

Can People Vote in Jail? Yes, But It's Very Challenging

AUGUST 1, 2022



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ISSUES

VOTING AND
ELECTIONS

By Matthew Peljovich, a Summer 2022 CLC intern

The freedom to vote is one of our most fundamental rights, and our democracy is strongest when every voter can freely participate in it — including those who are serving time in jail.

Two out of every three people currently in U.S. jails, or roughly half a million people, are being held in jail while they await their trial. These Americans have not been convicted of a crime, so there should be no restrictions on their right to vote.

Many other people in jail are serving time for a minor misdemeanor offense, which means they can still vote in 44 states and the District of Columbia.

Rules vary by state, so the best way for people to find out if they are eligible to vote from jail is through our free, user-friendly tool at RestoreYourVote.org.

While most people who are currently in jail have the right to vote, exercising that right can be incredibly difficult and this problem is particularly urgent because of

right can be incredibly difficult and this problem is particularly urgent because of who it impacts.

Jails disproportionately incarcerate voters who are Black, Indigenous or people of color or are low-income, homeless or have a disability. Ultimately, the barriers in place that prevent people from voting while in jail disproportionately deprive historically marginalized voters of their voice in our democracy.

Why is voting from jail so hard?

While most incarcerated people are technically free to vote under the law, they face countless barriers and obstacles throughout the process.

Someone who is incarcerated cannot go to their local elections office to register or vote, so they depend on alternatives provided by the jail. Incarcerated individuals need access to crucial information, like whether they are eligible to vote or when their local Election Day is, and they need access to the forms required to register and vote.

Unfortunately, election officials and prison administrators routinely fail to provide this access. One survey found that 30% of election officials in Ohio did not know if those serving misdemeanor sentences could still vote.

Incarcerated people are often left to fend for themselves to find the information they need to exercise their freedom to vote. Without internet access, voters in jail must rely on the prison's administration to provide paper registration forms or vote-by-mail applications, which can get stuck in bureaucratic delays or discarded by uninformed prison staff.

Even if a voter in jail gains access to these forms, they may lack the necessary identification to register or vote and may find their forms stuck in the jail's mail processing department, causing them to miss election deadlines. Additionally, many states that require an excuse to vote by mail do not count being incarcerated as a valid excuse.

In recent years, many states have passed laws that make it harder to register and vote in general, which negatively impact those voting from jail. One Tennessee law, which Campaign Legal Center (CLC) fought in court, required voters to cast their ballot in person the first time they vote, even if they are eligible to vote by mail.

Fulfilling this unnecessary requirement to vote would be impossible for someone in jail.

The challenges of trying to vote from jail can be so difficult to overcome that many stop trying. In one Ohio jail with 1,600 inmates, only eight were able to vote in 2016. In another jail in the same county, only three inmates voted out of 500.

How do we make voting more accessible in jails?

Fortunately, there are steps that people and advocates can take to help voters in jail exercise their freedom to vote.

Transparency and Accountability

Organizations must identify the current state of jail voting in their state or city to hold leaders accountable for providing jailed voters access to information and resources they need to vote.

A report published by the Arizona Coalition to End Jail- Based Disenfranchisement, in partnership with CLC, identified and rated each Arizona county's jail voting policies. It also found the statewide jail voting turnout rate to be less than half a percent in 2020. Rules vary by state, so identifying the gaps in a state's voting policies is the first step to closing those gaps.

Direct Registration and Voting Services

In states where local governments have failed to provide access, activists and nonprofit groups have stepped up to play a key role in voter education and facilitation.

One organization, Chicago Votes, started hosting registration drives in the Cook County Jail in 2017. They were then able to push the state and county to open an early voting site inside the jail for the 2020 election, which led to a 40% turnout rate among the inmates.

Local Advocacy and Activism

Thanks to the hard work of voting advocates and activists, the District of Columbia's Board of Elections designated the city jail as a voter registration agency, so staff are required to distribute voter registration forms and educational information to voters in jail. They also opened an in-person voting site inside the prison to ensure jailed voters could exercise their freedom to vote.

State-Level Legislation

After years of pressure, Massachusetts recently passed the VOTES Act. One of CLC's former fellows, Dana Paikowsky, helped write the bill, which requires jails to actively provide education and assistance throughout the voting process.

CLC's Role

As part of a comprehensive strategy to help jailed voters access their freedom to vote, CLC developed a manual to provide advocates with the tools they need to help jailed voters cast a ballot.

CLC also provides legal support to partners on the ground and has consulted directly with states and localities to craft and implement measures that expand ballot access in jails.

In Ohio, jailed voters who were incarcerated after the mail-in ballot application deadline, but before Election Day, had no way to vote. CLC sued and won, forcing the state to provide and accept mail-in ballots for those voters.

Serving time in jail does not mean you have lost the right to vote, but it does

serving time in jail does not mean you have lost the right to vote, but it does makes it much harder to exercise that right. CLC will keep working to protect and expand the freedom to vote to every voter, including those who are serving their time, because our democracy works best when every voter can make their voice heard.

Can People with Felony Convictions Vote?

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