



## Yale Law School

THE ARTHUR LIMAN CENTER  
FOR PUBLIC INTEREST LAW

March 10, 2021

Senator Mae Flexer & Representative Daniel Fox, Co-Chairs  
Senator Rob Sampson & Representative Gale Mastrofrancesco, Ranking Members  
Government Administration and Elections (GAE) Committee  
Legislative Office Building, Room 2200  
Hartford, CT 06106

**Re: Testimony in Support of H.B. No. 6578:  
(Raised) An Act Concerning Participation in the Electoral Process**

Dear Senators Flexer and Sampson, Representatives Fox and Mastrofrancesco:

The Arthur Liman Center for Public Interest Law at Yale Law School writes in support of H.B. No. 6578 – which will restore voting rights to approximately 3,000 returning citizens who are currently disenfranchised even after they are released from prison.<sup>1</sup> This bill is critical to eliminating unwise and unjust exclusions to civic participation, which harm communities and suppress the voices of people directly affected by the criminal legal system. Research has documented the importance of re-enfranchisement both for civic participation and public safety.<sup>2</sup> We thank you for your commitment to restoring the franchise for those on parole in Connecticut.

We also write to bring to your attention another facet of the problem of voting for people in detention. We estimate that there are between 3,000 and 4,000 eligible voters jailed in the State of Connecticut who – despite having the right to vote under Connecticut law – are unable to cast a ballot. As you know, people who are detained pre-trial or serving time for a misdemeanor have the right to vote.<sup>3</sup> As of March 5, 2021, 3,373 individuals were held pre-trial (and hence, presumed innocent) and another several hundred people were serving a misdemeanor sentence.<sup>4</sup> From the work that the Liman Center and the Civil Justice Clinic at Quinnipiac University School of Law did last fall, when about 3,400 people were in those categories, we learned first-hand (as we detail below) how hard it is to cast ballots while in detention.

A combination of administrative complexities, needless delays, and information gaps make it extraordinarily difficult for eligible voters in Connecticut correctional facilities to participate in the

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<sup>1</sup> See *Correctional Community Program Daily Population Count By Community Program*, CT DATA (Mar. 5, 2020), available at [hdata.ct.gov/Public-Safety/Correctional-Community-Program-Daily-Population-Co/5d7h-at3x](https://data.ct.gov/Public-Safety/Correctional-Community-Program-Daily-Population-Co/5d7h-at3x) (identifying that 3,029 individuals are on parole in the State of Connecticut).

<sup>2</sup> See, e.g., Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 196 (2004).

<sup>3</sup> C.G.S.A. 9-45(b); 9-46a(a).

<sup>4</sup> See *Correctional Facility Daily Population Count By Facility*, CT DATA (Mar. 5, 2020), available at [data.ct.gov/Public-Safety/Correctional-Facility-Daily-Population-Count-By-Fa/n8x6-s299](https://data.ct.gov/Public-Safety/Correctional-Facility-Daily-Population-Count-By-Fa/n8x6-s299).

electoral process. These individuals are disenfranchised not by law, but by a voting system that does not work. To right this wrong, we urge the General Assembly to take immediate action to streamline the processes through which these eligible voters can register to vote and submit their ballots while they are in detention. The goal is to put in place an effective and long-term statewide system to ensure that all enfranchised persons can exercise their right to vote.

Below, we provide more information on the problems and the solutions.

### **Burdens on Voting for Eligible, Incarcerated Voters**

Under the current system, few people in detention can receive or cast ballots. For starters, many citizens who are incarcerated in Connecticut correctional facilities do not know that they are eligible to vote. And those who do know face hurdles when seeking to register and to cast their ballots.

1. **Challenges in Registering to Vote.** While most citizens can go to their town clerk's office and register to vote, or can register to vote online, people in detention cannot. Instead, registering to vote from correctional facilities can require *four separate mailings*: a written request for a registration application, a return mailing from the registrar with the registration application, a send-out of the completed application, and a return confirmation that the voter is registered.

These time-consuming backs and forths impose weeks of delay and, under current problems with the U.S. mails, raise the possibility of mail being lost in transit. Furthermore, voter registration requires proof of residence and a form of identification. Such forms of identification are often difficult, if not impossible, for detained populations to access unless they are assisted by personnel from the Department of Correction (DOC).

2. **Difficulties Obtaining and Returning Absentee Ballots.** After eligible voters in state custody successfully register to vote, they must then request an absentee ballot in writing. This process includes two additional mailings. If an incarcerated elector is lucky enough to learn about and be able to register to vote in the two months before an election, they likely will not have time to request and return their ballot in time for it to be counted.

### **Lessons Learned from the Liman Center's Detained Voter Project**

The concerns we have outlined are not abstract but based on what we learned last fall during the 2020 General Election. Using public records, the Liman Center and the Civil Justice Clinic at Quinnipiac University School of Law identified 3,400 people in Connecticut jails who met the criteria for voter eligibility. In a few short weeks before the General Election, we mailed these people information and helped 134 people register to vote by mail. Shortly before the election, we were able to work with the DOC to ensure that voters would get forms without using the mails. We helped about 200 people in detention have their ballots counted in the November 2020 election. This is a small fraction of the total number of those eligible, but a much larger number than Connecticut has seen in the past. Connecticut could do much better.

From a follow-up survey to voters in Connecticut correctional facilities, we heard from 75 incarcerated voters and learned from their experiences. As one prospective voter explained, "*Unfortunately, I received my absentee ballot the day after election day, which obviously made it impossible to vote.*" Another voter noted a similar experience after attempting to vote: "*I never received any type of ballot and never got to vote. I feel like my rights were suppressed.*" Other voters reported hearing erroneous information from staff or delays in

receiving a response. When handing out voter forms, one detained voter reported that he was told by staff: “*I don’t know why they sent this because inmates are not allowed to vote.*” Another voter indicated having written “*the counselor 3 times asking questions*” before receiving a response.

### **Practical Legislative Solutions to Remove Vote Burdens and Improve Voter Access.**

Connecticut can and should do more to ensure that eligible incarcerated voters are able to participate in the electoral process. When the state detains voters and prevents them from accessing the polls – which is their legal right – it becomes the state’s responsibility to facilitate voter access. This is a constitutional imperative as much as it is a moral one. Connecticut cannot burden incarcerated voters with a system that blocks their access to the ballot.<sup>5</sup>

A few straightforward changes to Connecticut law could ensure that all eligible voters in detention can cast their ballots.

1. **Provide Voter Registration Forms & Registration Assistance.** The DOC should provide voter registration forms to people when they first enter facilities and help them register then. The Department should work with the Secretary of the State to provide clear information about the right to vote and straightforward instructions explaining the voter registration and absentee voting processes for incarcerated individuals.
2. **Automatic Absentee Ballot Delivery.** The Secretary of the State and the DOC should compare records to identify all registered voters who are incarcerated in advance of an election. Absentee ballots should then be automatically sent to these voters in correctional facilities well in advance of election day.
3. **Emergency Voting for Detained Electors.** For those electors who are detained for the first time in the few days leading up to an election, elections staff should be authorized to drop off and pick up absentee ballots from local correctional facilities before Election Day.

We call on the Connecticut General Assembly to adopt these measures which are necessary to make voting accessible for people in Connecticut correctional facilities. **We therefore suggest that in addition to the important expansion of the franchise in H.B. No. 6578, the bill also be amended to protect the pre-existing voting rights of detained individuals.** We write to offer our help in doing so, and we enclose potential language that would accomplish these ends. Further, we also attach a one-page information sheet that summarizes some of the points made in this testimony.

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<sup>5</sup> See, e.g., *Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 666 (6th Cir. 2016) (increasing the time needed to vote for mainly African-American communities imposed a burden that, while “not severe,” was also “not slight,” and was constitutionally unjustifiable); *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1352 (11th Cir. 2009) (“However slight the burden [imposed on voters] may appear, it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation”); see also Dana Paikowsky, *Jails as Polling Places: Living Up to the Obligation to Enfranchise the Voters We Jail*, 54 HARVARD CIVIL RIGHTS & CIVIL LIBERTIES LAW REVIEW 829, 856-58 (2019) (noting the equal protection implications of treating all eligible voters equally).

We thank the General Assembly for its continued commitment to securing the voting rights of all Connecticut citizens, and to pursuing new avenues to ensure access to voting for those who are or have been incarcerated.

Thank you for your consideration of this letter.

Sincerely,

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