

# **Voting Rights Behind Bars: Election Accessibility for Voting-Eligible Populations in New York Jails**

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## **Abstract**

While the question of post-incarceration voting rights restoration is frequently explored by scholars, there is significantly less attention allotted to rights preservation for individuals who are in jail yet remain eligible to vote. Limited studies illustrate that mechanisms of de facto disenfranchisement, meaning standard procedures within the justice system that hinder or even bar voter participation, are pervasive and persistent. In other localities, these findings have been critical to implementing policy solutions that address institutional barriers and increase civic participation among detained populations. This important research, however, has been nonexistent in New York. Based on a random sample of ten New York counties stratified by population, along with Riker's Island, this study seeks to elucidate what election assistance procedures are offered in jail facilities, if any. This research involves records requests to county Boards of Elections and jails, along with phone interviews with jail officials. Through interviews and records requests, this study found that election assistance procedures varied significantly across county lines and, in particular, that misinformation around detained voter eligibility impaired assistance. Importantly, only one county jail maintained copies of absentee ballot requests. There, research uncovered that a mere two out of 10 requesting individuals were ultimately able to vote. Yet, no county monitors civic participation of detained populations entirely, requiring this study to manually match names from jail rosters to those of registered and absentee voters to identify detained voters. Findings that limited or no effort is put into ensuring ballot access for detained populations points to a miscarriage of civic rights within jails in New York State.

**Keywords:** Voting rights, disenfranchisement, criminal justice, 2020 election, New York

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## Introduction

The re-enfranchisement of people on parole or probation for felony convictions is an increasingly prominent and salient question of policy change in recent years. Since 1997, more than 20 states have taken some level of legislative action to restore voting rights, and yet, research indicates that “a majority [of the public] is still hesitant to allow those on probation and parole to vote.”<sup>1</sup> By state, current procedure to regain voting rights mirrors this mixed response: some restore the right to vote automatically, some require re-registration, others preclude restoration without the payment of Court fines or other fees, and the more than 30 remaining states do not allow people under community supervision to vote at all.<sup>2</sup> New York was among these 34 states, until 2021, when its governor signed Senate Bill 830(B), which extends voting rights to people on parole. While the question of rights restoration is frequently explored by scholars and state legislature alike, there is significantly less attention allotted for rights preservation of individuals in jail who *remain* eligible to vote.

Legally, justice-involved individuals who are nonetheless eligible to vote have the constitutional right to do so from jail, but there are practical barriers which may prevent or deter them from exercising this right. Detained populations awaiting trial or conviction, along with those serving a sentence for a misdemeanor conviction,<sup>3</sup> are all among those in custody who are eligible to vote. There are an estimated

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<sup>1</sup> Bruce E. Cain and Brett Parker, “The Uncertain Future of Felon Disenfranchisement,” *Missouri Law Review* 84, no. 4 (2019): 939.

<sup>2</sup> Morgan McLeod, “Expanding the Vote: Two Decades of Felony Disenfranchisement Reforms,” *The Sentencing Project*, October 17, 2018, <https://www.sentencingproject.org/publications/expanding-vote-two-decades-felony-disenfranchisement-reforms/>.

<sup>3</sup> Recognizing that in 6 states (Illinois, Indiana, Kentucky, Michigan, Missouri, and South Carolina) a misdemeanor conviction also disenfranchises otherwise eligible voters (Jackson-Gleich and Yeary, 2020).

746,000 eligible voters currently in jail nationwide.<sup>4</sup> In fact, present-day populations of individuals detained pretrial are five times greater than those of the 1970s, when the U.S. Supreme Court first upheld the right to vote while in jail.<sup>5</sup> In *O'Brien v. Skinner* (1974), a case originating in Monroe County, New York, the Court declared it unconstitutional to abridge or impede upon the voting rights of jailed, eligible voters.<sup>6</sup> Of issue is that the Court did not advise in *O'Brien* on procedural implementation to protect these rights.<sup>7</sup> In New York, eligible voters in jail custody may vote absentee. Moreover, absentee ballot and voter registration applications are available in jail facilities, but only required at those located within New York City.<sup>8</sup>

Despite these affirmations of voting rights, people in jail for pretrial detainment or awaiting conviction, along with those serving a misdemeanor, potentially face a truly uphill battle to exercise their constitutional right to vote. Indeed, both standard jail procedures and broader trends of confusion around the voting eligibility of detained populations can dissuade voter turnout in jails. Once in custody, detained individuals have limited or no access to internet, personal identification, pens with blue or black ink, and voter registration or

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<sup>4</sup> Ginger Jackson-Gleich and Rev. Dr. S. Todd Yearly, "Eligible But Excluded: A Guide to Removing the Barriers to Jail Voting," Prison Policy Initiative, [https://www.prisonpolicy.org/reports/jail\\_voting.html](https://www.prisonpolicy.org/reports/jail_voting.html).

<sup>5</sup> Dana Paikowsky, "Jails as Polling Places: Living up to the Obligation to Enfranchise the Voters We Jail," *Harvard Civil Rights-Civil Liberties Law Review* 54, no. 2 (Summer 2019): 835.

<sup>6</sup> *O'Brien v. Skinner*, 414 U.S. 524 (1974).

<sup>7</sup> Margaret Barthel, "Getting Out the Vote From the County Jail," *The Atlantic*, November 4, 2018, <https://www.theatlantic.com/politics/archive/2018/11/organizers-fight-turn-out-vote-county-jails/574783/>.

<sup>8</sup> Brennan Center for Justice, "Can I Vote? Frequently Asked Questions by People with Criminal Records," Brennan Center, <https://www.brennancenter.org/sites/default/files/legacy/Democracy/NY%20State%20voting%20FAQ.pdf>.

absentee ballot forms;<sup>9</sup> these limitations are customary to intake procedures in jail facilities but inherently create (potential) obstacles to the ballot. Importantly, these barriers only apply to detained individuals who are *aware* they have the right to register to vote or vote absentee. In reality, prior studies in other counties and states repeatedly find that those in custody, along with the corrections officers themselves, misconstrue or do not know voting eligibility guidelines for potential detained voters (Porter, 2010; Fisher, 2020).

This study aimed to determine what election assistance procedures are currently in place in various New York counties and if misinformation persists among both jailed, eligible voters and county officials. This research required records requests to county Boards of Elections and jail facilities. Presumably, a large majority of counties have no mechanisms in place to monitor voter turnout among detained populations. As a result, any voters in New York jails were identified manually by matching names of detained individuals to names of registered and absentee voters. Outreach to county jails also included requests for phone interviews with officials to allow for a complete picture of any election procedures. This research is the first of its kind in the State of New York.

As a result, this study faced incredible barriers to requesting and receiving information from county jails and Boards of Elections. Ultimately, though, the resulting turnout rate, across ten sampled counties and on Riker’s Island, aligns with prior studies’ findings that detained voter participation is poor or nonexistent. Among an estimated voting-eligible jail population of 5,036, this research found only 26 individuals that cast ballots for the 2020 Election while in custody. This equates to a turnout rate of 0.52%, or less than one person for every one hundred eligible. Evidently, current election assistance procedure is largely inadequate – and, in some cases, was

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<sup>9</sup> Ginger Jackson-Gleich and Rev. Dr. S. Todd Yeary, “Eligible But Excluded: A Guide to Removing the Barriers to Jail Voting,” Prison Policy Initiative, [https://www.prisonpolicy.org/reports/jail\\_voting.html](https://www.prisonpolicy.org/reports/jail_voting.html).

further weakened by visitor restrictions during the COVID-19 pandemic. And yet, overall voter turnout in New York State reached 70% in the 2020 Election. This illustrates how constraints to the democratic process inevitably and irreparably harm those so often forgotten in elections: individuals in the justice system.

### **Background and Prior Research**

There are a variety of mechanisms and misconceptions in the justice system that impede the civic rights of detained populations. An overview of these potential barriers by the Prison Policy Initiative highlights the lack of access to personal identification (i.e. driver's license or state issued I.D.),<sup>10</sup> pens, stamps, and registration forms,<sup>11</sup> all of which are necessary to register or apply for an absentee ballot.<sup>12</sup> Jackson-Gleich and Yeary have also noted the especially critical lack of or limited access to the internet which may contribute not only to a greater difficulty registering, but confusion around election dates, registration deadlines, and voter eligibility (Prison Policy Initiative). Further, if detained individuals are able to successfully apply for an absentee ballot, a lack of internet access obstructs their ability to research candidate or policy information,<sup>13</sup> rendering potential jailed voters unable to cast an *informed* ballot.

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<sup>10</sup> Granted, many states do not require photo I.D. to register, including New York, however, it should be anticipated that justice-involved individuals similarly not have access to their social security card, birth certificate, utility bills, paystubs, and other accepted forms of identification that are still required.

<sup>11</sup> Ginger Jackson-Gleich and Rev. Dr. S. Todd Yeary, "Eligible But Excluded: A Guide to Removing the Barriers to Jail Voting," Prison Policy Initiative, [https://www.prisonpolicy.org/reports/jail\\_voting.html](https://www.prisonpolicy.org/reports/jail_voting.html).

<sup>12</sup> Only three localities, Cook County, Chicago, Los Angeles County, and Washington, D.C., allow detained individuals to vote in-person, by converting jail facilities into polling places for voters on Election Day. (Vasilogambros, July 16, 2021).

<sup>13</sup> *Ibid.*

In addition to obstacles that potential voters face, there is significant confusion around voting eligibility that prevents eligible detained individuals from participating in an election. This trend of misinformation is illustrated by research in New York which found that in a sample of the State's eligible voters who were *previously* incarcerated, an astounding 30% "incorrectly believed they were ineligible to vote."<sup>14</sup> Generally, if justice-involved individuals are first-time voters, which may be the case as the jail population "skews younger" (Barthel, 2018; Lewis and Shen, 2020), these misconceptions are added obstacles to a registration process which may already seem daunting or unfamiliar.

Misinformation around voting eligibility is also a problem among officials in jail and/or elections administration, and perhaps an even costlier one. For instance, a staggering 90% of local election officials surveyed in Tennessee incorrectly recalled rules around voting rights restoration for prior felony convictions.<sup>15</sup> Similarly, reports have uncovered that jail officials misinform eligible voters of their rights while in jail custody. Take the case of the Apache County Jail, Arizona, where one detained individual was warned by a corrections officer that voting while ineligible was illegal and could result in additional felony charges.<sup>16</sup> Importantly, a lack of access to the internet or informed poll workers meant that he was unable to confirm if this risk applied to him,

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<sup>14</sup> Nicole D. Porter, "Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2010," The Sentencing Project, October 2010, <https://www.sentencingproject.org/wp-content/uploads/2016/01/Expanding-the-Vote-State-Felony-Disenfranchisement-Reform-1997-2010.pdf>.

<sup>15</sup> Robin Fisher, "Ballot Access behind Bars," Fordham Law Review Online 89 (2020-2021): 90.

<sup>16</sup> Madeleine Carlisle and Lissandra Villa, "Whether or Not You're Able to Vote in Jail May Come Down to Where You're Incarcerated," Time, October 1, 2020, <https://time.com/5895219/voting-jail-2020-election/>.

and thus was dissuaded from voting out of caution.<sup>17</sup> In his case, he was indeed eligible to vote.<sup>18</sup> So, there is a significant possibility that those detained who actually express interest in voting and request assistance may not receive the help that they need and have a constitutional right to. And yet, all too limited surveillance has taken place in states to determine how many of these voting-eligible detained individuals are ultimately voting, and how expansive voter mobilization efforts are in these jail facilities.

While not comprehensive, nor expressly indicative of New York's specific problems, prior research carried out around the country has been enlightening and, largely, indicative of disenfranchisement. For example, the Arizona Coalition to End Jail-Based Disenfranchisement reported an estimated voter turnout rate of 2.9% in the State's jails during the 2020 General Election (2021). Notably, upon examining procedures with jails in all 15 state counties, the Arizona-based coalition revealed that only one county met their criteria for adequate election assistance procedures.<sup>19</sup> Likewise, efforts in Wisconsin found, again, only one county to be providing sufficient "guidance on the voting process" in jails.<sup>20</sup> For La Plata County in Colorado, only one *vote* was cast from the county jail in the past two decades.<sup>21</sup> In a similar vein, one jail in Ohio saw only eight voters exercise this right in the 2016 Election, out of a total detained

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<sup>17</sup> Robin Fisher, "Ballot Access behind Bars," *Fordham Law Review Online* 89 (2020-2021): 91.

<sup>18</sup> *Ibid.*

<sup>19</sup> Nicole Lewis and Aviva Shen, "Unlocking the Vote in Jails," The Marshall Project, October 26, 2020, <https://www.themarshallproject.org/2020/10/26/unlocking-the-vote-in-jails>.

<sup>20</sup> *Ibid.*

<sup>21</sup> Dana Paikowsky, "Jails as Polling Places: Living up to the Obligation to Enfranchise the Voters We Jail," *Harvard Civil Rights-Civil Liberties Law Review* 54, no. 2 (Summer 2019): 831

population of 1,600.<sup>22</sup> These dismal turnout rates and lacking resources in county jails are part of a widespread pattern of procedural barriers which result in disenfranchisement.

This glaring obstruction of civic rights cannot be separated from a history of racial disenfranchisement, nor the over-incarceration of Black and Brown people in the criminal justice system. This most directly implicates individuals serving felony convictions, in prisons where “African Americans are incarcerated at nearly six times the rate of whites,” and Hispanics nearly double.<sup>23</sup> Importantly, the disenfranchising effects of incarceration can be felt even before conviction, especially for people of color. A nationwide study from 2002 revealed that 69% of detained individuals were non-white, and since then the unconvicted, pre-trial population has doubled.<sup>24</sup> These bloated populations are in part symptomatic of a burdensome and racially coded bail system, where defendants of color both receive a bail amount that is “twice as high as bail set for white defendants” and are less likely to be able to afford bail.<sup>25</sup> Metropolitan areas, like New York City, are also significantly more likely to detain Black and Brown people pre-trial.<sup>26</sup> Although this variable is not within the scope of this research, the realities of *de facto* disenfranchisement in the State of New York bear an unequal burden on people of color in jail custody.

Turning to New York, there is severely limited empirical data on voting accessibility and turnout of justice-involved individuals in

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<sup>22</sup> Esther Honig, “Voting with Inmates at the Franklin County Jail,” WOSU Public Media, November 8, 2016, <https://news.wosu.org/news/2016-11-08/voting-with-inmates-at-the-franklin-county-jail#stream/0>.

<sup>23</sup> Marc Mauer and Ryan S. King, “Uneven Justice: State Rates of Incarceration by Race and Ethnicity,” The Sentencing Project, July 2007, <https://www.issuelab.org/resources/695/695.pdf>.

<sup>24</sup> Wendy Sawyer, “How race impacts who is detained pretrial,” Prison Policy Initiative, October 9, 2019, <https://www.jstor.org/stable/resrep27304?seq=1>.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

the State. Among New York jails, the state census data tallied a total population of 16,872 for December of 2019, which decreased to 13,575 for December of 2020.<sup>27</sup> To be clear, the exact number of eligible voters within this population is unknown. Previous studies have investigated issues adjacent to election accessibility in New York jails. For instance, Morris examined “lost voters” in New York City, meaning “individuals with a history of participating in elections,” that have been disenfranchised due to a felony conviction.<sup>28</sup> In total, 2,518 lost voters were identified for the 2017 general election.<sup>29</sup> In 2005, a study of the voting habits of justice-involved individuals in New York indicated that a remarkable 61.9% of participants had been previously registered to vote, but that this number dropped by 33% when asked if they were still currently registered.<sup>30</sup> These empirical findings point to a systemic problem of representation in the criminal legal system, but it can only be speculated how many detained, eligible voters face disenfranchisement in New York since no prior research considers jail-based voting.

However, in an effort to encourage participation, the Mayor’s Office partnered with the Legal Aid Society of New York and the Campaign Finance Board to begin voter registration drives in the City’s

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<sup>27</sup> Division of Criminal Justice Services. “Jail Population in New York State.” New York State Government, 2020.

[https://www.criminaljustice.ny.gov/crimnet/ojsa/jail\\_population.pdf](https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_population.pdf).

<sup>28</sup> Kevin Morris, “Neighborhoods and Felony Disenfranchisement: The Case of New York City,” *Urban Affairs Review* 57, no. 5 (2021): 1203.

<sup>29</sup> *Ibid.*, at 1218.

<sup>30</sup> Ernest Drucker and Ricardo Barreras, “Studies of Voting Behavior and Felony Disenfranchisement Among Individuals in the Criminal Justice System in New York, Connecticut, and Ohio,” *The Sentencing Project*, September 2005,

<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.525.3935&rep=rep1&type=pdf>.

jails leading up to the 2018 election.<sup>31</sup> Overall, they received 624 voter registration forms and provided 547 absentee ballots to individuals in jail within the first year.<sup>32</sup> Yet, no outside organizations were admitted into NYC jail facilities during the 2020 General Election cycle due to the COVID-19 pandemic.<sup>33</sup> Therefore, it is essential to identify how a sudden departure in election assistance procedures affected voter turnout in the City's facilities. Additionally, an important consideration is that this NYC program can only work to enfranchise individuals in jail who remain within city limits. In fact, a majority of people jailed in the state are located in "non-NYC facilities."<sup>34</sup> So, while there are pre-existing procedures across the city and country that could potentially inform policy reform in New York, it is requisite to first understand election accessibility and calculate the voter turnout rate within the State's broader network of county jails.

### **Methodology**

*Sample.* A stratified sampling of 10 counties was selected randomly to be representative of New York State as a whole and counties by size, along with the jail facilities on Riker's Island due to the uniquely large detained population. New York's 62 counties were divided into five equally sized groups, or strata, based on overall population estimates from the U.S. Census Bureau. Within each strata, two counties were then chosen at random, through random number assignment, to be included in the research sample. This results in a stratified, random sample that reflects the overall diversity of New York State, as well as allows for comparison (and representation) by size.

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<sup>31</sup> Andres O'Hara, "Rikers Voter Registration Drive Gains Momentum," The Gothamist, August 31, 2018, <https://gothamist.com/news/rikers-voter-registration-drive-gains-momentum>.

<sup>32</sup> *Ibid.*

<sup>33</sup> Jan Combopiano, email message to Madalyn Stewart, April 28, 2022.

<sup>34</sup> Division of Criminal Justice Services. "Jail Population in New York State." New York State Government, 2020. [https://www.criminaljustice.ny.gov/crimnet/ojsa/jail\\_population.pdf](https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_population.pdf).

*FOIA Requests.* In New York, registered voter data is required to be publicly available and maintained by the Board of Elections. Any additional information held by a state government agency, such as the Board of Elections or county jail, is eligible for request under the Freedom of Information Act (FOIA). Through public records requests, I requested data from the sampled counties' respective Boards of Elections and jail facilities to determine election accessibility in New York jails. Specifically, FOIA requests sought information on the number of registration forms or absentee ballots requested or submitted by detained individuals during the 2020 General Election. All FOIA requests also asked for electronic copies of any voter education and registration materials given or available to detained individuals. This may include voter rights pamphlets, voter registration applications, calendars with election deadlines, and sample ballots. Importantly, I anticipated that neither the Boards of Elections nor the jails may maintain specific records of the number of eligible individuals who register to vote or ultimately vote absentee during detainment.

Alternatively, then, voter registration and turnout rates among detained populations in each county were determined by manually matching inmate names from jail rosters with those of registered and absentee voters in the county. FOIA requests sent to each Board of Elections requested (1) a complete list of active and inactive registered voters in the county, including date of registration, (2) a complete list of voters who requested an absentee ballot for the 2020 General Election, including date of request, and (3) a complete list of absentee voters, including the dates the ballot was issued and returned for the 2020 General Election. Next, requests to each county jail sought jail rosters that included full names of detained individuals with intake or release dates between January 1, 2020 and December 31, 2020, to account for periods of detainment that surpassed the months of the 2020 General Election cycle. Potential errors in data collection will be discussed in the Limitations section of this study.

In response to FOIA requests, the Ulster County Jail was the only one to produce records directly monitoring absentee ballot

requests submitted by detained individuals. Therefore, with the exception of New York City, this research relied solely on matching inmate names to those of registered voters in the county. When there was a match, this name was cross-referenced with the list of absentee voters to determine if that individual ultimately cast a ballot. Finally, booking and release dates of these detained individuals were compared with the date of voter registration, absentee ballot application, and/or receipt of absentee ballot to verify that this activity took place during detainment. For Manhattan and Riker's Island facilities, the New York City Department of Corrections was unable to include names of detained individuals on jail rosters. Likewise, the City's Board of Elections purported that they held no relevant records. As an alternative, I requested (1) electronic copies of any voter registration or absentee ballot applications received from all addresses associated with the jail facilities and (2) a complete list of all absentee voters from these addresses during the 2020 General Election, including their full name, mailing address, and date ballots were issued and/or received.

*Interviews.* In order to partially account for inconsistencies or limitations in data, this study also conducted phone interviews with officials in jail administration. When communicating with officers at county jails to submit and complete FOIA requests, I requested confidential phone interviews. In total, 29 interview requests were sent by email, not including those requested by phone call. Ultimately, only three officials in jail administration agreed to participate in an interview, with the remaining requests being largely ignored or formally declined. Participants were provided an informed consent form in advance and responded affirmatively in writing to agree to the interview. Pre-written interview questions were approved by the Fordham Institutional Review Board. For each phone interview, the only copy of the audio recording was maintained and protected by the principal researcher and deleted after interview transcription was complete.

*Turnout Rate.* To determine the detained voter turnout rate in a given county, the number of known absentee ballots cast in a county jail were divided by the total voting-eligible jail population. The

estimated voting-eligible jail population during the 2020 Election cycle was obtained, where possible, directly from lieutenants or other officials in jail administration. In these cases, during phone calls or interviews, officials were asked to estimate the portion of the jail population that was serving a felony conviction. Thus, the remainder of the jail population would be eligible to vote, whether these individuals were awaiting trial or sentencing, or serving a misdemeanor conviction. In instances where no administration was receptive to estimated population requests, this study estimated the jail's voting-eligible population by multiplying the total jail population by 0.74, the average voting-eligible population calculated from responding counties.<sup>35</sup> While the resulting estimates may not be exact, they are at least roughly representative of the civic landscape in jails around New York State.

## **Findings**

### ***Voter Registration and Turnout Rates***

This research investigated and quantified civic participation in New York jails both in terms of registration and voting by mail. Table 1 displays the voter registration rates of each county and in the State as a whole, derived from the known number of detained individuals who registered to vote while in jail custody divided by the eligible jail population. Similarly, Table 2 indicates the ultimate voter turnout rate by county and in the State as a whole, by dividing the known number of detained absentee voters by the eligible jail population.

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<sup>35</sup> This estimation is based on methodology by the Arizona Coalition to End Jail-Based Disenfranchisement. For counties that did not provide estimates of voting-eligible populations, please note the asterisks indicated after select counties' eligible populations in Tables 1 and 2.

County	Registered Voters	Eligible Jail Population	Registration Rate (%)
Chenango	1	90*	
Fulton	0 <sup>1</sup>	54*	0
Hamilton	0	0	0
Monroe	0 <sup>2</sup>	669	0
Orleans	0	35	0
Rensselaer	0	74	0
Steuben	0	110	0
Ulster	0	85*	0
Wayne	0	45	0
New York (Manhattan)	0	322*	0
Riker's Island	0	3552*	0
<b>TOTAL</b>	<b>1</b>	<b>4313</b>	<b>0.02</b>

Table 1. Data on voter registration during detainment from all 10 New York counties and Riker's Island.

\* These counties indicated were unable to provide estimates for the voting-eligible population, therefore the overall average rate of eligibility (0.74) was utilized.

<sup>1</sup> The Fulton County records for registered voters did not include date of registration, therefore the rate of voter registration could not be considered in this county and the total eligible jail population is not counted with the sample total for this table. Hamilton County also did not provide date of registration within available records, however, because neither one of the two detained people in the jail were registered to vote at all, this has no effect on the overall dataset.

<sup>2</sup> The Monroe County records for registered voters were not provided until April 28, 2022. Due to this delay, the rate of voter registration could not be considered in this county and the total eligible jail population is not counted with the sample total for this table.

*Voter Registration Rates.* Looking first to Table 1, it appears that little voter registration takes place in county jails, with only Chenango County producing any *successful* registration activity among detained

populations. In the Manhattan Detention Complex, one additional person completed a voter registration form that was received by the NYC Board of Elections. However, this individual had no voter record, indicating that this application was unsuccessful. Instead, all known absentee voters indicated in Table 2 were already registered to vote before incarceration.<sup>36</sup>

This research intended to further expand upon these findings by also determining the number of detained individuals who had been previously registered to vote (in the county of detainment) but did not ultimately vote in the 2020 Election. This exploration produced incredibly mixed results. For instance, in Rensselaer County, where an estimated 74 individuals were eligible to vote in the 2020 Election, only 2 were already registered. By contrast, 18 detained individuals were registered to vote in Orleans County, despite an eligible jail population of only 35 people. Due to limitations in data collection, these findings cannot be generalized, which is explained in detail later in this study.

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<sup>36</sup> This is verified by comparing the period of detainment with the date of voter registration.

County	Absentee Voters	Eligible Jail Population	Turnout Rate (%)
Chenango	0	90*	0
Fulton	1	54*	1.85
Hamilton	0	0	0
Monroe	21	669	3.14
Orleans	0	35	0
Rensselaer	0	74	0
Steuben	0	110	0
Ulster	2	85*	2.35
Wayne	0	45	0
New York (Manhattan)	1	322*	0.31
Riker's Island	1	3552*	0.02
<b>TOTAL</b>	<b>26</b>	<b>5036</b>	<b>0.52</b>

Table 2. Data on absentee voting during detainment from all 10 New York counties and Riker's Island.

\* These counties indicated were unable to provide estimates for the voting-eligible population, therefore the overall average rate of eligibility (0.74) was utilized.

*Voter Turnout Rates.* As shown in Table 2, New York voters detained in jail had an estimated voter turnout rate of 0.52% in the 2020 Election.<sup>37</sup> That is less than one voter among every 100 people eligible in jail. More specifically, this translates to merely 26 known detained voters in the State. Of the 11 jurisdictions studied, civic participation was concentrated among five (Fulton, Monroe, Ulster, and New York Counties, as well as Riker's Island) – less than half of the survey sample.

<sup>37</sup> Nick Reisman, "New York Certifies 2020 Presidential Election Results," Spectrum Local News 1, December 4, 2020, <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2020/12/04/new-york-certifies-2020-election-results>.

As Table 2 reveals, detained voter turnout was overwhelming in Monroe County compared to the rest of the sample.

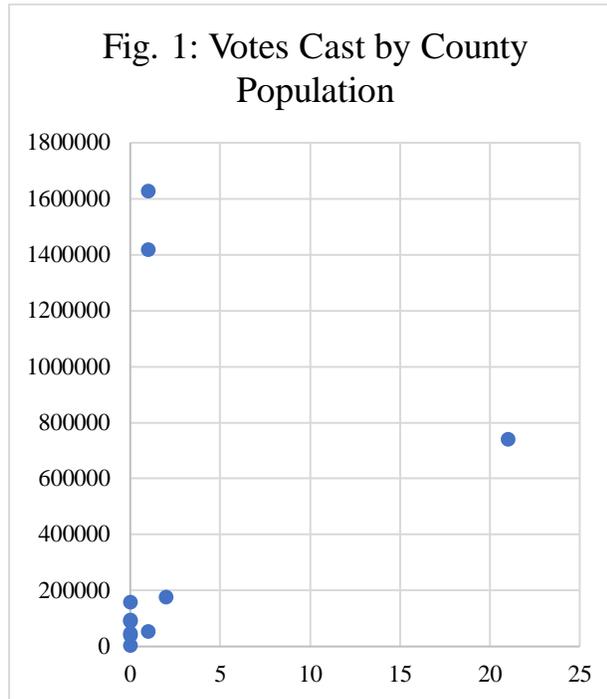


Figure 1. Classification of the number of known absentee votes cast in a given county according to county population.

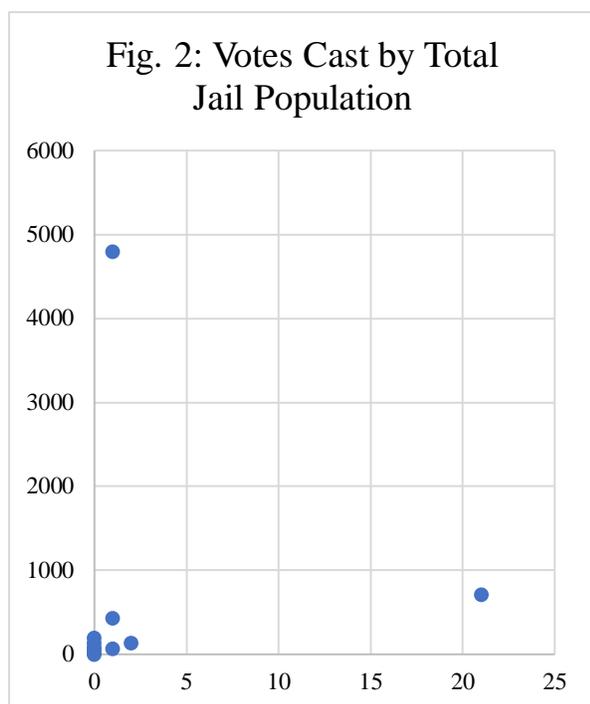


Figure 2. Classification of the number of known absentee votes cast in a given county according to total detained population in the county jail.

Figures 1 and 2 demonstrate that both county population and total jail population are not indicative of better or worse civic participation among detained populations. In other words, populous counties do not have better or worse access to resources that improve election procedures in jails. Likewise, jail facilities with greater inmate populations are not inherently more or less likely to prioritize election assistance. Ultimately, overall voter participation among detained populations was so statistically insignificant in this sample that county and jail size is not relevant to this discussion.

In response to records requests, the Ulster County Jail was the only facility that monitored written absentee ballot requests during the 2020 Election and maintained electronic copies. Of the 10 detained

individuals who sent absentee ballot applications to the Ulster County Board of Elections, only two ultimately cast a ballot. In one interview, the jail official from Steuben County affirmed that no one, to his knowledge, requested to register or apply from an absentee ballot during the 2020 Election.<sup>38</sup> In fact, “[he] honestly can’t think of any time where anybody has asked” about how to vote from jail in an election.<sup>39</sup> The participating official in Wayne County expressed a similar sentiment, stating that “no one has requested [to vote] that [he] know[s] of,”<sup>40</sup> and in communication with Hamilton County, an official in jail administration indicated the same.<sup>41</sup>

Looking to New York City, in the Manhattan Detention Complex, two people requested to vote absentee, according to Board of Elections’ records available from the facility address. As shown in Table 2, only one of these individuals ultimately cast a ballot. Likewise, across all jail facilities located on Riker’s Island, with an overall detained population totaling approximately 4,800,<sup>42</sup> the FOIA request to the City’s Board of Elections only procured four absentee ballot requests. All four requesting individuals were issued absentee ballots, but only one successfully voted in the 2020 Election. Although detained individuals in New York City facilities would potentially register to vote in one of numerous counties, any absentee ballots would need to be forwarded to the jail itself. Therefore, all relevant absentee ballot applications *should* have been flagged by the FOIA

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<sup>38</sup> Confidential interview, interview by Madalyn Stewart, October 12, 2021.

<sup>39</sup> *Ibid.*

<sup>40</sup> Confidential interview, interview by Madalyn Stewart, December 16, 2021.

<sup>41</sup> Email message to author, December 6, 2021.

<sup>42</sup> Jan Ransom, Jonah E. Bromwich, and Rebecca Davis O’Brien, “Inside Rikers: Dysfunction, Lawlessness and Detainees in Control,” *The New York Times*, October 11, 2021.

<https://www.nytimes.com/2021/10/11/nyregion/rikers-detainees-correction-officers.html>.

request, which included all addresses associated with Manhattan and Riker’s facilities.

Despite the apparent limitations to the method of data collection, this does not undermine the finding of potentially low turnout in Riker’s facilities, even with election assistance procedures. So, these findings remain noteworthy given that in 2018, for instance, the Department of Corrections and Community Supervision (DOCCS) reported delivering 624 voter registration forms to detained individuals, in addition to a total of 1,171 election forms, such as absentee ballot requests, being submitted to the Board of Elections.<sup>43</sup> Importantly, the actual civic participation rate of detained populations is unknown, even to the organizations directly involved with voter registration, according to Anthony Posada, the supervising attorney in Legal Aid’s Community Justice Unit.<sup>44</sup> That is, that groups like The Legal Aid Society rely on the DOCCS to ultimately deliver absentee ballots to detained voters, and subsequently to the Board of Elections.<sup>45</sup> In an interview, he explained, “during prior years we helped upwards of 600 people register to vote, but I can’t tell you how many of them actually *did* vote.”<sup>46</sup>

Certainly, the pandemic may have greatly detracted from civic participation on Riker’s Island for the 2020 Election in particular. Indeed, from the start of the COVID-19 pandemic, election assistance became the sole responsibility of the DOCCS.<sup>47</sup> Anthony Posada described the transition in election assistance, stating:

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<sup>43</sup> Ese Olumhense, “Advocates Continue to Press for In-Person Voting at NYC Jails,” City Limits, July 26, 2021, <https://citylimits.org/2021/07/26/advocates-continue-to-press-for-in-person-voting-at-nyc-jails/>.

<sup>44</sup> Anthony Posada, interview by Madalyn Stewart, May 17, 2022.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

During the pandemic, because nobody was allowed on Riker's, we were kind of in the dark as to what was happening. Although we were being told by the Department of Corrections that they had done a significant amount of outreach and had provided people with materials to vote that informed them of their right to vote, we actually found that was not the case. (Interview, May 17, 2022)

With this in mind, it is possible that detained voter turnout in NYC facilities would be low during the 2020 Election, similar to results demonstrated by Table 2. Even still, to account for limitations, this study emphasizes that when Riker's Island data is excluded from Table 2, the turnout rate still totals only 2.06% among more than 1,100 eligible individuals. Regardless, it would be useful to identify any gaps in this research and clarify DOCCS election assistance procedures during the pandemic.<sup>48</sup> However, interview requests to the DOCCS were ignored.

In Monroe County, there were also more ballots requested than ballots cast. Nevertheless, this county had the highest rate of civic participation in the overall study. In his interview, the Monroe County Jail official estimated that "it was definitely within 100 people that [he] specifically provided forms," whether for voter registration or absentee ballot applications, during the 2020 Election cycle.<sup>49</sup> This estimation is not including those individuals who requested forms from the law library, or directly from the local Board of Elections. By matching names from records provided by both county agencies, this study uncovered 33 absentee ballots issued to individuals in jail custody, of which 21 were returned and tabulated in the election, as noted in Table 2. While this number may seem insignificant, importantly, it is more

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<sup>48</sup> Andres O'Hara, "Rikers Voter Registration Drive Gains Momentum," *The Gothamist*, August 31, 2018, <https://gothamist.com/news/rikers-voter-registration-drive-gains-momentum>.

<sup>49</sup> Confidential interview, interview by Madalyn Stewart, March 3, 2022.

than four times the total calculated turnout of the entire remaining New York sample.

More generally, there are several potential explanations for why an absentee ballot request is unsuccessful. Some individuals who requested to vote absentee may not yet be registered. In this case, a Board of Elections would respond with a blank voter registration form, starting the application process over. Alternatively, those who requested may have chosen not to vote upon receipt of an absentee ballot or may have been released from detainment before the ballot was received. For instance, four requesting individuals in Monroe County had ballots issued only six days before their release; potentially, these absentee ballots did not arrive in time to be completed and returned. There are also potential delays on the part of the county jails or U.S. postal service that result in failure to deliver forms before registration deadlines. Any number of these barriers may account, at least in part, for the disparity between ballots requested and counted. Regardless, the notable uptick in voter participation for Monroe County brings into consideration the facility's robust election assistance procedures.

### ***Election Assistance Procedures***

This study intended to articulate not simply the direct voter turnout rate for each county but also elaborate on any election assistance procedures in place in jails. Evidently, the existence of a constitutional right to vote for detained individuals does not ensure an awareness of this right, neither on the part of the detained populations nor correctional staff. Further, the ruling in *O'Brien v. Skinner* (1974) in no way defined or provided a criterion for election assistance procedures.<sup>50</sup>

Fortunately, New York City does establish a basic foundation for what information is available to detained individuals. According to guidelines published by the Brennan Center for Justice, voter

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<sup>50</sup> *O'Brien v. Skinner*, 414 U.S. 524 (1974).

registration forms and absentee ballot applications “should” be available in any jailing facility located in the city.<sup>51</sup> However, these policies do not dictate what support jail officials must provide. Further, these guidelines do not extend to New York State as a whole. Beyond city limits, it is then upon the impetus of detained individuals to contact their local Board of Elections. Certainly, a lack of civic participation among detained individuals is not indicative of civic disinterest. Likewise, low participation rates may not necessarily mean that a jail has no election assistance procedures.

*Voter Education, Registration, and Absentee Application Resources.* All FOIA requests asked for digital copies of any voter education and registration materials given or available to detained individuals, such as voter rights pamphlets, voter registration applications, and calendars with election deadlines. Only four county jails (Ulster, Monroe, Rensselaer, and Wayne Counties) procured relevant voter resources to fulfill this component of the request, with the jail official from Steuben County detailing available voter materials during an interview. It is important to note, however, that possession of relevant forms does not assure that these are fully accessible to detained populations. For example, election-related announcements posted in housing units or law libraries are potentially less effective than materials given directly to the detained population. Among these four obliging counties, there were little consistencies in terms of available voter materials.

In addition, there were issues of accuracy, language access, or scope of these resources provided in all four cases. For instance, in Rensselaer County, voter rights information is only provided in English, and it does not include any forms to register to vote or apply for an absentee ballot. Instead, the packet instructs voting-eligible individuals to mail a letter to the local Board of Elections with the

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<sup>51</sup> Brennan Center for Justice, “Can I Vote? Frequently Asked Questions by People with Criminal Records,” Brennan Center, <https://www.brennancenter.org/sites/default/files/legacy/Democracy/NY%20State%20voting%20FAQ.pdf>.

following information: “the address where you registered, an address where the ballot is to be sent, the reason for the request, [and] the signature of the voter” (see Figure 3). Wayne County, conversely, did provide copies of voter registration forms in *both* English and Spanish, but with no written instruction on voter eligibility.

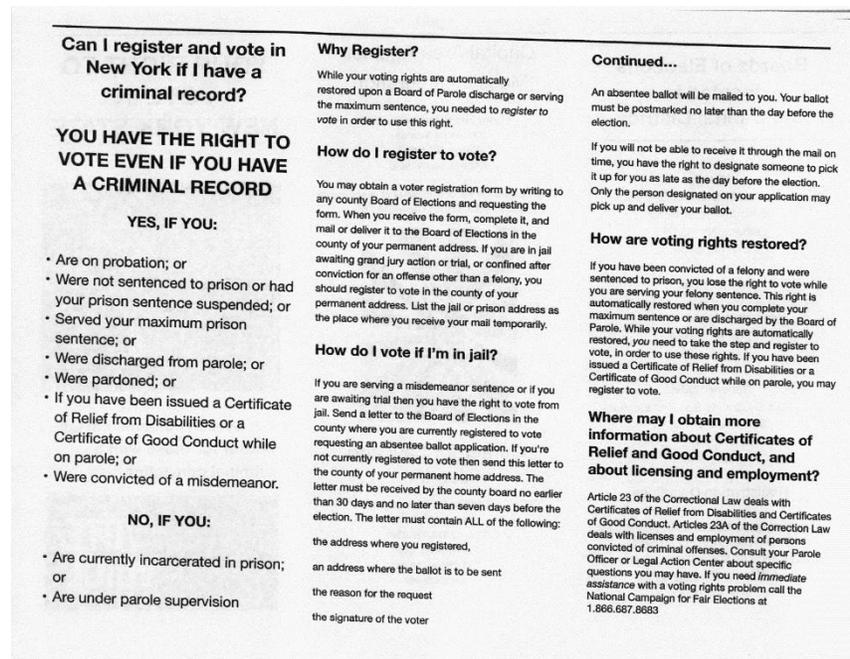


Figure 3. The second page of the voter rights pamphlet provided by the Rensselaer County Jail.

For Ulster County, detained individuals receive a Board of Elections calendar with relevant voter deadlines highlighted, along with announcements that are posted in the facility in both Spanish and English that state detained individuals may request to vote absentee. Yet, the flyer inaccurately asserts in all caps that “you must be registered to vote” (see Figure 4) when, in fact, registration can be facilitated from jail. While voter registration applications and related

assistance may require more work on the part of jail officials, eligible detained populations have the right to register to vote during detainment. In fact, this misrepresentation of their rights seemed to have a tangible impact on the facility's voter turnout rate. Of the 10 detained individuals who sent absentee ballot applications to the Board of Elections, only 2 ultimately cast a ballot. Among the remaining 8 applicants, several were never registered or had been purged from the voter rolls, and therefore could not vote absentee.<sup>52</sup> This may have not been the case, had announcements indicated equal opportunity to register to vote.

**ABSENTEE  
BALLOTS ARE  
AVAILABLE UPON  
(BLUE) REQUEST  
TO  
CORRECTION'S  
ASSISTANT; YOU  
MUST BE  
REGISTERED TO  
VOTE.**

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Figure 4. Announcement from the Ulster County Jail that is posted in housing units.

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<sup>52</sup> Ulster County Board of Elections representative, email message to author, December 13, 2021.

Finally, Monroe County Jail does provide a “Know Your Rights” packet to detained individuals that explicitly states not only that they have the right to register to vote and vote absentee, but also includes voter registration and absentee ballot applications. Monroe County is unique in that detained individuals do not have internet access but are each given a tablet. Therefore, requests for forms to register to vote or apply for an absentee ballot may be made from a tablet and are fulfilled within 24 to 72 hours.<sup>53</sup> The jail official charged with election assistance estimated during his interview that, during the 2020 Election cycle, “it was definitely within 100 people that [he] specifically provided forms to,” not including those assisted by other staff, the law library, or the Board of Elections.<sup>54</sup>

As for the Monroe County voter rights pamphlet, it details the conditions of eligibility; however, this packet is provided only in English, excluding the voter registration form which is also available in Spanish. These educational and instructional resources should be accessible in Spanish. In fact, the official explained that he had previously “request[ed] that their calendars also be placed in Spanish because [they] just receive English, and the same thing with the Executive Orders for the changes and rights for felony convicted inmates.”<sup>55</sup> Moreover, the packet contents are outdated in that it purports that individuals on parole are ineligible to vote without a pardon from the Governor. Similarly, the Rensselaer County voter rights pamphlet also incorrectly indicates that people on parole must receive a pardon to register to vote, per Executive Order No. 181. This Executive Order has been rendered unnecessary after New York Senate Bill SB830(B) was signed by Governor Cuomo on May 4, 2021, which restores the right to vote to anyone on parole. While this does not apply to voting-eligible individuals still awaiting trial or conviction, it is a critical component of rights restoration in New York. Relevant

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<sup>53</sup> Confidential interview, interview by Madalyn Stewart, March 3, 2022.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

to these findings, this is suggestive that even formal election assistance procedures now required by law may not be observed *in practice* within jail facilities.

On the other hand, in facilities that do or are in the process of recognizing these changes in election law, this may have beneficial side effects for rights preservation of those who are in jail yet remain eligible to vote. For instance, the official from Wayne County indicated that the Commission of Corrections for the State sent voter rights information to jail facilities to comply with the newly enacted law.<sup>56</sup> Moreover, that he is now in the process of developing similar resources to assist the presently detained population. He continued:

Before, nobody would have known any direction on how to do that if an inmate had asked how they would get in touch with the Board of Elections. They would probably look up the address, but that would be the one thing. Now, for that, there would be a packet I could get you. (Confidential interview, December 16, 2021)

*Training in Election Assistance.* All of these voter materials reflect that jail officials may act as a resource to connect detained individuals to the relevant forms. However, this does not inherently indicate that, much like an election official or poll worker, the corrections staff assists individuals to correctly complete forms or answer questions pertaining to eligibility. In rare instances, the county jail or Sheriff's Office may delegate specific responsibilities to jail administration to assist potential detained voters. This is the case for Monroe and Wayne Counties. However, in other counties, it would seem many officials in jail administration have no or limited knowledge of even the basic voting eligibility of detained people. For instance, in Steuben County, when originally calling to request records, both lieutenants spoken to did not

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<sup>56</sup> Confidential interview, interview by Madalyn Stewart, December 16, 2021.

understand why I was requesting information on election assistance from a jail.<sup>57</sup> Yet, during an interview with the official representing Steuben County, he assured that all jail administration and staff is “absolutely” aware that detained individuals retain voting rights.<sup>58</sup> This kind of disjunction among officers from the same facility underscores the extreme disparities in election assistance that may result depending upon even the particular official a detained person approaches for help.

Indeed, even at facilities like Wayne or Monroe County Jails, there are important limits to current training procedures. The Wayne County jail official said that “all the information is provided” by the Commission of Corrections, “you just have to do a little more leg work...they [ ] don’t have a blueprint on what to do.”<sup>59</sup> Moreover, “besides [him]self,” there was no leadership for training or election assistance.<sup>60</sup> In fact, although he affirmed that the Board of Elections would likely be supportive if assistance was requested, that “unfortunately, that’s not the case” with his own staff.<sup>61</sup> He explained:

They have a bunch of people here but it’s just about changing with the times...Corrections is a routine-structured area, so trying to implement new ideals, it’s hard to get staff involved without getting questioned...I’d rather get it out, so everyone knows why we’re doing this, but it just falls on deaf ears. If they have a personal view, I can’t change that. (Confidential interview, December 16, 2021)

Especially of note, the Wayne County representative estimated that only one third of the corrections staff likely even knew that the

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<sup>57</sup> Phone call with Steuben County Jail representatives, June 7, 2021.

<sup>58</sup> Confidential interview, interview by Madalyn Stewart, October 12, 2021.

<sup>59</sup> Confidential interview, interview by Madalyn Stewart, December 16, 2021.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

detained population had this right to vote.<sup>62</sup> Unsurprisingly then, when asked if he believed that detained persons are aware they retain the right to vote, the Wayne County official admitted that he “would probably say no.”<sup>63</sup> Similarly, the official from Monroe County indicated that many questions from detained individuals pertain to eligibility, political party affiliation, and so on.<sup>64</sup> Importantly, he explained that corrections staff were trained to carefully define the degree of election assistance they are responsible for.<sup>65</sup> He justified this constraint, stating:

I dissuade our staff from participating in educating the inmates because we haven't been provided the training. The inmate may ask us simple questions, like what their social security number is or which address they should put down, but I dissuade our staff from trying to explain differences in political views, political parties...So, if they have any questions, we have the information from the Board of Elections and they can reach out to them to ask those questions right to the Board...I think the more we can utilize the Board of Elections and their expertise, the better off we are. (Confidential interview, March 3, 2022)

This perspective underlines a very important point, in that the responsibility of election assistance would, ideally, not be under the sole authority of jail administration. Indeed, as the Monroe County official articulated, it is the Board of Elections staff who *should* be up to date on voting eligibility and registration or absentee application procedures.

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<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> Confidential interview, interview by Madalyn Stewart, March 3, 2022.

<sup>65</sup> *Ibid.*

*Board of Elections Involvement.* In cases where jails post announcements or provide materials related to voting rights and procedures, any subsequent voter applications are forwarded directly to the local Board of Elections. Yet, Monroe County was the only confirmed instance of a more formal collaboration between the Board of Elections office and jail administration. In Steuben County, for instance, the jail official stated that the facility had no relationship with the Board of Elections.<sup>66</sup> However, he expressed an interest in training, perhaps from the Board, since “there really is nothing at this point that [he] know[s] of.”<sup>67</sup> Likewise, in Wayne County there is no collaboration with the local Board of Elections but, during the interview, the jail official indicated a desire for a “co-partnership” so that the responsibility of election assistance was shared.<sup>68</sup>

For Monroe County, the jail official provided a detailed overview of current and prior collaborative efforts between the two county departments. In 2019, the first year the jail provided election assistance, the Board of Elections was not involved. At that time, out of hundreds of detained eligible voters, “only six people [ ] had shown an interest and actually provided voter registration forms or absentee ballot requests.”<sup>69</sup> This participation increased significantly “once the Board of Elections assisted us with some training,” he explained.<sup>70</sup> More so, he articulated his reasoning for increased involvement on the part of the Board. At first, he personally collected the registration and absentee applications from detained individuals and contacted the Board of Elections, who would send a representative to the jail to retrieve the forms. However, he stated, “what ends up happening is the inmate population doesn’t necessarily trust these forms are making

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<sup>66</sup> Confidential interview, interview by Madalyn Stewart, October 12, 2021.

<sup>67</sup> *Ibid.*

<sup>68</sup> Confidential interview, interview by Madalyn Stewart, December 16, 2021.

<sup>69</sup> Confidential interview, interview by Madalyn Stewart, March 3, 2022.

<sup>70</sup> *Ibid.*

it to the Board of Elections.”<sup>71</sup> In response, individuals may now deliver forms “through the postal service, [him]self, or a representative from the Board of Elections” who comes to the facility.<sup>72</sup>

This is just one component of the jail’s collaboration with representatives from the Board of Elections, along with City Councilman Willie Lightfoot, who helped initiate outreach with the support of the county sheriff. These contacts have previously “come in and do[ne] training for the inmates to try to encourage voting and try to explain the importance of voting.”<sup>73</sup> This educational component is particularly essential for any robust election assistance procedures. He explained that prior analysis of intake revealed a significant portion of the detained population had not completed a high school level education, where civic education curriculum may be more prominent.<sup>74</sup> As a possible consequence of this, he found that many individuals “don’t understand that they can register” or have questions that are answered during these sessions with Board of Elections staff.<sup>75</sup> The official from Wayne County expressed a similar point, attributing confusion around eligibility to the misconception which has “been in everybody’s head forever that...once you’re a felon you can’t vote.”<sup>76</sup>

In the Monroe County Jail, however, the training sessions led by the city councilman and Board of Elections representatives came to a halt at the start of the pandemic.<sup>77</sup> Indeed, many facilities have only very recently began allowing any visitors to return. Importantly, the jail attempted to rectify this change in procedure. In particular, the official stated that, “to combat that, our city councilman provided a video that

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<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> Confidential interview, interview by Madalyn Stewart, December 16, 2021.

<sup>77</sup> Confidential interview, interview by Madalyn Stewart, March 3, 2022.

we showed to the inmate population that encouraged them to vote.”<sup>78</sup> The measured voter turnout for the county suggests a correlation between participation and election assistance, even in the COVID-19 pandemic. Despite setbacks in procedural changes during the 2020 Election cycle, the turnout rate increased in tandem with new Board of Elections involvement, from 6 *requesting* individuals to 21 ultimate voters, over 3% of the County’s eligible jail population.

### **Limitations**

Certainly, these methods of data collection and evaluation are not without limitations. Perhaps most relevant to the findings for calculated voter turnout rates, it is noteworthy that this study relies on the assumption that detained individuals would register to vote or vote absentee in their county of detainment. In other words, that these persons are detained in their home county. While individuals, particularly those living in populous areas like New York City, may be transported upstate upon conviction and incarceration, in cases of pre-trial detainment, individuals typically remain in the county in which the alleged crime occurred. Thus, this study anticipates that most people accused of a crime are not outside of their county of residence. Nevertheless, it is possible that detained individuals would be registered to vote or vote absentee from another county outside of the one in which they are detained. Statewide registered voter databases are available; however, these databases do not report actual voter history. Moreover, this study did not have the bandwidth to conduct a second manual review of all names on jail rosters with a statewide database.

Looking to measurable results, it should also be highlighted that some variations exist among the records provided by each county. Select counties (Chenango, Ulster, Monroe, and Wayne Counties) only provided jail rosters with first and last names of detained individuals. Thus, in these cases, middle initials could not be utilized when needed

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<sup>78</sup> *Ibid.*

to distinguish between multiple voters with the same name. Similarly, other counties did not include (1) the last known addresses of detained individuals, which intended to act as another method of identity verification, nor (2) the date of voter registration, which meant that any individuals who registered to vote during detainment would not be flagged in Table 1.<sup>79</sup> Similarly, in Monroe County, the Board of Elections records did not provide the dates of absentee ballot applications, so it is not possible to know if additional people delivered requests that were not received or fulfilled.

Next, as previously mentioned, only Ulster County and New York City retained electronic copies of absentee ballot requests received in writing. Therefore, in the remaining counties, it is unknown if detained individuals attempted to register to vote or vote absentee via oral or written request but were not adequately assisted, denied access, or ultimately chose to not participate in the election.

This informs the most crucial limitation to this research, in that detained populations were not consulted during the interview process. Voting-eligible individuals in custody may have firsthand insight into obstacles to voter registration or absentee ballot applications. Likewise, they could better assess the level of political and civic interest among jail populations than the officers. During interviews, participants were asked for their observations on levels of political interest. The official from Steuben County, for instance, held the opinion that “most of the time, once they get here, they forget about the outside world,” and are therefore no longer concerned with politics.<sup>80</sup> This perception, as interviewees themselves attested, is fundamentally one-sided and held by a figure of authority. Unfortunately, the ongoing COVID-19 pandemic made in-person contact inherently impossible. Further research with access to individuals in jail custody should take these critical perspectives into account.

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<sup>79</sup> For details on which counties failed to provide the date of voter registration, please refer to Table 1.

<sup>80</sup> Confidential interview, interview by Madalyn Stewart, October 12, 2021.

**Discussion and Recommendations**

As illustrated throughout this research, civic participation among detained populations in New York facilities is not monitored by local Boards of Elections, nor county jails. This placed an incredible burden upon this study to manually sort, match, and analyze data that was occasionally incomplete, and often obtained only after months of repeated outreach and reminders to counties. In New York City, for example, both the Board of Elections and Department of Corrections allot themselves a minimum of 90 days to respond to FOIA requests, a deadline which both agencies exceeded, only to provide no records or records that did not fulfill key components of the original request. This obstacle is part of a much larger trend of hesitancy to outright pushback from officials among the sampled counties. In Orleans County, for example, after an official in jail administration agreed to schedule an interview, he was instructed by the county District Attorney's Office to formally decline to participate. A lack of transparency not only impedes upon this research but further obstructs the constitutional right to vote retained by the majority of detained populations.

Indeed, the Monroe County Jail was the only facility to respond to an interview request in a timely manner, and the participating official expressed interest in the research and any resulting recommendations for policy reform. Monroe County had the most expansive election assistance procedures, the most involvement from the Board of Elections, and the highest voter turnout rate in the New York State sample. The jail's practices highlight some important considerations for this discussion. First, there is an emphasis on fostering trust in the civic process among detained populations. This finding underscores an essential objective of this study to encourage cross-agency partnerships, not to place blame. Election assistance procedures should not be the sole responsibility of the corrections staff. Not only is there potential skepticism among those in custody, but jail officials do not have immediate access to current election laws on voter eligibility, nor

updated voter forms.<sup>81</sup> Certainly, willingness for collaboration may vary between County Boards of Elections. Looking to New York City, an Executive Committee Member for the Brooklyn Voters Alliance, Jan Combopiano, said of election assistance to jail-based voting, “the BOE feels like they have no capacity and no knowledge about it, but if it was required, they would do it. We don’t have a BOE that makes it their mission to support voters.”<sup>82</sup>

Detained voters are overwhelmingly injured by this lack of administrative support. Even in counties where voter registration forms are available, this may not rectify general confusion and misinformation, both among staff and detained populations, regarding the right to vote of those in custody. As previously mentioned, despite the election assistance provided by the Wayne County Jail official, he estimated that two thirds of the facility’s staff did not know that detained individuals were allowed to vote.<sup>83</sup> He believed the same misconception to be true for the entire detained population.<sup>84</sup> Further, in Monroe County, the interviewed jail official noted that individuals were often unaware of their voting rights and/or general civic procedures, such as political party affiliation or the importance of participating in elections.<sup>85</sup> Evidently, as Jan Combopiano articulated, “not only are people who are detained or incarcerated the last to be considered as having any part in elections, they are usually just ignored as if they were no longer citizens at all.”<sup>86</sup> Ultimately, although *O’Brien v. Skinner* did not specify on how election assistance should be administered in jail, the Court wholeheartedly rejected any “onerous

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<sup>81</sup> Take, for example, that several counties provided copies of voter education materials that had not been updated since the passage of New York Senate Bill 830(B) which restored voting rights to all people on parole.

<sup>82</sup> Jan Combopiano, interview by Madalyn Stewart, December 1, 2021.

<sup>83</sup> Confidential interview, interview by Madalyn Stewart, December 16, 2021.

<sup>84</sup> *Ibid.*

<sup>85</sup> Confidential interview, interview by Madalyn Stewart, March 3, 2022.

<sup>86</sup> Jan Combopiano, interview by Madalyn Stewart, December 1, 2021.

burden on the...exercise of franchise” as unconstitutional.<sup>87</sup> The poor to nonexistent voter participation among New York’s detained populations points to a substantial obstruction of civic rights.

These findings do not aim to leverage an outright indictment of the accessibility of civic democracy in New York, but to bring light to an issue of representation, encourage awareness around voter eligibility while detained, and present potential outlets for policy reform. The following recommendations do not purport to be the best or only solutions, and rather, are a starting point if the State or elected officials were interested in promoting the exercise of the vote franchise for eligible detained individuals in New York. First, based on the difficult research and FOIA request process, it is suggested that the state legislature mandate local Boards of Elections monitor and maintain records of all communication with county jail facilities, as well as copies of all voter registration or absentee ballot applications received from the jail address. Further, the culmination of this surveillance could be published and made publicly available annually.

Further, given that all interviewees were in favor of legislation to allow county jails to assume and enforce agency-assisted registration duties, it could be beneficial to amend the National Voter Registration Act to include all county jails and correctional facilities as voter registration agencies, alongside the Department of Motor Vehicles (DMV), Department of Labor, and Division of Veterans’ Services, among others. The defined responsibilities of a VRA include (1) providing and distributing voter registration and absentee ballot applications, (2) assisting with the completion of voter forms, as needed, (3) delivering voter forms within two weeks of completion, and (4) displaying all voter materials prominently.<sup>88</sup> The official representing the Wayne County Jail stated:

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<sup>87</sup> *O’Brien v. Skinner*, 414 U.S. 524 (1974).

<sup>88</sup> National Voter Registration Act, ELN ch. 17, §5-211

I think this might be another avenue for people to be able to register to vote. Just like the DMV, if they come in here...we'd give them the information right there. I wouldn't be objected to that because I feel that everyone should have the right to vote or know that they can. (Confidential interview, December 16, 2020)

This legislative change could also benefit corrections staff who would like to register to vote, as well as any visiting family or guests of detained individuals.

Finally, future implementation of election assistance in New York counties could include educational workshops for both corrections staff and detained populations. As indicated by the Monroe County official, people in custody may not know or feel that their vote matters.<sup>89</sup> By offering voluntary civic education workshops for justice-involved individuals, facilities' detained voter engagement strategies could be proactive. Tangentially, if policy was changed to increase the election assistance training available, jail officials could potentially feel adequately prepared to provide help or direct detained voters as needed. Interviewees also indicated support for this reform, with the Steuben County official describing it as "useful" and pointing out that, in terms of current procedure, "there really is nothing at this point that [he] know[s] of."<sup>90</sup> Above all, there are evidently drastic procedural differences between counties of the same state, as well as differences of knowledge among officials of the same county. The statewide institutionalization of election assistance and civic engagement procedures in New York jails could then potentially serve to uplift civic-minded detained individuals and cultivate the preservation of voting rights for the voting-eligible jail population.

### **Acknowledgements**

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<sup>89</sup> Confidential interview, interview by Madalyn Stewart, March 3, 2022.

<sup>90</sup> Confidential interview, interview by Madalyn Stewart, October 12, 2021.

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