

# ENFRANCHISEMENT FOR ALL

The Case for Ending Penal  
Disenfranchisement in Our Democracy



**INCLUSIVE  
DEMOCRACY  
AGENDA**

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*A more inclusive democracy is a more vibrant democracy, and a more vibrant democracy is good for every body.*

– Desmond Meade, Florida Rights Restoration Coalition<sup>1</sup>



## The Problem

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Our democracy is strongest when all people have a say in decisions affecting our lives and our communities. Initiate Justice, an organization of people directly impacted by mass incarceration and disenfranchisement, puts it plainly: “Democracy needs everyone.”<sup>2</sup>

Yet today, nearly 250 years after the Declaration of Independence was signed to throw off the yoke of tyranny and protect our “unalienable rights,” we continue to deny the most fundamental right to millions of Americans. To be sure, Black Americans and other members of the Reconstruction, women’s rights, and Civil Rights Movements have engaged in tireless struggle to advance voting rights since our founding.<sup>3</sup> Yet a large group of U.S. citizens remains locked out of the vote

across almost the entire United States: people involved in the criminal legal system.<sup>4</sup> This stain on our democracy formally disenfranchises roughly 5 million Americans with felony convictions,<sup>5</sup> and makes voting impossible for many others who have not lost their voting rights but are unable to access a ballot. And because our criminal legal system disproportionately targets, arrests, sentences, and locks up people of color, communities of color are represented among disenfranchised Americans far beyond their representation in the population.<sup>6</sup>

The most significant form of penal disenfranchisement is felony disenfranchisement. These laws have formally stripped 1 in every 13 Black Americans of their right to vote, 4 times the disenfranchisement rate of non-Black Americans.<sup>7</sup> In the 2016 elections, the felony disenfranchisement rate among voting-eligible Americans of all races was approximately 2.5 percent, but it was 7.4 percent for African Americans.<sup>8</sup> In some states, the African American disenfranchisement rate was significantly higher, topping 25 percent in Kentucky and 20 percent in Florida, Tennessee, and Virginia.<sup>9</sup> Nationwide, that's more than 2 million Black Americans who were kept from exercising full democratic citizenship.

Felony disenfranchisement laws are so omnipresent in the United States today that one may think they have been around forever, or that these laws are required by the U.S. Constitution. In fact, these racist schemes are not prescribed by the U.S. Con-

#### **DEFINITIONS:**

**Penal disenfranchisement** is the system of laws, policies, and practices that prevent people involved in the discriminatory criminal legal system from voting.

**Felony disenfranchisement** is a specific form of penal disenfranchisement and refers to laws that temporarily or permanently strip people with felony convictions of their right to vote.

stitution, and they have not existed forever. The present-day iteration of felony disenfranchisement laws originated during and just after the Civil War, when, having won their freedom from slavery, African Americans were building unprecedented political power, especially in the South.<sup>10</sup> Further, felony disenfranchisement does not exist at all in some places today. Maine, Vermont, and Puerto Rico allow people to vote while incarcerated, regardless of their conviction status or history.<sup>11</sup> So, too, did both Utah and Massachusetts, until 1998 and 2000, respectively.<sup>12</sup>

Almost immediately after the end of slavery, and especially with the passage of the Reconstruction amendments granting citizenship and the right to vote to all male citizens, regardless of race, felony disenfranchisement laws were born.<sup>13</sup> The discrepancies in the crimes to which disenfranchisement penalties were applied in some states reveal the racist intent of these laws: crimes perceived as being committed more often by African Americans, including burglary, theft, and arson, resulted in losing one's vote, while violent crimes more likely to have been committed by whites, such as murder and rape, did not.<sup>14</sup> Felony disenfranchisement laws were a central part of an intentional strategy advanced under the Jim Crow regime to minimize political power in Black communities—often explicitly and violently—and to maintain white supremacy.<sup>15</sup>

Felony disenfranchisement laws vary from state to state. In the most extreme cases—Iowa, Kentucky, and Virginia<sup>16</sup>—people convicted of a felony lose their right to vote forever, unless they successfully petition the Governor's office to restore their rights, a process that can be confusing and cumbersome, is subject to the whims and biases of an individual or small group of people, and can take years. At the other end of the spectrum are the 2 U.S. states that have no felony disenfranchisement laws at all, Maine and Vermont. It is no coincidence that the only U.S. states that presently permit people incarcerated for felony convictions to vote are the 2 whitest in the nation;<sup>17</sup> the geography of felony disenfranchisement today shows us both that it is perfectly possible for incarcerated people to vote and that laws preventing it are fundamentally, irrevocably racist. The vast majority of states fall somewhere in between, from those that restore people's right to vote automatically upon their release from prison,<sup>18</sup> to those that only restore the right to vote after a person has fulfilled all terms of their sentence, including probation, parole, payment of all fines and fees, and completed a mandatory waiting period.<sup>19</sup>

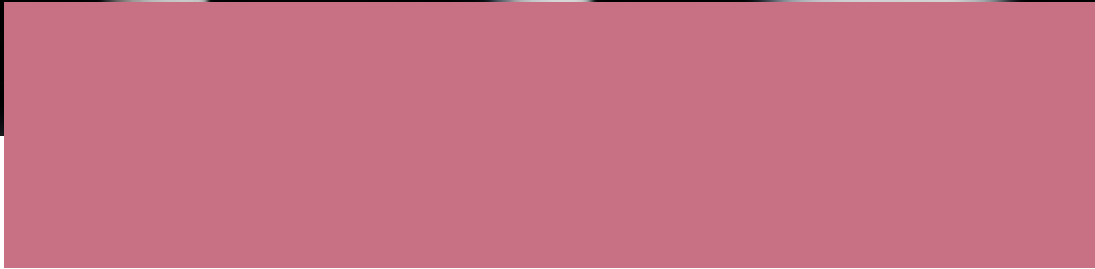
On top of those who formally lose their right to vote during and after incarceration due to a felony conviction, many others are denied the right to vote until they overcome insurmountable financial obligations, including fines, fees, and court

costs attached to their sentences, without any assessment of their financial wellbeing or ability to pay. Even though the poll tax has been unconstitutional since 1964,<sup>20</sup> these financial obligations act as a modern-day poll tax in at least 30 states and keeps hundreds of thousands of Americans from voting.<sup>21</sup>

Still others who technically maintain their right under the federal and state law are blocked from voting because they are behind bars, not convicted of any crime but detained pretrial without access to a ballot at the time of an election. In 1974, the U.S. Supreme Court ruled that pretrial detainees must be permitted to vote an absentee ballot like other eligible voters who are unable to appear in person to vote.<sup>22</sup> However, compliance with this ruling varies dramatically across states and localities. In many places, pretrial detainees—who comprise a majority (63 percent) of the U.S. jail population and have not been convicted of any crime, felony or otherwise<sup>23</sup>—cannot register to vote or access a ballot, despite the fact that they still have a right to one.<sup>24</sup> While jail populations fluctuate, the Prison Policy Initiative estimates there are over 750,000 people in jail on any given day,<sup>25</sup> many of whom are U.S. citizens age 18 or older (i.e. are eligible to vote), but a significant portion of whom are effectively disenfranchised.

Obstacles to democratic participation similarly exist for many of those who are incarcerated for a non-disqualifying misdemeanor or felony conviction.<sup>26</sup> These Americans, who remain eligible to vote, often have no way to register or cast a ballot if they are serving time during an election.

Every election, millions of people, disproportionately Black and brown people, are kept from voting by penal disenfranchisement. These members of our communities—whether they are currently behind bars or back home—are just as integral to the health and vibrancy of our society and our democracy as anyone else. In fact, their interaction with the dehumanizing criminal legal system means incarcerated and formerly incarcerated people have unique insight into the ways our policies and elected officials can fail us, insights they can bring to the ballot box with a vote for candidates and policies that will champion rights, dignity, and justice for all people. And yet, too often these community members are kept from doing so by laws and practices designed not to make our communities safer, and not even for prisoner punishment or rehabilitation, but instead to maintain white supremacy. The systematic exclusion of these millions of Americans from our elections (among other systems)<sup>27</sup> based on racist, Jim Crow era laws not only weakens our communities, it also undermines the very legitimacy of our democracy.



## The Solution: Enfranchisement For All

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Congress should pass legislation abolishing the practice of felony disenfranchisement in all federal elections, including for those who are currently incarcerated. Such legislation should provide guidance on how states can most effectively implement voter registration and ensure people in prison can access the ballot. Legislation must be developed in partnership with directly impacted communities.

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State lawmakers should take action to abolish felony disenfranchisement in their states by overturning any existing statute that permits it and supporting amendments to their constitutions to strike the disenfranchising language. In doing so, they should also automatically re-enfranchise all incarcerated and formerly incarcerated people who become eligible to vote, so that no individual has to petition to have their rights restored. Each of these efforts must be developed in partnership with directly impacted communities.

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Local jail and election officials should undergo training on the voting rights of people detained in local jails, create publicly-available plans for the accessibility of registration and voting in jails, and, where state law allows, create polling places and/or allow for in-person absentee voting in local jails on Election Day.

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State lawmakers and elections officials, as well as local elections officials and jail workers, should partner with grassroots and community groups to ensure incarcerated people are aware of their voting rights, can access information on elections and races, and have real opportunities to register and cast their ballots. States should make funding available to these groups to engage in this work, including conducting ongoing implementation and monitoring efforts.

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Congress, states, and localities alike must immediately pass laws that dramatically reduce prison and jail populations, shorten or eliminate the period of pretrial and post-conviction incarceration. These long overdue common sense laws are the first steps toward the ultimate goal of dismantling the deeply racist and profit driven criminal legal system.

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We must take action at the federal, state, and local levels to abolish penal disenfranchisement in all its forms. On top of being racist in their roots and discrimina-



tory in their impact, these laws and practices are inconsistent with our values as a democratic society. We must end this painful and violent practice of excluding people from our democracy by ending penal disenfranchisement laws and correcting the practices that keep even eligible incarcerated people from voting. We must expand voting rights to those whose rights have been taken away, formally or in practice, for involvement with the criminal legal system.

Since those closest to the problem often have the best ideas for solutions, all efforts to address penal disenfranchisement, whether at the federal, state, or local level, must be led by the people most directly affected by the criminal legal system: incarcerated and formerly incarcerated people, as well as their families. The criminal legal system is a uniquely inhumane system in our society; prisons, jails, detention facilities, and other places used to cage humans are singularly horrifying institutions. The people who have interacted with these systems and institutions—involvement that sometimes takes the form of the irrevocable theft of years or decades of their lives—have unique insights into the problems that riddle the criminal legal system as it exists today. They also have unparalleled perspectives on what it will take to remedy these grave ills. Accordingly, all policies aimed at addressing penal disenfranchisement must reflect the needs and priorities of people who have lived through, or are still surviving, our racist and cruel criminal legal system.



## Ending Disenfranchisement in Federal Elections

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While it will take state-level action to remedy felony disenfranchisement laws in state and local elections, Congress today can restore the right to vote in federal elections to all people, regardless of conviction history or incarceration status. Congress has the authority to legislate to overturn these racially discriminatory voting laws based on the 14th Amendment, which guarantees equal protection of the law, and the 15th Amendment, which prohibits the denial of the right to vote based on race.<sup>28</sup> Since felony disenfranchisement laws were enacted with racially discriminatory intent, as described above, and result in racially discriminatory impact, the 14th and 15th Amendments provide a strong and broad basis for Congressional legislation ending such disenfranchisement in federal elections. Additionally, Article I, Section 4 of the U.S. Constitution—the Elections Clause—gives Congress broad authority to make laws governing federal elections,<sup>29</sup> a power the Supreme Court has upheld.<sup>30</sup> Indeed, this is the authority Congress drew upon in drafting much of H.R.1/S.1, the “For the People Act,” including the provision that would restore the voting rights of people with a felony conviction after they are released from prison. Building on this important proposal to restore voting rights after incarceration, Congress should also pursue full voting rights for incarcerated prisoners. Drawing on its Constitutional authority, Congress should introduce and pass legislation restoring the right

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*Building on this important proposal to restore voting rights after incarceration, Congress should also pursue full voting rights for incarcerated prisoners.*

to vote in federal elections for all people disenfranchised through the criminal legal system, regardless of their conviction history, incarceration status, or progress toward completion of their sentence.

Federal legislation ending penal disenfranchisement should be designed in consultation with organizations led by and composed of formerly and currently incarcerated people. Accordingly, Dēmos is working with the National Council of Incarcerated and Formerly Incarcerated Women and Girls to draft such legislation. Among other important work, the National Council works “to ensure that no policies, laws, practices, organizing and services are made about women and girls who are or were incarcerated without including our voices, experiences and ideas for creating more effective outcomes.” Instead, the National Council is “collectively building new and just policy grounded in social justice, human rights and dignity.”<sup>31</sup> Dēmos and National Council’s policy proposal is forthcoming.

Such legislation should codify in federal law the abolition of penal disenfranchisement in all federal elections, and it should include provisions that would ensure incarcerated and formerly-incarcerated people are made aware of their right to register and vote in federal elections and are able to make that right real. Provisions could address:

#### *Registering to Vote and Casting a Ballot*

Federal legislation should set standards for registering to vote and casting a ballot for federal elections in prisons and jails. This should include mandating regular opportunities for incarcerated people to register to vote and requiring the secure transmission of federal voter registration applications. It should also require that federal absentee ballots sent to incarcerated people include pre-paid return postage, and it should guarantee incarcerated people’s ability to cast provisional ballots, if their name does not appear on the rolls. Further, such legislation should also require states to provide registration forms and ballots for federal elections in languages other than English, should incarcerated people request them, in line with the language accessibility requirements of the Voting Rights Act. Additionally, federal legislation should guarantee every incarcerated person the ability to cast a secret ballot that will be securely transmitted to elections officials in time to be counted. It should require states to design ballots that include only those federal races incarcerated people are eligible to vote in. And it should provide protection against prosecution of individuals who inadvertently vote in races for which they are ineligible.

### *Voter Education*

Federal legislation should offer specific direction on when and how often prison and jail administrators and other officials in the criminal legal system must engage in education and notification efforts. It should additionally set out provisions for how incarcerated people can access campaign literature, candidate materials, and other information on the people and/or issue measures they will be voting on. This could include making materials available in prison libraries on candidates and races in the state where a prison is based; ensuring people have regular internet access throughout each election cycle and especially in the weeks leading up to Election Day, so that they may find materials on candidates and races in their home states; and timely methods for people to request and receive candidate and campaign material.

### *Enforcement and Accountability*

Finally, such legislation should contain enforcement mechanisms so that there are consequences and accountability for any state and federal prisons who renege on their responsibilities to offer regular and meaningful opportunities for incarcerated people to register to vote and cast a ballot that counts. Such provisions could include power for the U.S. Attorney General to pursue violations of voting rights of and secure remedies for incarcerated people. It could also create a private right of action for any incarcerated person who is denied their voting rights in federal elections, so that they are not reliant on the Attorney General or anyone else to take legal action in defense of their right to vote in federal elections. It could withhold federal funds for construction of any new jail, prison, or other incarceration facility from states that deny the voting rights of incarcerated people.<sup>32</sup> Congress should also appropriate adequate funds for federal and state prisons and jails to be able to implement the above requirements quickly.

Critically, as they implement voter registration and voting in prisons, federal corrections officials should work in partnership with community groups led by (or working with) people directly impacted by the criminal legal system. Given their relationships and trust with justice-involved people, such groups are likely to be the most effective at educating incarcerated and formerly incarcerated people about their right to vote in federal elections and supporting

them to get registered and vote. Partnership with these groups is critical for the successful re-enfranchisement and engagement of people disenfranchised due to their involvement in the criminal legal system.

Federal lawmakers should also consider including a provision that would make funds available to grassroots and community groups that are interested in partnering with federal officials on voter education and engagement efforts, as well as to conduct monitoring and accountability activities. Not only are these groups the best-placed to effectively engage people behind bars and ensure registration and voting requirements are being met, they are also generally doing their important work with too few resources. Federal funding can ensure they are able to bring their expertise and power to efforts to ensure federal voting rights for all people behind bars, as well as to test innovative strategies to increase civic participation and engagement.

Relatedly, such legislation should also consider directing federal corrections officials to revisit and repeal any rules or guidelines that make it difficult for formerly incarcerated people to access federal prisons, and it should offer guidance to states on how to do the same, so that formerly incarcerated people are able to fully participate in voter education and engagement efforts, and in ongoing implementation and monitoring activities.

## FEDERAL INTERVENTIONS TO END PENAL DISENFRANCHISEMENT

### Registering to Vote & Casting a Ballot

Set standards for registering to vote and casting a ballot for federal elections in prisons and jails.

Mandate regular opportunities for incarcerated people to register to vote and require the secure transmission of federal voter registration applications.

Require that federal absentee ballots sent to incarcerated people have return postage pre-paid.

Guarantee incarcerated people's ability to cast provisional ballots, if their name does not appear on the rolls.

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Require states to provide registration forms and ballots for federal elections in languages other than English, should incarcerated people request them.

Guarantee every incarcerated person the ability to cast a secret ballot that will be securely transmitted to elections officials in time to be counted.

Require that states design ballots that include only those federal races incarcerated people are eligible to vote in.

Provide protection against prosecution of individuals who inadvertently vote in races for which they are ineligible.

### **Voter Education**

Offer specific direction on when and how often prison and jail administrators and other officials in the criminal legal system must engage in education and notification efforts.

Define provisions for how incarcerated people can access campaign literature, candidate materials, and other information on the people and/or issue measures they will be voting on.

### **Enforcement & Accountability**

Create enforcement mechanisms so state and federal prisons are held accountable to their responsibilities to provide opportunities for incarcerated people to register and vote.

Empower the U.S. Attorney General to pursue violations of voting rights of and secure remedies for incarcerated people.

Create a private right of action for any incarcerated person who is denied their voting rights in federal elections.

Withhold federal funds for construction of any new jail, prison, or other incarceration facility from states that deny the voting rights of incarcerated people.

**Conduct all of these activities and programs in partnership with communities directly impacted by the criminal legal system.**

## Ending Disenfranchisement in State and Local Elections

Voter qualifications for state and local elections are governed by each individual state, and in many cases the exclusion of people with felony convictions is codified in a state's constitution. Strategies to remedy this injustice depend on the state. In some cases, states can abolish felony disenfranchisement laws by simple legislation passed by both houses and signed by the governor. In states where the practice is codified in the constitution, reform must take the form of a constitutional amendment, either put forward by the state legislature or demanded by the people via a citizen-initiated ballot measure.<sup>33</sup>

In amending their constitution to end penal disenfranchisement, states should go even further to explicitly prohibit any kind of disenfranchisement scheme that targets people with criminal convictions in the future. Where laws that disenfranchise people with felony convictions are changed, states should automatically restore the voting rights all people who become qualified to vote with the change. No one should have to petition to have their voting rights restored, a process that can be long and onerous.<sup>34</sup>

States should also pass companion laws, designed in partnership with incarcerated or formerly incarcerated people, that ensure detained and incarcerated people have real opportunities to register and cast their ballots. Having the legal right to vote is a critical first step, but it is not enough, as ongoing barriers to the ballot prevent even eligible people from voting. State lawmakers, election officials, and department of corrections administrators should work together with directly impacted communities to design policies that address:

### *Registering to Vote and Casting a Ballot*

States should allocate robust resources for voter registration in jails and prisons leading up to registration deadlines or Election Day, and they should hold Departments of Correction accountable for allowing such activities in jails and prisons. Voter registration in jails and prisons should be conducted in partnership with directly impacted people, such as community organizations led by and/or composed of formerly incarcerated people and their families. State law should require this kind of partnership and make funding available for such groups to engage in these voter registration and turnout efforts. Any existing state laws, regulations, guidance, or directives that make it hard for formerly incarcerated people to access jails and state prisons must be repealed.

Additionally, states could consider how to facilitate election protection efforts led by grassroots and community groups, as well as what they can do to help incarcerated people access the existing national election protection hotlines.<sup>35</sup>

States can also designate Departments of Corrections, prisons, jails, probation and parole offices, and re-entry agencies as voter registration agencies under the National Voter Registration Act, the 1993 law that helped make voter registration in the U.S. more accessible, especially to under-registered populations like low-income people and communities of color.<sup>36</sup> Additionally, any states implementing automatic voter registration (AVR) should consider making these same departments and offices voter registration agencies. Doing so would mean that at each interaction with the criminal legal system, people would be offered the opportunity to register to vote, and any person who enters the criminal legal system not registered is quickly and easily registered to vote.

In addition to facilitating voter registration, states must ensure voting while incarcerated is accessible and straightforward. There should not be early cut-offs for requesting or receiving absentee ballots from jails; incarcerated people should be able to request absentee ballots up to the latest deadline by which non-incarcerated people can request an absentee ballot in a state, and transmittal of that absentee ballot to the detained person must occur the day it is requested. Boards of Elections must be allowed to mail absentee ballots to jails.<sup>37</sup>

States should require that jails maintain a list of phone numbers of all Boards of Elections in the state, visibly posted and accessible to all people incarcerated in the jails, and inmates should be permitted to call their Board of Election free of charge to request an absentee ballot and/or ask additional questions about registering and voting. Absentee ballots should be mailed to detained people with return postage pre-paid, so that voters are not left unable to return their ballots and vote for lack of funds to buy a stamp. And, if mailing out or return of absentee ballots cannot happen in time for the election, Boards of Election should allow for direct delivery of ballots to and from people in jail, either by Board of Elections workers, or by family members of incarcerated people or other trusted people they designate.

For example, under Ohio law, if an eligible voter who is registered in the county where they are confined requests a ballot, Board of Elections employees must deliver the ballot to them in person.<sup>38</sup> Additionally, Boards of Election



must ensure detained people are not required to show an identification that is not available to them while they are in jail to be able to request absentee ballots. Both Pennsylvania and South Dakota, for example, allow people incarcerated for misdemeanors to vote, but they require the submission of an ID incarcerated people do not have access to in order to complete an absentee ballot request form.<sup>39</sup>

States should also create and resource polling places and/or in-person Election Day absentee voting in all jails and state prisons where people are incarcerated.<sup>40</sup> In 2019, Illinois made the Cook County Jail a polling location and mandated same-day registration there, facilitating voting for the roughly 6,000 people incarcerated there on any given day.<sup>41</sup> States should also make no-excuse absentee voting available to all incarcerated people, meaning inmates and prisoners must be able to request, receive, and submit absentee ballots in a timely manner without having to provide a reason from a pre-approved and often limited list of acceptable excuses.<sup>42</sup> States that do not have no-excuse absentee voting must ensure that experiencing a period of incarceration is a valid reason for which people are permitted to cast an absentee ballot, including listing it as a reason on the absentee ballot request form.<sup>43</sup> Further, incarcerated people must be able to cast provisional ballots if their names are not on the rolls.

States must also guarantee these voters can cast secret ballots, meaning guards and other jail and prison officials cannot watch how an incarcerated person votes or review their ballot before it is mailed. States must also ensure that all ballots are able to be counted by transmitting absentee ballots to the appropriate election authority in time to count.

### *Voter Education*

States should allocate resources for robust education programs, so all inmates and prisoners are aware of their voting rights and know where and how to register and vote. They must also set out provisions for how incarcerated people can access campaign literature, candidate materials, and other information on the people and/or issue measures they will be voting on, and states should allocate resources to make sure voter education is available throughout each election cycle and especially in the weeks leading up to Election Day. Again, such programs should be created and implemented in partnership with communities directly impacted by the criminal legal system.

### *Enforcement and Accountability*

As with the federal legislation described above, any state bills addressing penal disenfranchisement in state and local elections should also empower states' attorneys general to pursue violations of incarcerated and formerly incarcerated people's voting rights, and create a private right of action for individuals to seek recourse if their rights are violated.

Dēmos has compiled recommendations on the ways states can making voting rights real for all people impacted by the criminal legal system. [Read more on state-based solutions here.](#)

<b>STATE INTERVENTIONS TO END PENAL DISENFRANCHISEMENT</b>
<b>Registering to Vote &amp; Casting a Ballot</b>
Allocate robust resources for voter registration in all jails and prisons that house voting-eligible people.
Ensure Departments of Correction permit such activities in jails and prisons.
Allocate funding for community groups to engage in voter registration efforts.
Repeal any state laws, regulations, guidance, or directives that make it hard for formerly incarcerated people to access jails and state prisons.
Designate Departments of Corrections, prisons, jails, probation and parole offices, and re-entry agencies as voter registration agencies under the National Voter Registration Act.
Make these departments and offices voter registration agencies under AVR.
Ensure voting while incarcerated is accessible and straightforward.
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Eliminate early cut-offs for requesting or receiving absentee ballots from jails, and transmit absentee ballots the day they are requested.

Allow Boards of Elections to mail absentee ballots to jails.

Maintain a list of phone numbers of all Boards of Elections in the state in every jail, and permit inmates to call their Board of Election free of charge.

Mail absentee ballots with return postage pre-paid.

Allow for direct delivery of ballots to and from people in jail.

Ensure detained people are not required to show an ID that is not available to them while they are in jail in order to request absentee ballots.

Create and resource polling places and/or in-person Election Day absentee voting in all jails and state prisons where people are incarcerated.

Make no-excuse absentee voting available to all incarcerated people.

Allow incarcerated people to cast provisional ballots if their names are not on the rolls.

Guarantee incarcerated voters can cast secret ballots.

Ensure that all absentee ballots are transmitted to the appropriate election authority in time to count.

Facilitate election protection efforts led by grassroots and community groups.

### **Voter Education**

Create robust voter education programs informing all inmates and prisoners of their voting rights and how to register and vote.

Ensure incarcerated people can access campaign literature, candidate materials, and other information on the people and issues they will be voting on.

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### **Enforcement & Accountability**

Empower states' attorneys general to pursue violations of incarcerated and formerly incarcerated people's voting rights.

Create a private right of action for individuals to seek recourse if their rights are violated.

**Conduct all of these activities and programs in partnership with communities directly impacted by the criminal legal system.**



## Addressing Disenfranchisement at the Local Level

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While states have the most power to abolish disenfranchisement in state and local elections, there are important ways localities can ensure all people who are experiencing a period of incarceration can access their fundamental right to vote. In fact, local officials like Boards of Elections and sheriffs play a critical role in voter registration and ballot accessibility. As with the federal and state recommendations above, all plans to facilitate voting and registration for people detained in local jails should be conducted in collaboration with grassroots and community groups made up of or representing directly impacted people and their families.

Local actors play an important role in facilitating:

### *Notification of Voting Rights*

Local corrections officers should make incarcerated people who have not lost their voting rights, such as pretrial detainees and those with non-disqualifying convictions, aware of their right to register and vote. They must provide notification orally and in writing at the time of people's intake into the jail or prison, periodically during their period of incarceration and with increased frequency before elections, and upon release from incarceration and/or supervision. Notification of voting rights, and information on how an incarcerated person can register and vote, should be included in inmate handbooks, broadcast on any in-jail closed circuit television system, and housed in the jail library, as applicable.<sup>44</sup>

### *Ballot Accessibility*

While many of the rules relating to ballot accessibility are determined at the state level, local actors that implement state law—including both jail officials and local Boards of Elections—are critical in facilitating access to the ballot for incarcerated people. For example, jails should require mail from the Board of Elections be delivered to the addressed recipient the same day it is received by the jail, so that incarcerated voters can cast their ballot and return it in time to be counted. If state law allows, local Boards of Elections and jails should work together so that inter-agency mail can be delivered from jails to local Boards without postage otherwise required. Additionally, since personal belongings, including IDs, are often confiscated when a person is incarcer-

ated and kept from them during their period of incarceration, jails should facilitate access to the types of IDs required to register to vote and to cast a ballot in their state, so that people behind bars during an election are not prevented from voting for lack of ID.

Where state law does not act as a barrier, local officials should establish polling locations in jails or in-person absentee voting locations in jails. In Texas, Houston Justice, through an effort called “Project Orange,” and the Texas Organizing Project are organizing to take advantage of the local administration of voting in Texas to bring voting to people behind bars in Harris (Houston), Dallas, and Bexar (San Antonio) Counties via polling places inside jails.<sup>45</sup>

### *Voter Education*

Additionally, local Boards of Elections, sheriffs, and corrections personnel must work together to ensure incarcerated people have access to information about what is on the ballot in the period leading up to all elections—including primaries, generals, run-offs, and special elections. This should include the creation and publication of voter guides for use in local jails,<sup>46</sup> and it could also include ensuring inmates can access information on candidates and races mailed to jails by campaigns, parties, and/or individuals.

### *Understanding of Voting Rights Among Local Officials*

Local elections officials, sheriffs, and other jail workers should undergo training on the voting rights of people detained in local jails. One of the many barriers incarcerated people face to accessing their voting rights is a lack of understanding or misinformation among jail officials on what those rights are. Local corrections officials and Boards of Elections must work together to ensure everyone working in jails understands the voting rights of people in their facilities and adheres to the rules and regulations in place to facilitate voter registration and ballot accessibility among eligible incarcerated people. Such trainings should be led by or conducted in partnership with grassroots and community groups representing incarcerated and formerly incarcerated people and their families.

Further, sheriffs and local election officials should create and publish registration and ballot accessibility plans for jails, so that all officials responsible for facilitating jail voting—including local election officials and jail officials—are aware of their responsibilities to support voting among eligible incarcer-

ated people and understand the process for doing so.<sup>47</sup> There should be a requirement that these plans be published, as in Colorado,<sup>48</sup> so that community members and groups can evaluate local officials' efficacy in facilitating jail voting and, where they are not meeting their obligations, community members can hold them accountable.

## LOCAL INTERVENTIONS TO END PENAL DISENFRANCHISEMENT

### Notifications of Voting Rights

Ensure incarcerated people who have not lost their voting rights are aware of their right to register and vote.

Provide notification orally and in writing at the time of their intake into the jail or prison, periodically during their period of incarceration and with increased frequency before elections, and upon release from incarceration and/or supervision.

Include notification of voting rights and information on how to register and vote in inmate handbooks, broadcast on any in-jail closed circuit television system, and housed in the jail library.

### Ballot Accessibility

Require mail from the Board of Elections be delivered to the addressed recipient the same day it is received by the jail.

Allow inter-agency mail to be delivered from jails to local Boards without postage otherwise required.

Facilitate access to the types of IDs required to register to vote and to cast a ballot in their state.

Establish polling locations in jails or in-person absentee voting locations in jails.

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### **Voter Education**

Ensure incarcerated people have access to information about what is on the ballot in the period leading up to all elections—including primaries, generals, run-offs, and special elections.

Create and publish voter guides for use in local jails, and ensure inmates can access information on candidates and races mailed to jails by campaigns, parties, and/or individuals.

### **Understanding of Voting Rights**

Require local elections officials, sheriffs, and other jail workers to undergo training on the voting rights of people detained in local jails.

Ensure all jail workers and election officials adhere to the rules and regulations in place to facilitate voter registration and voting among eligible incarcerated people.

Create and publish registration and ballot accessibility plans for jails, so that all officials responsible for facilitating jail voting are aware of their responsibilities and understand the process for doing so.

**Conduct all of these activities and programs in partnership with communities directly impacted by the criminal legal system.**



## Overhauling the Criminal Legal System

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Finally, Congress, the states, and localities alike must overhaul their discriminatory criminal legal systems, undoing the widespread criminalization of communities of color and making sure fewer people land in jail and prison in the first place. There are 2.3 million people caged in prisons, jails, detention facilities, and other institutions of confinement across the country.<sup>49</sup> Extreme racial disparities in who is locked up mean that Black people are incarcerated at rates 5 times that of white people, and Latinx people twice as much as whites.<sup>50</sup> While broader criminal justice reform is not the focus of this piece, we cannot talk about the consequence of disenfranchisement without talking about its cause: the systems that criminalize and lock up Black and brown people at unconscionable rates. Siloed discussions and analyses lead to siloed solutions, so it is critical that we acknowledge the whole picture.

For example, the Movement for Black Lives has a visionary and comprehensive platform to end what it calls the “war on Black people” while also making long-term investments toward collective liberation.<sup>51</sup> Bail reform is just one of the many reforms they call on states and localities to pursue, which would allow more people to be home with their families and communities, rather than locked up, as they await a hearing or trial on their case. A full 63 percent of people held in jails have not been convicted of any crime.<sup>52</sup> Legally, these people retain their right to vote, but in practice they very often cannot access the registration rolls or ballot box. State and local officials should guarantee that people are not held in jail before trial because of an inability to pay, and they should reduce and eliminate fines, fees, and other ways our justice system criminalizes poverty and denies people their fundamental right to vote.<sup>53</sup> When fewer people are detained in jails in the first place, the task of facilitating voting in jails becomes easier.

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No election is fully legitimate if even a single citizen of voting age who wants to cast a ballot cannot. And yet, year after year, penal disenfranchisement laws and practices mean millions of people—disproportionately Black and brown people—are forced to sit out elections and, in turn, are excluded from full citizenship and the ability to build durable political power. Penal disenfranchisement laws and practices in the U.S. are a deep stain on our integrity and our morality as a people.

They are racist in their roots and discriminatory in their impact. They are inconsistent with our values as a democratic society. And they do nothing to promote community wellness. In fact, they deny directly impacted people and their communities the myriad benefits that come from full civic engagement, and they deny society the unique and invaluable perspectives of incarcerated and formerly incarcerated people. They allow policymakers at every level to ignore the demands, basic needs, and values of millions of Americans, especially Black Americans. Once and for all, we must cease this painful and violent practice of excluding people from our democracy by ending disenfranchisement through the criminal legal system, and expanding voting rights to those whose rights have been taken away.



# Endnotes

1. Desmond Meade, “Who Belongs? EP 6 – Desmond Meade on the Victory to Regain Voting Rights in Florida,” Othering & Belonging Institute at Berkeley, January 30, 2019.
2. Taina Vargas-Edmond, Gregory Fidell, Lisa Schottenfeld, and Sasha Feldstein, *Democracy Needs Everyone*, Initiate Justice 2019. <https://www.initiatejustice.org/wp-content/uploads/2019/03/Democracy-Needs-Everyone-Report-Initiate-Justice.pdf>.
3. Nikole Hannah-Jones, “Our democracy’s founding ideals were false when they were written. Black Americans have fought to make them true,” *The New York Times*, August 14, 2019, <https://www.nytimes.com/interactive/2019/08/14/magazine/black-history-american-democracy.html>. See generally W.E.B. Du Bois, *Black Reconstruction in America*, (New York: The Free Press, 1935); Susan Ware, *Why They Marched: Untold Stories of Women Who Fought for the Right to Vote*, (Cambridge: The Belknap Press of Harvard University, 2019); John Lewis and Michael D’Orso, *Walking With the Wind*, (New York: Simon & Schuster, 1998); Reverend Dr. William J. Barber II, *The Third Reconstruction: Moral Mondays, Fusion Politics, and the Rise of a New Justice Movement*, (Boston: Beacon Press, 2016); Gary May, *Bending Toward Justice: The Voting Rights Act and the Transformation of American Democracy*, (Durham: Duke University Press, 2015).
4. Americans living within the United States without citizenship are also systematically denied a say in our democracy via the vote, and U.S. citizens and nationals living in the U.S. territories cannot vote for the president or vice president in the general election or for voting representation in Congress. Residents of Washington, D.C. also lack voting representation in Congress. This section deals only with U.S. citizens disenfranchised for involvement in the criminal legal system.
5. In 2016, the Sentencing Project estimated that felony disenfranchisement laws formally disenfranchised 6.1 million Americans; see Christopher Uggen, Ryan Larson, and Sarah Shannon, *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement*, The Sentencing Project, 2016. <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>. In 2018, a supermajority of Floridians passed Amendment 4, which automatically restored the voting rights of 1.4 million Floridians who had served time and completed probation and parole; see Frances Robles, “1.4 Million Floridians With Felonies Win Long-Denied Right to Vote,” *The New York Times*, November 7, 2018, <https://www.nytimes.com/2018/11/07/us/florida-felon-voting-rights.html>. However, in 2019, Republican lawmakers in Florida passed a law requiring returning citizens pay outstanding fines, fees, and restitution before their voting rights are restored, which has made hundreds of thousands of newly-eligible Floridians again ineligible to register and vote until they pay this modern-day poll tax. See Chiraag Bains, “Florida Prices Hundreds of Thousands of Returning Citizens Out of the Vote in a Stunning and Unconstitutional Move,” *Dēmos*, June 29, 2019, <https://www.demos.org/press-release/florida-prices-hundreds-thousands-returning-citizens-out-vote-stunning-and>; and *Can’t Pay, Can’t Vote: A National Survey of the Modern Poll Tax*, Campaign Legal Center and the Civil Rights Clinic at Georgetown Law, July 25, 2019, 23, [https://campaignlegal.org/sites/default/files/2019-07/CLC\\_CPCV\\_Report\\_Final\\_0.pdf](https://campaignlegal.org/sites/default/files/2019-07/CLC_CPCV_Report_Final_0.pdf). Litigation challenging the 2019 Florida law as unconstitutional is ongoing. The decision in that case will determine how many Floridians automatically regain their right to vote and how many remain disenfranchised for a period after incarceration. Current estimates put the total number of disenfranchised people nationwide between 4.7 and 6 million.

6. See Dorothy E. Roberts, “Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework Symposium on Pursuing Racial Fairness in Criminal Justice: Twenty Years after *McCleskey v. Kemp*,” *Columbia Human Rights Law Review* 39 (2008 2007): 261–86; Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (Oxford: Oxford University Press, 2006); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2012); NAACP Criminal Justice Fact Sheet, <https://www.naacp.org/criminal-justice-fact-sheet/>; and *Everyone’s America: 26 State Policies for a Race-Forward, Populist Agenda to Empower all Americans*, Dēmos 2018, 176. <https://www.demos.org/research/everyones-america>.
7. Jean Chung, “Felony Disenfranchisement: A Primer,” The Sentencing Project, 2016, <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>.
8. Christopher Uggen, Ryan Larson, and Sarah Shannon, *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement*, The Sentencing Project, 2016, 12. <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>.
9. *Id.* at 3.
10. W.E.B. Du Bois, *Black Reconstruction in America*, (New York: The Free Press, 1935).
11. See *supra* note 7.
12. The Sentencing Project, *Legislative Changes On Felony Disenfranchisement*, September 2003, 4-5, <https://static.prisonpolicy.org/scans/sp/legchanges-report.pdf>. See also Edgar B. Herwick, III, “How Massachusetts (Recently) Lost the Right to Vote,” WGBH News, May 29, 2019, <https://www.wgbh.org/news/local-news/2019/05/29/how-massachusetts-prisoners-lost-the-right-to-vote>.
13. Pippa Holloway, “‘A Chicken-Stealer Shall Lose His Vote’: Disfranchisement for Larceny in the South, 1874-1890,” *Journal of Southern History*, Vol. 75, No. 4, pp. 931-962, November 2009, <https://ssrn.com/abstract=1508526>.
14. *Id.* See also *Hunter v. Underwood*, 471 U.S. 222 (1985); Brief of Plaintiffs-Appellants at 2, *Harness v. Hosemann*, No. 19-60632 (5th Cir. Dec. 12, 2019); and Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000), 131.
15. In general, see *Supra* note 6. For Florida, see: Erika Wood, *Florida: An Outlier in Denying Voting Rights*, The Brennan Center for Justice, 2016, [https://www.brennancenter.org/sites/default/files/publications/Florida\\_Voting\\_Rights\\_Outlier.pdf](https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf); New York, see: Erika Wood, Liz Bednitz, and Garima Malhotra, *Jim Crow in New York*, 2009, [http://www.brennancenter.org/sites/default/files/legacy/publications/JIMCROWNY\\_2010.pdf](http://www.brennancenter.org/sites/default/files/legacy/publications/JIMCROWNY_2010.pdf); Virginia, see: *Report of the Proceedings and Debates of the Constitutional Convention*, State of Virginia, (1906): 3076; Alabama, see *Journal of the Proceedings of the Constitutional Convention of the State of Alabama* (1901): 9, <https://archive.org/details/journalofproceed00alabrigh/page/8>; Mississippi, South Carolina, and others see: Virginia E. Hench, *The Death of Voting Rights: The Legal Disenfranchisement of Minority Voters*, *Case Western Reserve Law Review*, Vol 48, Issue 4 (1998): 742, <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2224&context=caselrev>; see also *Everyone’s America: 26 State Policies for a Race-Forward, Populist Agenda to Empower all Americans*, Dēmos, 2018, 176, <https://www.demos.org/research/everyones-america>.

16. See *supra* note 7. Note that in 2016 the governor of Virginia began individually restoring the voting rights of all formerly incarcerated people after they completed the terms of their sentence, a practice the current governor has continued. In 2019 the governor of Kentucky committed to restore the voting rights of people with felony convictions once they complete the terms of their sentence (including incarceration, probation, and parole). While progress, both of these actions are discretionary and can be overturned by future governors. Indeed, exactly this happened in Iowa, whose governor in 2005 issued an executive order restoring voting rights of those who had completed their sentences, only to have it overturned by the subsequent governor in 2011. In 2019, Iowa automated part of its rights restoration process, though formerly incarcerated people convicted of felony convictions still have to apply to have their rights restored.
17. Maine is 94.6 percent white, non-Hispanic, and Vermont is 94.2 percent white, non-Hispanic. “Quick Facts: United States, White Alone, Percent,” U.S. Census Bureau, 2018, <https://www.census.gov/quickfacts/geo/chart/US/RHI125218>.
18. See *supra* note 7, states include: CO, DC, HI, IL, IN, MD, MA, MI, MT, NV, NH, ND, OH, OR, PI, RI, UT. Note that whether Florida falls in this category or the next is still up in the air and will depend on the final ruling in an active court case challenging the statute implementing Amendment 4.
19. *Id.*, states include: AL, AZ, DE, FL, MS, NE, TN, VA, WY. Note that, while Alabama disenfranchises people convicted of felonies involving “moral turpitude,” it does not disenfranchise people convicted of other felonies, so some Alabamans serving time for felony convictions actually maintain their right to vote, and community groups are working to ensure they can access the ballot. See Solomon Crenshaw Jr., “Some Prisoners Invited to Vote by Absentee Ballot for the First Time This Year,” Birmingham Watch, February 15, 2020, <https://birminghamwatch.org/prisoners-invited-vote-absentee-ballot-first-time-year/>.
20. The 24th Amendment to the U.S. Constitution (ratified 1964) banned poll taxes for federal elections. However, some states continued the practice for state elections until they were forced to stop by the U.S. Supreme Court’s decision in *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966). In *Harper*, the Supreme Court “conclude[d] that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard” (see *Harper* at 666).
21. Campaign Legal Center and the Civil Rights Clinic at Georgetown Law, *Can’t Pay, Can’t Vote: A National Survey of the Modern Poll Tax*, July 25, 2019. [https://campaignlegal.org/sites/default/files/2019-07/CLC\\_CPCV\\_Report\\_Final\\_0.pdf](https://campaignlegal.org/sites/default/files/2019-07/CLC_CPCV_Report_Final_0.pdf); see also Beth A. Colgan, *Wealth-Based Penal Disenfranchisement*, 72 Vand. L. Rev. 55 (2019), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3312439](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3312439). Note that Colgan employs a different methodology for assessing state-based statutes, rules, and policies governing penal disenfranchisement and finds that a full 48 states plus the District of Columbia employ some form of wealth-based penal disenfranchisement. Modern day poll taxes are being challenge in the courts. In a case involving implementation of Florida’s Amendment 4 (see *supra* note 5), the 11th Circuit Court of Appeals upheld a temporary ruling against a Florida statute that would have prevented formerly incarcerated people from voting due to the inability to pay outstanding fines and fees. In its ruling, the 11th Circuit found the requirement “punishes those that cannot pay,” *Jones v. Governor of Fla.*, No. 19-14551, 2020 U.S. App. LEXIS 5022, \*19 (11th Cir. Feb. 19, 2020).
22. *O’Brien v. Skinner* 409 U.S. 1240 (1974).

23. Nick Pinto, “The Bail Trap,” *The New York Times Magazine*, August 13, 2015, <https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html>; and Wendy Sawyer and Peter Wagner, “The Whole Pie,” The Prison Policy Initiative, March 19, 2019. <https://www.prisonpolicy.org/reports/pie2019.html>.
24. Dēmos has litigated against this practice in Ohio. See *Tommy Ray Mays II v. LaRose*, No. 18-1376 (S.D. Ohio filed Nov. 6, 2018), <https://www.demos.org/case/mays-v-larose>.
25. See *supra* note 23, Sawyer and Wagner. See also Wanda Bertram and Alexi Jones, “How many people in your state go to local jails every year?” *Prison Policy Initiative*, September 18, 2019, <https://www.prisonpolicy.org/blog/2019/09/18/state-jail-bookings/>.
26. Eight states disenfranchise or allow disenfranchisement of people due to misdemeanor convictions: IL, IN, IA, KS, KY, MI, MO, and SC. See Allyson Frederickson and Linnea Lassiter, *Disenfranchised by Debt: Millions Impoverished by Prison, Blocked from Voting*, Alliance for a Just Society, March 2016, at 9. <http://allianceforajustsociety.org/wp-content/uploads/2016/03/Disenfranchised-by-Debt-FINAL-3.8.pdf>. For more on how states categorize felonies, which disqualify people from voting, see “Felon Voting Rights,” the National Conference of State Legislatures, <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>.
27. See U.S. Commission on Civil Rights, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, June 2019. <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf>.
28. The 14th Amendment (ratified 1868) protects the right to vote against discrimination; the 15th Amendment (ratified 1870) prohibits vote denial or abridgement based on race.
29. *U.S. Constitution*. Art. I, Sec. 4 reads “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.”
30. See *Oregon v. Mitchell*, 400 U.S. 112 (1970).
31. “For the People Act,” H.R.1 / S.1, 117th Congress (2021). The full House of Representatives passed this historic election reform package, including the “Democracy Restoration” provision, on March 3, 2021. It is now headed to the Senate, where it will receive a hearing, markup, and vote this Congress.
32. National Council of Incarcerated and Formerly Incarcerated Women and Girls, “The Declaration of the National Council of Incarcerated and Formerly Incarcerated Women and Girls,” April 16, 2015, <https://www.nationalcouncil.us/post/the-declaration-of-the-national-council-for-incarcerated-and-formally-incarcerated-women-and-girls>.
33. The U.S. government has provided hundreds of millions of dollars to localities for jail construction over the last 25 years. See Brian Sonenstein, “U.S. Department of Agriculture Provided over \$277 Million for Local Jail Construction Since 1996,” *Mint Press News*, June 7, 2018, <https://www.mintpressnews.com/agg-dept-funds-jails/243402/>.
34. Incarcerated and formerly incarcerated people in Florida achieved just such a change after they designed a ballot measure (Amendment 4), organized enough signatures to put it on the ballot, and knocked on doors across the entire state, convincing 65 percent of voters to support the change in November 2018. The effort was led by the Florida Rights Restoration Coalition, a grassroots membership group run by formerly incarcerated people. See <https://floridarcc.com/>.

35. For example, before formerly incarcerated people in Florida won passage of Amendment 4, individuals had to undergo a long, complicated—and often unsuccessful—process to have their voting rights restored. After completing all terms of their sentence (including incarceration, probation, parole, or any other form of community supervision, as well as payment of victim restitution and any other fines or fees imposed as part of their sentence or accrued while serving their sentence), formerly incarcerated people had to undergo a 5-7 year waiting period, and only then could apply to the governor to have their rights restored. Such a petition included a written application alongside a number of supporting documents, including certified copies of the charging instrument, judgment, and sentence for each conviction, as well as, in many cases, a hearing before the governor-appointed clemency board, which has full discretion to approve or deny petitions. If petitions were denied, individuals had to wait another 2 years before even being able to reapply. In former Governor Rick Scott’s first full year in office, after he tightened clemency rules even further, only 52 people’s applications for voting rights restoration were approved. At the time, there were an estimated 1.4 million people disenfranchised for felony convictions in the state. See Erika Wood, *Florida: An Outlier in Denying Voting Rights*, The Brennan Center for Justice, 2016, 11-13. [https://www.brennancenter.org/sites/default/files/publications/Florida\\_Voting\\_Rights\\_Outlier.pdf](https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf). While Florida’s process pre-Amendment 4 was particularly onerous, the rights-restoration process in states where it is not automatic can also be lengthy, costly, and otherwise burdensome for formerly incarcerated people.
36. Election Protection hotlines are managed by the Lawyer’s Committee for Civil Rights Under Law, the NALEO Education Fund, APIAVote and Asian Americans Advancing Justice, and the Arab American Institute. See “Election Protection: 866 OUR VOTE,” <https://866ourvote.org/about/>. Dēmos and the Southern Center for Human Rights are currently experimenting with a hotline serving some jails in Georgia, through which incarcerated people in these jails can call election attorneys to ask about their voting rights and/or report violations of those rights.
37. The National Voter Registration Act (NVRA) of 1993 reduced barriers to voter registration—often one of the greatest impediments to voting, especially among low-income communities and other marginalized peoples—by requiring states to provide voter registration at DMVs, agencies providing public assistance, and agencies providing services to persons with disabilities; requiring states to accept mail-in voter registration applications; and providing protections from improper voter purges. The NVRA also allows states to designate additional departments and agencies as source agencies, and some states have elected to offer voter registration at places like public housing agencies, state licensing offices, schools, community colleges, and universities, among others. States could add Departments of Corrections to this list. Thanks to the NVRA, registering to vote, and in turn, voting itself, is more accessible for millions of Americans every election cycle. For more on the impact of the NVRA, see Laura Williamson, Pamela Cataldo, and Brenda Wright, *Toward a More Representative Electorate*, Dēmos, December 21, 2018. <https://www.demos.org/research/toward-more-representative-electorate>.
38. Until recently, Georgia did not allow ballots to be mailed to places other than the permanent residential addresses of the elector requesting the ballot, which meant eligible voters behind bars in Georgia could not have absentee ballots mailed to them. The state changed this regulation in 2019, and now eligible voters in jails can receive absentee ballots while incarcerated. See Ashley Flete, “New law in Georgia allows people in jail, awaiting trial right to vote,” News Channel 6 WJBF, February 12, 2020, <https://www.wjbf.com/top-stories/new-law-in-georgia-allows-people-in-jail-awaiting-trail-right-to-vote/>; and Georgia Secretary of State, “Absentee Voting: A Guide for Registered Voters,” 2020, [https://sos.ga.gov/admin/files/Absentee\\_Voting\\_A\\_Guide\\_for\\_Registered\\_Voters\\_2020.pdf](https://sos.ga.gov/admin/files/Absentee_Voting_A_Guide_for_Registered_Voters_2020.pdf).

39. Ohio Rev. Code § 3509.08(A). Note that local Boards of Elections should work with state Boards of Elections to ensure that, whenever possible, all people in a state can benefit from direct delivery, even if they are incarcerated in a county different from that where they are registered. Note, too, that direct delivery by a family member or designee may require that jail officials actually hand the ballot between the incarcerated person and their visitor, given restrictions on passing materials in many jails. Local Boards of Elections should offer guidance to jails detailing jail officials' responsibility to facilitate direct delivery of ballots and best practices for respecting an incarcerated person's right to cast a secret ballot.
40. Allyson Frederickson and Linnea Lassiter, *Disenfranchised by Debt: Millions Impoverished by Prison, Blocked from Voting*, Alliance for a Just Society, March 2016, at 11. <http://allianceforajustsociety.org/wp-content/uploads/2016/03/Disenfranchised-by-Debt-FINAL-3.8.pdf>.
41. There are logistical questions to be considered when designing in-jail and in-prison voting, but they are undoubtedly addressable. Consider, for example, that Texas Election Code allows for Election Day voting from outer space (See Tex. Elec. Code § 106.002), a proposition that raises even more logistical questions, all of which the state of Texas is able to address. Any additional arrangements or accommodation required to make voting in jails and prisons possible are well worth the effort to remedy the grave violations of their voting rights experienced by people behind bars on Election Day.
42. Cinnamon Janzer, "Chicago Jail Becomes a Polling Place," Next City, September 17, 2019, <https://nextcity.org/daily/entry/a-chicago-jail-becomes-a-polling-place>.
43. In Ohio, state law prevents thousands of registered Ohio voters who are detained after close of business the Friday before the election from requesting and receiving an absentee ballot in jail. However, individuals who are unable to vote in person due to an unforeseen hospitalization are permitted to request, receive, and cast a ballot in the days immediately preceding an election. See *supra* note 24 *Mays v LaRose*.
44. See New York state's absentee ballot application, box 1, New York State Board of Elections, <https://www.elections.ny.gov/NYSBOE/download/voting/AbsenteeBallot-English.pdf>.
45. Washington, D.C. passed a law requiring the Department of Corrections to provide such notice. See D.C. ACT 22-565, *Voting Rights Notification Amendment Act of 2018*, (2018), Washington, D.C., <http://lims.dccouncil.us/Download/38259/B22-0312-SignedAct.pdf>.
46. See Houston Justice, "Project Orange," <https://www.houstonjustice.org/inmatejustice>; and the Texas Organizing Project, <https://organizetexas.org/>. Dēmos is supporting their efforts and, alongside the Campaign Legal Center, submitted a letter urging local officials to take steps to enfranchise the thousands of Houstonians jailed any given day; see Naila Awan and Danielle M. Lang, "Letter Urging Harris County, Texas, to Move Forward with Plan for In-Person Voting Inside Harris County Jail," September 23, 2019, <https://www.demos.org/testimony-and-public-comment/letter-urging-harris-county-texas-move-forward-plan-person-voting>.
47. Washington, D.C. is also a leader in this area, having created a voter guide specifically for incarcerated voters. See "Voting Guide for Incarcerated and Returning Citizens," District of Columbia Board of Elections, [https://www.dcboe.org/dcboe/media/PDFFiles/ReturningCitizens\\_4-30-18.pdf](https://www.dcboe.org/dcboe/media/PDFFiles/ReturningCitizens_4-30-18.pdf).



48. Campaign Legal Center, “Challenging Jail-Based Disenfranchisement: A Resource Guide for Advocates,” December 11, 2019, <https://campaignlegal.org/sites/default/files/2019-12/Jail%20Voting%20Advocacy%20Manual.pdf>.
49. “Policy and Procedures Manual,” Colorado Secretary of State Election Division, 2019, 7, <https://www.sos.state.co.us/pubs/elections/policyManual/ElectionsPolicyManual.pdf>.
50. See *supra* note 23, Sawyer and Wagner.
51. Leah Sakala, *Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/Ethnicity*, Prison Policy Initiative, May 28, 2014. <https://www.prisonpolicy.org/reports/rates.html>.
52. The Movement for Black Lives’ Platform includes proposals related to ending the war on Black people, reparations, investments in critical institutions and divestment from oppressive systems, economic justice, community control, and political power. See Movement for Black Lives, “Platform,” <https://policy.m4bl.org/platform/>.
53. See *supra* note 23, Sawyer and Wagner.
54. See *Everyone’s America: 26 State Policies for a Race-Forward, Populist Agenda to Empower all Americans*, Dēmos 2018, at 83 and 88. <https://www.demos.org/research/everyones-america>. Washington, D.C. is a leader in the area of pretrial release, as well; see Ann E. Marimow, “When it Comes to Pretrial Release, Few Other Jurisdictions Do It D.C.’s Way,” *The Washington Post*, July 4, 2016, [https://www.washingtonpost.com/local/public-safety/when-it-comes-to-pretrial-release-few-other-jurisdictions-do-it-dcs-way/2016/07/04/8eb52134-e7d3-11e5-b0fd-073d5930a7b7\\_story.html](https://www.washingtonpost.com/local/public-safety/when-it-comes-to-pretrial-release-few-other-jurisdictions-do-it-dcs-way/2016/07/04/8eb52134-e7d3-11e5-b0fd-073d5930a7b7_story.html).