incarcerated voters, not just those incarcerated for misdemeanors – namely, people civilly committed or detained pre-trial.

- The Secretary of State develop and implement a program to educate attorneys, judges, election officials, correction officials, including parole and probation officers, and members of the public on the requirements of this act.
- Offices of correction submit implementation plans detailing compliance as a voter registration agency to the Executive Office of Public Safety and Security by a set date. Plans must include:
  - (i) defining which staff members in each correctional facility shall be responsible for providing voter information to incarcerated persons;
  - (ii) incorporating voter registration procedures in accordance with intake processes and reentry programming;
  - (iii) methods for notifying persons incarcerated for misdemeanors of their right to continue voting while incarcerated; <sup>11</sup>
  - (iv) ensuring access to absentee ballot requests and submissions for individuals incarcerated for misdemeanors; and <sup>12</sup>
  - (v) methods of providing access to online voter registration.

## **State and Local Policy Changes**

Until these bills become law, Ballots Over Bars recommends that local and state actors--primarily county sheriffs' departments, the Department of Correction, and the Secretary of State--make simple and effective policy changes to safeguard eligible incarcerated voter's right to vote, including:

1. Sheriffs and Department of Correction officials should make a formal practice of informing all incarcerated people whether or not they are eligible to vote, and whether they are currently registered to vote within Massachusetts. For all eligible voters, official should provide absentee ballot applications in advance of election day, along with detailed instructions on the absentee ballot voting process and non-partisan information on all candidates and positions up for election.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

2. Sheriffs and Department of Correction officials should track how many incarcerated voters request and receive absentee ballots in the mail, and publish this information publicly, as well as documenting their jail voting practices, as a resource to other counties and agencies.
3. The Massachusetts Secretary of State should establish regular, mandatory trainings for town and city clerks (who process absentee ballot and voter registration applications) on state law regarding eligible incarcerated people's right to vote, and in particular, the laws regarding residency determinations for incarcerated voters.

## County-by-County Findings

Below are detailed findings on jail voting practices for each of the ten counties surveyed--Barnstable, Essex, Franklin, Hampden, Hampshire, Middlesex, Norfolk, Plymouth, Suffolk and Worcester.<sup>13</sup> For details on our project methodology, **see Appendix A.**

### Barnstable

Ballots Over Bars contacted the Barnstable Sheriff's Department to learn about their jail voting process. According to Special Sheriff Perry, all eligible incarcerated voters in Barnstable are made aware of their voting rights through a handbook upon intake, where there is a written voting access policy, and "house managers"<sup>14</sup> of each facility notify eligible incarcerated voters of their right to vote, particularly for voters incarcerated in the Barnstable Jail. Special Sheriff Perry said that house managers stay out of the voting process as much as possible, only providing assistance if an incarcerated voter requests money for postage - which is provided for free through the canteen fund – or needs a notary public.

Special Sheriff Perry reported that the sheriff's department does not make determinations on voter eligibility, however noted that incarcerated people often do not know if they are eligible to vote because they are unsure of the designation of their crime (a felony versus a misdemeanor). In those instances, the sheriff's department provides clarification of their charges.

Special Sheriff Perry said that he would welcome League of Women Voters members coming to Barnstable correctional facilities to do trainings on voting or non-partisan overviews of candidates running for office, and added that incarcerated people do not always trust information coming from staff, so it is helpful to have outside volunteers.

<sup>13</sup> Ballots Over Bars was unable to mobilize volunteers in Berkshire, Bristol, Duke, and Nantucket counties to research their jail voting process, so the project was not implemented in these counties and no information was gathered on barriers voters incarcerated in these counties encounter.

<sup>14</sup> A term employed by the Sheriff's Department

## **Essex**

The League of Women Voters - Salem (LWV-Salem) worked with the Essex County Sheriff's Department's (ECSD) about facilitating jail voting for eligible incarcerated voters. While ECSD was receptive to this idea, they said that voting could not take place in the 2018 primary for three reasons: security, logistics (including postage), and data (identifying who is incarcerated on a felony conviction versus a misdemeanor conviction). As a result, it is believed that none of the eligible voters incarcerated by ECSD voted in the 2018 primary, at which time ECSD likely held the largest group of eligible incarcerated voters in the state.<sup>15</sup>

For the general election, LWV-Salem was granted access to the ECSD jail. Volunteers went in and distributed absentee ballot applications and answered questions. LWV-Salem reported the following numbers: 87 absentee ballot applications were submitted. Of the 87, city clerks rejected 13 applications and approved the other 74 applications. Of the 74 absentee ballots mailed in to eligible incarcerated voters, 46 ballots were successfully submitted to Town Clerks; 23 ballots arrived at the jail too late to be returned in time; and 5 ballots that were mailed to voters were not ultimately submitted.

## **Franklin**

A Franklin County Jail volunteer contacted the Franklin County Sheriff's department and was granted permission to distribute absentee ballot applications and information about the upcoming elections to eligible incarcerated voters. On August 17th, the volunteer distributed absentee ballot applications to 19 eligible incarcerated voters for the 2018 primary, with an additional 4 the following week for a total of 23 absentee ballot applications.

However, when the volunteer submitted the absentee ballot applications to the Greenfield Town Clerk, the clerk refused to accept the applications because they came

<sup>15</sup> Massachusetts Department of Correction, Weekly Count Sheet, June 18, 2018. [https://www.mass.gov/files/documents/2018/06/26/Weekly\\_DOC\\_Count\\_06182018.pdf?\\_ga=2.11753300.1.1167717609.1572292171-1883890597.1554254263](https://www.mass.gov/files/documents/2018/06/26/Weekly_DOC_Count_06182018.pdf?_ga=2.11753300.1.1167717609.1572292171-1883890597.1554254263)

from incarcerated voters who had used the jail as their legal residence. The clerk called the Massachusetts Secretary of State, and afterwards said she had been advised that eligible incarcerated voters had to apply using the address of their residence prior to incarceration, rather than using the jail as their legal residence. Ballots Over Bars exchanged correspondence with the Secretary of State's Director and Legal Counsel of Election's Division regarding this issue, and the Secretary's office directed the clerk to consult their municipal attorney in order to interpret the law. Ultimately, the Greenfield Town Clerk held onto the ballot applications until just 4 days before the deadline, when she rejected 8 applicants who had registered to vote in other towns prior to their incarceration and 2 applicants who were currently serving felony sentences. These incarcerated voters were prevented from voting. Ballots Over Bars does not know the final outcome of the remaining 13 applications.

## **Hampden**

The Pioneer Valley Project, a community organizing group, contacted Hampden County Sheriff Nicholas Cocchi's office and were granted permission to distribute absentee ballot applications at the Hampden (Men's) Jail in Ludlow, and the Hampden (Women's) Jail and House of Correction in Chicopee. On October 18, 2018 PVP collected 38 absentee ballot applications from the Ludlow Jail, before the general election. Ballots Over Bars does not know the final outcome of these applications.

## **Hampshire**

A member of Indivisible Northampton contacted the Hampshire County Jail and spoke with staff about their process for ensuring eligible incarcerated people can exercise their right to vote. Staff informed the volunteer that the vast majority of people incarcerated in the Jail and House of Correction are ineligible to vote due to felony convictions, and that in 2016, only one person incarcerated at the jail was eligible to vote, and that that person did cast a ballot. Additionally, staff said that the number of people currently incarcerated in Hampshire County Jail on misdemeanor charges (in the summer of 2018) was in the single digits, and that all of the eligible voters would likely be released

by the time any volunteers could be trained and given access to the jail to distribute absentee applications. As a result, no volunteers went in.

## **Middlesex**

In 2016, the League of Women Voters - Arlington, led by Colleen Kirby, the Criminal Justice Legislative Specialist for the League, facilitated jail voting with the Middlesex Sheriff's Department. As a result, LWV-Arlington members were already familiar with the Sheriff's Department and were again granted access to distribute absentee ballot applications to eligible incarcerated voters in 2018. Ultimately, three volunteers filled out security clearance forms and, once approved, were allowed into the Middlesex County Jail and House of Correction in Billerica on August 29, 2018, to distribute absentee ballot applications - just 6 days before the primary. Volunteers met with incarcerated voters, who had signed up in advance, in a classroom within the jail and assisted in filling out absentee ballot applications. For the primary, 10 applications were submitted, and 2 voter registrations were submitted (registration not being necessary, but optional, for specially qualified voters). Since there were only 3 business days between the date the volunteers went in and the date of the primary, it is likely that the eligible voters who submitted their absentee ballot applications did not have enough time to receive their absentee ballots, fill them out and return them.

The applications listed addresses in multiple towns, and volunteers submitted some of the applications in-person, some via fax and some via e-mail - in the latter two cases, permission was received from the town clerks. The volunteers attempted to come in again to distribute applications for the general elections, however Sheriff's staff reported that no incarcerated people signed up, and so the visit was canceled.

## **Norfolk**

The League of Women Voters - Needham (LWV-Needham) contacted the Norfolk County Sheriff's Department and was granted permission to distribute absentee ballot applications. On August 8, 2018, just a week after the initial phone call, 4 volunteers visited three units within the jail, where they sat at a cafeteria-style table and helped



eligible voters fill out absentee ballot applications. Correctional staff informed volunteers that 302 people were eligible to vote within the facility, but volunteers were only given access to approximately 150-180 people during the visit. Ultimately, 23 people completed applications for absentee ballots for the primary, which volunteers submitted.

In October, the LWV-Needham returned to assist eligible incarcerated voters in applying for the general election. Volunteers went through a similar process, and were made available to approximately 200 people. Ultimately, 29 people completed applications for absentee ballots for the general election.

## **Plymouth**

Women of Conscience contacted the Plymouth County Sheriff's Department about their jail voting process, and were informed that the Plymouth County Jail makes ballot applications accessible to eligible voters, and did not need volunteer assistance. Staff reported that the jail does not track how many, if any, people vote each year from the jail, and could not provide additional data.

## **Suffolk**

The League of Women Voters - Boston chapter coordinated with the Suffolk County Sheriff's Department (SCSD) to organize jail voting in 2016. In the summer of 2018, Ballots Over Bars followed up with SCSD about returning ahead of the elections, however were informed by staff that the Department has been holding voter registration drives at both the Suffolk County Jail and House of Correction for some time, and did not need additional help. Staff reported that in the past, the sheriff had allowed volunteers from the Paulist Center, Ministries Voter Registration, and assorted colleges to help with jail voting, and forwarded a press release about the Department's voter registration efforts, which states that, in 2016, 120 men at the Nashua Street Jail registered to vote, as did 148 men and women at the Suffolk House of Correction. **(See Appendix B)**

Suffolk County holds one of the largest groups of incarcerated voters in the state, and has taken a public stance in supporting incarcerated voters' exercise their right to vote. Other sheriffs across the Commonwealth would benefit from insight into how the Suffolk Sheriff's Department facilitates jail voting, information which the Department has not shared with Ballots Over Bars despite repeated requests. <sup>16</sup>

Additionally, on June 26, 2018, the Suffolk Sheriff's Department co-hosted a Suffolk County District Attorney candidate forum with the American Civil Liberties Union of Massachusetts, at which incarcerated voters were permitted to ask questions of the candidates. It is not known whether the Sheriff's Department additionally informed the voters of their voting rights *while incarcerated*, or helped them access absentee ballot applications. <sup>17</sup>

## **Worcester**

Ballots Over Bars spoke with the Worcester County Sheriff's Department (WCSD), and were informed that the Sheriff's Department has a policy in place to inform eligible incarcerated voters of their right to vote, best described as a network of social workers informing individual clients of their right to vote as part of their one-on-one discussions. WCSD staff said that in previous years League of Women Voter members had helped facilitate jail voting, and staff expressed enthusiasm about working with volunteers and learning best practices for jail voting in the future, such as the 2020 election. However, staff told volunteers they could not come in to assist with the 2018 election since none of the required volunteer trainings were scheduled for the next month, leading up to election day.

<sup>16</sup> Massachusetts Department of Correction, Weekly Count Sheet, June 18, 2018. [https://www.mass.gov/files/documents/2018/06/26/Weekly\\_DOC\\_Count\\_06182018.pdf?\\_ga=2.117533001.1167717609.1572292171-1883890597.1554254263](https://www.mass.gov/files/documents/2018/06/26/Weekly_DOC_Count_06182018.pdf?_ga=2.117533001.1167717609.1572292171-1883890597.1554254263)

<sup>17</sup> In a [WBJR article](https://www.wbur.org/news/2018/06/27/jail-debate-suffolk-county-district-attorney) the following day, an incarcerated person being held pre-trial – Michael Murphy – says that if his case is settled and he's out in time to vote, he will go to vote. This phrasing suggests that he may be unaware that he retains the right to vote while incarcerated. <https://www.wbur.org/news/2018/06/27/jail-debate-suffolk-county-district-attorney>

## **Special populations: Women & Civilly Committed People**

The Department of Corrections (DOC) runs MCI-Framingham, the state's sole women's prison and the Massachusetts Treatment Center, which holds civilly committed men and certain criminally sentenced men. While MCI-Framingham and the Massachusetts Treatment Center hold people who are serving time for felony convictions and thus ineligible to vote while incarcerated, each facility also holds approximately 250 eligible voters: MCI-Framingham holds around 250 women who are awaiting trial or have been sentenced on misdemeanors for four counties that do not operate their own women's jails or houses of correction, and the Massachusetts Treatment Center holds around 250 men who have completed their criminal sentences and have been civilly committed, often indefinitely. When Ballots Over Bars contacted DOC about helping these voters exercise their right to vote, DOC staff replied that they require submission of a project proposal before volunteers may enter the facilities, and did not speak to any existing practices to help the voters they incarcerate access absentee ballots. The timeline for review of the proposal was too long to complete before the election, so volunteers did not go in.

# **APPENDIX A**

## **Ballots Over Bars Volunteer Guide**

Ballots Over Bars prepared this guide to orient project field volunteers across the state.<sup>18</sup> The Guide provides context on incarcerated people's voting rights in Massachusetts, offers guidance on contacting sheriffs' departments and interacting with staff, and the text of Massachusetts election laws pertaining to incarcerated voters and absentee ballots. Ballots Over Bars encourages community groups to make use of this volunteer guide to start their own jail voting campaigns, and gladly offers our support.

<sup>18</sup> Note: The Guide has been updated and modified for the purposes of this Report.

## APPENDIX A - Ballots Over Bars Volunteer Guide

### Ballots Over Bars Volunteer Guide Jail Voting Signup Project

“Despite the fact that most jail inmates are eligible to register to vote, it is believed that relatively few actually do so. Much of this is due to the logistical difficulties involved. Jail inmates obviously cannot go to a registrar’s office to obtain registration forms and for those who are already registered, obtaining an absentee ballot while incarcerated can be difficult as well. These obstacles disproportionately affect communities of color since 58% of jail inmates nationally are African American and Hispanic.”<sup>19</sup>

–*Jail-Based Voter Registration Campaigns*, Sentencing Project report (May 2003)

## Introduction

Hello! Thank you for signing up to participate in Ballots Over Bars’ Jail Voting Signup Project. In 2016, Rachel Corey and elly kalfus co-founded the all-volunteer community group Ballots Over Bars in collaboration with people incarcerated in Massachusetts prisons in order to help make their voices heard in government. Ballots Over Bars is a project of the Emancipation Initiative, a community organization founded by Derrick Washington, currently incarcerated in MCI-Norfolk prison. The Emancipation Initiative’s (EI) two priorities are ending life without parole sentencing and restoring universal voting rights to all currently and formerly incarcerated people.

Over the past two years we have focused on helping disenfranchised people in Massachusetts prisons make their voices heard through our Donate Your Vote project<sup>20</sup> and have given presentations to high school and college students on the history of incarcerated people’s fight for the right to vote,<sup>21</sup> as well as interviewing people who fought for their right to vote while incarcerated in MA.<sup>22</sup>

While we are working to repeal Massachusetts’ 120<sup>th</sup> Amendment (adopted in 2000), which bars all people incarcerated on felony convictions from voting, we also want to make sure that each and every one of the approximately 10,000 people incarcerated in Massachusetts who are eligible to vote are able to do so. Thank you for helping us get closer to that goal.

<sup>19</sup> Sentencing Project, *Jail-Based Voter Registration Campaigns*, May 2003, [https://www.prisonpolicy.org/scans/sp/fd\\_jailbasedvotercomporepost.pdf](https://www.prisonpolicy.org/scans/sp/fd_jailbasedvotercomporepost.pdf)

<sup>20</sup> Emancipation Initiative, *Donate Your Vote 2020*, <http://emancipationinitiative.org/get-involved/donateyourvote-2020/>

<sup>21</sup> kalfus, elly, 2018 Columbia Graduate School of Arts and Sciences Master’s SynThesis Competition, Youtube. <https://www.youtube.com/watch?v=Yep76xCVPBI>

<sup>22</sup> kalfus, elly, *Ballots Over Bars: An Oral History of Incarcerated People’s Fight for the Right to Vote in Massachusetts*, <http://oralhistory.columbia.edu/2018-ballots-over-bars/>

## Voter Eligibility in Massachusetts

All U.S. citizens who reside in Massachusetts and are 18 years of age or older are eligible to vote in all municipal, state and federal elections unless they are currently incarcerated on a felony conviction. Incarcerated people who *are* eligible to vote include:

1. People incarcerated pre-trial;
2. People incarcerated on misdemeanor convictions; and
3. People who have completed their sentence for a sex offense and are detained indefinitely, or civilly committed, at the Massachusetts Treatment Center.

Additionally, once people are released from prison, regardless of whether they are on probation or parole, they immediately become eligible to register to vote.

## Where Are Eligible Voters Incarcerated?

In Massachusetts, most people incarcerated on felony sentences are sentenced to state prisons (run by the Massachusetts Department of Correction), whereas people incarcerated pre-trial or on misdemeanors are incarcerated in jails and houses of correction (run by individual counties). However, there are always exceptions.

1. People incarcerated pre-trial: Most people who are incarcerated awaiting trial are incarcerated in county jails. Note: Women from the following counties are incarcerated pre-trial at the state's sole women's prison, MCI-Framingham: Essex, Middlesex, Norfolk and Plymouth. Occasionally, men incarcerated pre-trial are held in state prisons;
2. People incarcerated on misdemeanor convictions: Most people who are sentenced to jail time on misdemeanor convictions are incarcerated at county houses of correction. Note: People who have been sentenced to serve time on felony convictions may also be incarcerated at county houses of correction, however, are ineligible to vote; and
3. People who are civilly committed: Most people who have been civilly committed are incarcerated at the Massachusetts Treatment Center, which is operated by the Massachusetts Department of Correction (DOC).

## How Do Incarcerated People Cast Ballots?

In the 1970s and 1980s, eligible voters incarcerated in Massachusetts sued the Secretary of State because they were being prevented from voting. The Massachusetts Supreme Judicial Court ruled in their favor and ordered the legislature to create a pathway for eligible incarcerated voters to cast their ballot without going to the ballot box themselves.<sup>23</sup>

As a result, Massachusetts General Laws Part I/Title VIII/Chapter 50 (iii) was added, which specifies that people who are otherwise eligible to vote but are "confined in a correctional facility or a jail, except if by reason of a felony conviction," are specially qualified voters who are

<sup>23</sup> *Evers v. Davoren*, SJC, Suffolk, s.s., No. J74-118CI (1974), *Cepulonis v. Secretary of the Commonwealth*, 452 NE 2d 1137 (1983)

entitled to vote by absentee ballot. Furthermore, as specially qualified voters, incarcerated people who are eligible to vote do not need to fill out a voter registration form – instead, they can request an absentee ballot and then send in their ballot.

NOTE: According to Massachusetts Supreme Judicial Court precedent, incarcerated voters may use *either* their most recent address (where they lived prior to incarceration) or the correctional facility address (where they are incarcerated now) as their legal voting address. (*Dane v. Board*, 374 Mass. 152 (1978) It is up to the incarcerated voter to decide. However, according to the Secretary of State's Director and Legal Counsel of Election's Division, the presumption is that applicants are residents of their most recent address, rather than the jail facility. Additionally, voters who have previously registered within Massachusetts, but now choose to vote from a new address, may be required to re-register. <sup>24</sup>

## Barriers to Voting

The two main structural barriers that prevent eligible incarcerated people from voting in Massachusetts are:

1. Lack of knowledge: of eligibility, of absentee ballot application deadlines, of information on the candidates and races, and of the process for obtaining absentee ballots; and
2. Lack of funds to pay for postage.

Massachusetts currently incarcerates around 9,300 people in county jails and houses of correction on any given day.<sup>25</sup> The vast majority of these people are eligible to vote, as are the approximately 250 people civilly committed in the Massachusetts Treatment Center and the 250 people held pre-trial in the MCI Framingham women's prison.

However, from what we have heard from formerly incarcerated people, most facilities across the state do not help incarcerated voters obtain absentee ballots, and in fact some give incorrect information on their eligibility to vote.<sup>26</sup> Even when incarcerated voters have the funds and knowledge to apply for an absentee ballot, they may encounter additional obstacles, such as forms getting lost in the mail or town clerks rejecting their application based on an incorrect understanding of the law. When this happens, incarcerated voters are left with little recourse.

<sup>24</sup> Ballots Over Bars is currently in communication with the Secretary of State's office about what incarcerated applicants need in order to claim a voting address.

<sup>25</sup> Massachusetts Department of Correction, Weekly Count Sheet, June 18, 2018. [https://www.mass.gov/files/documents/2018/06/26/Weekly\\_DOC\\_Count\\_06182018.pdf?\\_ga=2.117533001.11167717609.1572292171-1883890597.1554254263](https://www.mass.gov/files/documents/2018/06/26/Weekly_DOC_Count_06182018.pdf?_ga=2.117533001.11167717609.1572292171-1883890597.1554254263)

<sup>26</sup> Formerly incarcerated people report that Massachusetts Treatment Center staff and parole officers have falsely informed civilly committed people and people released on parole that they are ineligible to vote.

# Are Eligible Incarcerated Voters Casting Ballots?

We do not know, and we want you to help us find out. In 2016, the Suffolk and Middlesex county sheriffs contacted the League of Women Voters of Massachusetts, and volunteers from the Arlington and Boston LWV chapters helped eligible incarcerated voters cast ballots. We do not know if other county sheriffs – or incarcerated people - are aware of their voting rights. We are launching this project to find out, and ensure every eligible voter is able to vote!

## Jail Voting Project

Educate sheriff's office staff on incarcerated citizens' right to vote (unless they are currently incarcerated on a felony conviction) and ensure that all eligible incarcerated voters will be able to vote in the 2018 primary and general election.

NOTE: Take notes while on the call of the names of the people you speak with, their titles, and their phone numbers (if they connect you to someone else). Do not be afraid to ask for this information – explain that you want to keep track of everyone you're speaking with for the next time you call. Write down any information you hear, and then enter it into the Google Form we will send you to track our efforts. If at any point you are asked a question you do not know the answer to, say you will get back to them – and then get in touch with us (BallotsOverBars@gmail.com).

### STEP 1

Call the sheriff's office for your assigned county and explain that you are a nonpartisan, concerned citizen who wants to make sure that all eligible incarcerated voters are able to vote in the 2018 primary and general election.

- Tip: When calling the jail, ask to speak with the "Volunteer/Outreach Coordinator," or "Director of Education." We have coordinated voting with jail staff holding these positions in certain counties, however depending on which county you live in, the sheriff's office may not employ someone with this title, or that position may entail different responsibilities.
- Tip: Avoid using the term "voter registration" where possible, since incarcerated people are specially qualified voters and do not in fact have to register; use more accurate term "voter signup."
- Tip: You can mention your affiliation with Ballots Over Bars, or with League of Women Voters or other groups you are a part of, however it could either help or hurt.

Some sheriffs' offices may know that the majority of people they lock up are eligible to vote, while others may have no idea, or may be skeptical. Assume it is not common knowledge and be prepared to explain who is allowed to vote and who is not. Some possible scenarios:

- If Sheriff's office says they already have a program to help people in the jail vote
  - Compliment them on their forward-thinking and ask for a contact person so you can ask more questions: How long have they been doing this? Do they do it all of the correctional facilities in the county? How many incarcerated people apply for



absentee ballots? How many actually vote? What information do they give incarcerated people on who is running, and on ballot questions? Do they have press releases or documentation about their voting efforts?

- If Sheriff's office says they did not know people in jail could vote but are open to learning more.
  - Thank them for their willingness to discuss. Explain that everyone incarcerated in Massachusetts who is a U.S. citizen and over the age of 18 is allowed to vote in all elections unless they are currently incarcerated on a felony conviction. Explain that they can find this listed on the Secretary of State's website (<https://www.sec.state.ma.us/ele/eleifv/howreg.htm>) and offer to give the citations for the Massachusetts General Laws (p. 6).
  - Ask if you, as a nonpartisan concerned citizen, could bring 2-3 volunteers in with you in July or August to help all eligible incarcerated voters fill out absentee ballot applications, and then return again to help eligible incarcerated voters fill out their absentee ballots once they receive them. Ask for a contact person who will help you set this up and thank them! Contact us!
  
- If Sheriff's office says they do not believe that incarcerated people are eligible to vote, or that no one in their facility is eligible
  - Explain that everyone incarcerated in Massachusetts who is a U.S. citizen and over the age of 18 is allowed to vote in all elections unless they are currently incarcerated on a felony conviction. Explain that they can find this listed on the Secretary of State's website (<https://www.sec.state.ma.us/ele/eleifv/howreg.htm>) and offer to give the citations for the Massachusetts General Laws (p. 6). Explain that Suffolk County Sheriff Tompkins's office put out a press release in 2017 about their jail voter signup process and offer to send.
  - Ask whether they're saying *everyone* in *all* of the facilities in their county are incarcerated on felony convictions. If so, thank them and contact us (we will look into it). If not, ask how they plan to protect incarcerated people's right to vote.
  
- IF Sheriff's office sends you to voicemail, doesn't answer the phone, or otherwise does not get back to you.
  - THEN keep calling and leaving messages and e-mails. After multiple attempts, try to contact the superintendents of the individual facilities to ask about jail voting. The superintendents may just refer you back to the sheriff's office, but worth a try.

## STEP 2

If you reach someone at the Sheriff's office who is willing to have you come in to help incarcerated voters fill out absentee ballot applications, congratulations!

Contact us ([ballotsoverbars@gmail.com](mailto:ballotsoverbars@gmail.com)) so we can help you plan the logistics of going in and consult the Volunteer Protocol!

# Relevant MA State Election Laws

Massachusetts election law defines U.S. citizens 18 years of age or older who are incarcerated in Massachusetts for any reason other than a felony conviction as “specially qualified voters” who are entitled to vote by absentee ballot, and do not need to register in order to vote. Below, find Massachusetts election laws relevant to incarcerated voters. Lines italicized for emphasis.

## Massachusetts General Laws Part I/ Title VIII/ Chapter 50/ Section 1 Definitions

"Specially qualified voter", a person (a) who is otherwise eligible to register as a voter; and (b) (1) whose present domicile is outside the United States and whose last domicile in the United States was Massachusetts; or (2) whose present domicile is Massachusetts and who is:

- (i) absent from the city or town of residence and in the active service of the armed forces or in the merchant marine of the United States, or a spouse or dependent of such person;
- (ii) absent from the commonwealth; or
- (iii) *confined in a correctional facility or a jail, except if by reason of a felony conviction.*

## Massachusetts General Laws Part I/ Title VIII/ Chapter 54/ Section 89 Applications; seasonably filed; spoiled ballots; application by family member

*Any form of written communication evidencing a desire to have an absent voting ballot be sent for use for voting at an election shall be given the same effect as an application made in the form prescribed by the state secretary.* No application shall be deemed to be seasonably filed unless it is received in the office of the city or town clerk or registrars of voters before noon on the day preceding the election for which such absent voting ballot is requested; provided, however, that if the day preceding such election is a Sunday or legal holiday, then it shall be received by such clerk or registrars before five o'clock post meridian on the last previous day on which such office is open[...]. *Said application may request an absent voting ballot for each regular or special primary and regular or special election which occurs within the calendar year in which the application is received by the city or town clerk or registrars.*

## Massachusetts General Laws Part I/Title VIII/Chapter 54/Section 91A Applications of specially qualified voters

*A specially qualified voter, as defined in section one of chapter fifty, who qualifies for an absent voting ballot pursuant to section eighty-six, or a family member of such specially qualified voter, may apply for an absent voting ballot in the manner prescribed in section eighty-nine[...].* If the registrars certify that such resident has the qualifications for voting, the clerk shall deliver an official absent voting ballot to such resident in the manner prescribed in section ninety-one B.

## Massachusetts General Laws Part I/Title VIII/Chapter 54/Section 91B Delivery of Ballots

The official absent voting ballot and accompanying papers described in section eighty-seven shall be delivered as hereinafter provided.

(a) *Except as required by subsections (b) and (c), the ballot and accompanying papers shall be mailed postage prepaid or, if the voter so requests, delivered when called for at the office of the clerk.*

## **APPENDIX B**

### **Suffolk County Sheriff's Department Voter Registration Press Release**

The Suffolk County Sheriff's Department issued a press release concerning the voter registration drive they held for eligible incarcerated voters inside Nashua Street Jail and Suffolk County House of Correction for the 2016 General Election. Additionally, the press release emphasizes the importance of civic engagement in reducing recidivism, and serves as a model for how other sheriffs' departments can support incarcerated voters' rights.

## **APPENDIX B - SCSD Voter Registration Press Release**

FOR IMMEDIATE RELEASE

CONTACT: Peter Van Delft

January 31, 2017

(617) 704-6682

### **VOTER REGISTRATION DRIVE FOR DEPARTMENT'S INCARCERATED ENCOURAGES CIVIC RESPONSIBILITY, DISCOURAGES RECIDIVISM**

Under the leadership of Suffolk County Sheriff Steven W. Tompkins, Department staff members recently joined with representatives from a group of nonpartisan voting rights organizations to help register men and women incarcerated at the Nashua Street Jail and Suffolk County House of Correction to vote in the upcoming 2016 General Election.

Though Massachusetts currently suspends the right to vote of those who are serving time on felony charges, as does nearly every state across the nation outside of Maine and Vermont, the prohibition of voting rights does not extend to those who are un-sentenced and awaiting trial or convicted of misdemeanor crimes.

The Suffolk County Sheriff's Department provides programming and training for inmates and detainees that are designed to improve their social, educational and employable skills with the goal of reducing recidivism and contributing to overall community health and safety. As part of those efforts, the Department emphasizes civic participation and responsibility, and encourages those who are eligible to become engaged in the decisions that directly and indirectly affect their communities.

"The vast majority of our detainees and inmates are from neighborhoods that fall within a five mile radius of our facilities," said Sheriff Tompkins. "We want them to leave us as individuals who are better able to care for themselves and their families, and take an active and positive role in their neighborhoods when they return. Civic engagement – being involved in the process through which our laws are created and decisions are made – is a critical part of that."

If the numbers are any indication, it appears that many incarcerated individuals feel similarly. At the Nashua Street Jail, 120 men have been registered and at the House of Correction, 148 men and women have been added to the rolls of potential voters. In addition to the nonpartisan information provided by the Massachusetts Secretary of State's Office, the populations at both facilities also received materials outlining the current state ballot initiatives and questions.

According to Suffolk County Sheriff's Department Volunteer Coordinator Pat O'Neal, the positive responses from past and present participants underscore the desire than many have to remain connected to their communities while incarcerated.

“This isn’t the first election that we’ve made these services available to the men and women in our facilities and I’m confident that it won’t be our last,” O’Neal said. “We’ve had good participation and we’re happy to be able to encourage more people to become involved in the civic process.”

That involvement, says Sheriff Tompkins, is not only a key component in the rehabilitation of those already incarcerated, but it also has the great potential to prevent future offenders.

“The majority of those who are in my care and custody are there as a result of addiction or mental illness, or both, and many of them belong somewhere other than jail or prison,” said Sheriff Tompkins. “It’s clear that we need more recovery and mental health resources in the community, and part of getting them requires that we all be civically engaged and making sure that those in elected office are working in their constituents’ best interests.”

“Ultimately,” Sheriff Tompkins continued, “much of our population is already disenfranchised and voting, making your voice heard, is crucial to empowerment which, in turn, helps to create communities that are safer, healthier and more vibrant for everyone.”