

STATE OF NEW YORK

6875

2023-2024 Regular Sessions

IN SENATE

May 12, 2023

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

AN ACT to amend the election law and the correction law, in relation to voting rights and access for incarcerated individuals

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The election law is amended by adding a new section 8-109
2 to read as follows:

3 § 8-109. Polling places at correctional facilities and local correc-
4 tional facilities. For purposes of facilitating voting by residents of
5 correctional facilities and local correctional facilities, as such terms
6 are defined in section two of the correction law, the board of elections
7 may establish by majority vote, in lieu of the absentee balloting
8 program set forth in subdivisions one through fifteen of section 8-407
9 of this article, a polling place at any such facility for at least three
10 hours of operation beginning the third day prior to any general, prima-
11 ry, run-off primary pursuant to subdivision one of section 6-162 of this
12 chapter or special election for any public or party position, and
13 ending on and including the second day prior to such general, primary,
14 run-off primary or special election for such public office or party
15 position. Any such polling place shall be established in compliance
16 with the early voting provisions of paragraphs (d) and (e) of subdivi-
17 sion four and subdivisions five through eleven of section 8-600 of this
18 article. Voter access to polling places established pursuant to this
19 section shall be restricted to voters detained or confined at such
20 facility or related facilities and voters who are employees of such
21 facilities, who are registered to vote in the county where such facility
22 is located, or for facilities located in the city of New York, voters
23 who are registered to vote in the city of New York. All other eligible
24 voters who are detained or confined at such facility or who are employ-
25 ees of such facility shall be provided with voter registration forms and

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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absentee ballot applications pursuant to section 8-415 of this article. The establishment of polling places under this section shall be in addition to, and shall not diminish, the minimum quantity of early voting locations required by subdivision two of section 8-600 of this article, nor shall the fact of such establishment alter or prejudice the application of the equitable siting factors therein. The board of elections shall establish procedures or apply procedures established for early voting, subject to approval of the state board of elections, to ensure that persons who vote during the early voting period shall not be permitted to vote subsequently in the same election.

§ 2. Subdivision 1 of section 8-406 of the election law, as amended by section 2 of part HH of chapter 55 of the laws of 2022, is amended to read as follows:

1. If the board shall find that the applicant is a qualified voter of the election district containing his or her residence as stated in his or her statement and that his or her statement is sufficient, it shall, as soon as practicable after it shall have determined his or her right thereto, mail to him or her at an address designated by him or her, or deliver to him or her, or to any person designated for such purpose in writing by him or her, at the office of the board, such an absentee voter's ballot or set of ballots and an envelope therefor. If the ballot or ballots are to be sent outside of the United States to a country other than Canada or Mexico, such ballot or ballots shall be sent by air mail. However, if an applicant who is eligible for an absentee ballot is a resident of a facility operated or licensed by, or under the jurisdiction of, the department of mental hygiene, or a resident of a facility defined as a nursing home or residential health care facility pursuant to subdivisions two and three of section two thousand eight hundred one of the public health law, or a resident of a hospital or other facility operated by the Veteran's Administration of the United States, or a person detained or confined at a correctional facility or local correctional facility, as such terms are defined in section two of the correction law, such absentee ballot need not be so mailed or delivered to any such applicant but, may be delivered to the voter in the manner prescribed by section 8-407 of this ~~chapter~~ title if such facility is located in the county or city in which such voter is eligible to vote.

§ 3. Section 8-407 of the election law, as added by chapter 296 of the laws of 1988, subdivisions 1, 3 and 15 as amended by chapter 195 of the laws of 2001, and subdivision 6 as amended by chapter 326 of the laws of 1989, is amended to read as follows:

§ 8-407. Voting by residents of nursing homes, residential health care facilities, facilities operated or licensed, or under the jurisdiction of, the department of mental hygiene or hospitals ~~[or]~~, facilities operated by the Veteran's Administration of the United States, or by persons detained or confined at correctional facilities and local correctional facilities. 1. The board of elections of a county or city in which there is located at least one facility operated or licensed, or under the jurisdiction of, the department of mental hygiene, or a facility defined as a nursing home or residential health care facility pursuant to subdivisions two and three of section two thousand eight hundred one of the public health law or an adult care facility subject to the provisions of title two of article seven of the social services law, ~~[or]~~ a hospital or other facility operated by the Veteran's Administration of the United States, or a correctional facility or local correctional facility shall, subject to subdivision sixteen of this section and section 8-109 of this article, provide and ensure that resi-

dents of, or persons detained or confined at, each such facility for which such board has received twenty-five or more applications for absentee ballots from voters who are eligible to vote by absentee ballot in such city or county at such election, may vote by absentee ballot ~~[only]~~ in the manner provided for in this section. Such board may, in its discretion, provide that the procedure described in this subdivision shall be applicable to all such facilities in such county or city without regard to the number of absentee ballot applications received from the residents of any such facility.

2. Such a board of elections shall appoint, in the same manner as other inspectors, one or more bi-partisan boards of inspectors, each composed of two such inspectors. Such inspectors may be regular employees of such board of elections or persons qualified in accordance with subdivision six of section 3-400 of this chapter. All inspectors appointed pursuant to this subdivision shall undergo the requisite training and subscribe to the oath required of election inspectors pursuant to sections 3-412 and 3-414 of this chapter.

3. Not earlier than ~~[thirteen]~~ twenty-one days before or later than the day before such an election such a board of inspectors shall, between the hours of ~~[nine]~~ seven o'clock in the morning and ~~[five]~~ eight o'clock in the evening on one or more days, attend at each such facility for the residents of which the board of elections has custody of twenty-five or more absentee ballots or which otherwise qualifies pursuant to subdivision sixteen of this section or, if the board of elections has so provided, each such facility for which the board has custody of one or more such absentee ballots, pursuant to the provisions of this chapter.

4. Each such board of inspectors may attend at more than one facility, provided, however, that no such board of inspectors shall be assigned to attend at more facilities than it reasonably can be expected to complete within the time specified by this section.

5. The board of elections shall deliver to each board of inspectors voter registration forms, paper absentee ballot applications or tools capable of providing eligible persons with access to complete and submit or save such applications through the electronic voter registration or absentee ballot application transmittal system and sufficient equipment for the printing and issuance of absentee ballots or all the absentee ballots in the custody of such board of elections which are addressed to ~~[residents of]~~ voters at the facilities which such board of inspectors is appointed for or assigned to attend, together with one or more portable voting booths of a type approved by the state board of elections and such other supplies, including assistive devices and any reasonable accommodations for persons with disabilities and interpretive resources and personnel for those in need of language assistance, as such board of inspectors will require to discharge its duties properly. Any completed voter registration forms collected by such board of inspectors shall be processed pursuant to sections 5-208 and 5-210 of this chapter, as applicable. Any completed absentee ballot application forms collected by such board of inspectors shall be treated as applications for an absentee ballot delivered in person at the board of elections to the voter or to an agent of the voter in accordance with paragraph (c) of subdivision two of section 8-400 of this title and processed pursuant to section 8-402 of this title.

6. The board of elections, at least ~~[twenty]~~ forty-five days before each such election, or, for facilities not set forth in subdivision sixteen of this section, on the day after it shall have received the

1 requisite number of applications for absentee ballots from the residents
2 of any such facility, whichever is later, shall communicate with the
3 superintendent, administrator or director of each such facility or their
4 designated democracy officer or agent to arrange the ~~[day]~~ days and
5 ~~[time]~~ times when the board of inspectors will attend at such facility.
6 The board of elections shall keep a list of ~~(a)~~ the ~~[day]~~ days and
7 ~~[time]~~ times at which the board of inspectors will attend at each such
8 facility, (b) the number of applications for absentee ballots received
9 from any such facility, and (c) the number of absentee ballots returned
10 by voters at any such facility pursuant to this section as ~~[a]~~ public
11 ~~[record]~~ records at its office and deliver a copy of such records to the
12 state board of elections within seven days after certification of each
13 primary, general or special election.

14 7. It shall be the duty of each such superintendent, administrator or
15 director, or their designated democracy officer or agent, to assist the
16 board of inspectors attending or serving such facility in the discharge
17 of its duties, including, but not limited to making available to such
18 board of inspectors space and reasonable accommodations within such
19 facility suitable for the discharge of its duties.

20 8. The board of inspectors shall deliver each absentee ballot
21 addressed to a ~~[resident-of]~~ voter located at each such facility to such
22 ~~[resident]~~ voter. If such ~~[resident]~~ voter is physically disabled the
23 inspectors shall, if necessary, deliver the ballot to such voter at
24 ~~[his]~~ their bedside.

25 9. The board of inspectors shall arrange the portable voting booth or
26 booths provided and effect such safeguards as may be necessary to
27 provide secrecy for the votes cast by such ~~[residents]~~ voters.

28 10. If such a ~~[resident]~~ voter is unable to mark ~~[his]~~ their ballot,
29 ~~[he]~~ they may be assisted in marking such ballot by the two members of
30 the board of inspectors or such other person as ~~[he]~~ they may select. If
31 a voter is unable to mark the ballot and unable to communicate how ~~[he~~
32 ~~wishes]~~ they wish such ballot marked, such ballot shall not be cast. No
33 person who assists a voter to mark ~~[his]~~ their ballot pursuant to the
34 provisions of this section, shall disclose to any other person how any
35 such ballot was marked.

36 11. Except as otherwise provided in this section, all ballots cast
37 pursuant to this section shall be cast in the manner provided by this
38 chapter for the casting of absentee ballots.

39 12. After such ballots have been cast and sealed in the appropriate
40 envelopes, they shall be returned to such inspectors.

41 13. Upon completion of its duties, the board of inspectors shall
42 forthwith return all such ballots to the board of elections.

43 14. Any person, political committee or independent body entitled to
44 appoint watchers for the election district in which any such facility is
45 located at the election for which such absentee ballots are cast, shall
46 be entitled to appoint a watcher to attend such board of inspectors at
47 such facility.

48 15. All ballots cast pursuant to the provisions of this section which
49 are received before the close of the polls on election day by the board
50 of elections charged with the duty of casting and canvassing such
51 ballots, may be delivered to the inspectors of election in the manner
52 prescribed by this chapter or retained at the board of elections and
53 cast and canvassed pursuant to the provisions of section 9-209 of this
54 chapter as such board shall, in its discretion, determine pursuant to
55 the provisions of subdivision one of this section.

16. With respect to correctional facilities and local correctional facilities, as such terms are defined in section two of the correction law, the board of elections in counties with at least one hundred thousand registered voters shall provide that the eligible persons detained or confined at any such facility in such county with seventy-five or more persons detained or confined may vote by absentee ballot as provided for in this section, without regard to the number of absentee ballot applications received from eligible voters at any such facility. With respect to eligible persons detained at such facility who are not residents of the county in which such facility is located, the residential duty to facilitate timely voter registration and absentee ballot access pursuant to section 8-415 of this title shall still apply. Each board of elections subject to this subdivision shall adopt written procedures to ensure orderly administration of the absentee balloting program at each such facility. Such procedures shall include, but not be limited to, the delivery and retrieval of voter registration forms and absentee ballots, shall be counter signed by the facility's superintendent, administrator or director, or their designated democracy officer or agent, and shall be public records. All procedures shall be submitted to the state board of elections no later than ninety days prior to the first election day in which a facility located within such a county shall participate in this program, and approved by the state board of elections with any amendments prescribed by the state board of elections no later than seventy-five days prior to such election day. All other correctional facilities and local correctional facilities in such a county shall be subject to the provisions of section 8-415 of this title; provided, however, that a board of elections may provide absentee balloting access in accordance with this subdivision to voters detained or confined at such other correctional facilities and local correctional facilities in lieu of such board of elections' obligations prescribed by section 8-415 of this title. This subdivision shall not apply to any facility where the persons detained or confined at such facility are exclusively under the age of eighteen.

17. Nothing in this section shall prejudice or limit the rights under state and federal law of any voter who votes pursuant to the methods in this section, including the rights and remedies provided for under title two of article seventeen of this chapter.

§ 4. The election law is amended by adding a new section 8-415 to read as follows:

§ 8-415. Absentee voting; application and registration drive for citizens detained or confined at correctional facilities and local correctional facilities. 1. This section applies to any correctional facility or local correctional facility, as such terms are defined in section two of the correction law, for which absentee balloting is not provided pursuant to section 8-407 of this title, except for any such facility where the persons detained or confined at such facility are exclusively under the age of eighteen. For each such facility, the board of elections shall coordinate with the superintendent, administrator, director, designated democracy officer or agent to facilitate voter access by ensuring that all eligible citizens are provided with a voter registration form, which shall be processed pursuant to sections 5-208 and 5-210 of this chapter, as applicable, and that all eligible voters are provided with an absentee ballot application no later than twenty-one days prior to election day. It shall be the duty of each such superintendent, administrator, director, designated democracy officer or agent to assist the board in the discharge of its duties pursuant to

this subdivision, including, but not limited to making available suitable space and reasonable accommodations within such facility.

2. The state board of elections shall promulgate non-partisan educational materials in plain language about the voting rights of individuals currently incarcerated and formerly incarcerated for inclusion in the inmate handbook or similar materials and reentry resources. Nothing in this subdivision shall prohibit the inclusion or distribution of non-partisan educational materials in additional resources provided to or made available to incarcerated or formerly incarcerated individuals.

§ 5. Section 500-j of the correction law, as amended by chapter 291 of the laws of 2009, is amended to read as follows:

§ 500-j. Who may visit local correctional facilities. The following persons may visit at pleasure all local correctional facilities: The governor and lieutenant-governor, secretary of state, comptroller and attorney-general, members of the legislature, judges of the court of appeals, justices of the supreme court and county judges, district attorneys ~~[and]~~, every clergyman or minister, as such terms are defined in section two of the religious corporations law, having charge of a congregation in the county in which such facility is located, and bi-partisan board of elections officials and inspectors appointed by the board of elections in the county where any such facility is situated or the board of elections in the city of New York, in order to discharge their duties under sections 8-407 and 8-415 of the election law. No other person not otherwise authorized by law shall be permitted to enter the rooms of a local correctional facility in which convicts are confined, unless under such regulations as the sheriff of the county, or in counties within the city of New York, the commissioner of correction of such city, or in the county of Westchester, the commissioner of correction of such county shall prescribe.

§ 6. Subdivision 1 of section 146 of the correction law, as amended by chapter 274 of the laws of 2019, is amended to read as follows:

1. The following persons shall be authorized to visit at pleasure all correctional facilities: The governor and lieutenant-governor, commissioner of general services, secretary of state, comptroller and attorney-general, members of the commission of correction, members of the legislature and their accompanying staff and any employee of the department as requested by the member of the legislature if the member requests to be so accompanied, provided that such request does not impact upon the department's ability to supervise, manage and control its facilities as determined by the commissioner, judges of the court of appeals, supreme court and county judges, district attorneys ~~[and]~~, every clergyman or minister, as such terms are defined in section two of the religious corporations law, having charge of a congregation in the county wherein any such facility is situated, and bi-partisan boards of elections officials and inspectors appointed by the board of elections in the county where any such facility is situated or the board of elections in the city of New York, in order to discharge their duties under sections 8-407 and 8-415 of the election law. No other person not otherwise authorized by law shall be permitted to enter a correctional facility except by authority of the commissioner of correction under such regulations as the commissioner shall prescribe.

§ 7. Section 75 of the correction law, as amended by chapter 103 of the laws of 2021, is amended to read as follows:

§ 75. ~~[Notice of voting]~~ Voting rights. 1. Freedom to vote. All persons who may have been or may hereafter be detained or confined at, or committed to or taken charge of by any correctional facility, who are

1 qualified to register for and vote at any election pursuant to section
2 5-102 of the election law and not subject to exclusion by section 5-106
3 of the election law, are hereby declared to be entitled to the free
4 exercise and enjoyment of the elective franchise without discrimination
5 or preference.

6 2. Opportunity to register to vote and request ballots. The rules and
7 regulations established for the government of any correctional facility
8 shall recognize the right of detained or incarcerated individuals, who
9 are qualified to register for and vote at any election pursuant to
10 section 5-102 of the election law and not subject to exclusion by
11 section 5-106 of the election law, to the free exercise of their right
12 to vote in accordance with the provisions of the constitution and, to
13 effectuate such end, shall allow for access by the eligible individuals
14 to electronic personal voter registration or voter registration by
15 application pursuant to article five of the election law and to access
16 absentee balloting services through the electronic absentee ballot
17 application transmittal system or by paper application pursuant to title
18 four of article eight of the election law, in such manner as may best
19 carry into effect the spirit and intent of this section and be consist-
20 ent with the proper discipline and management of the correctional facil-
21 ity. Such services shall be made available within the buildings or
22 grounds, whenever possible, where the detained or incarcerated individ-
23 uals are required by law to be confined, in such manner and at such
24 hours as will be in harmony with the rules and regulations of both the
25 facility and the board of elections, and such facilities shall secure to
26 such individuals the free exercise of their right to vote in accordance
27 with the provisions of this section. In case of a violation of any of
28 the provisions of this section, any person feeling himself or herself
29 aggrieved thereby may exercise any rights and remedies provided for
30 under state and federal law, including by instituting proceedings in the
31 supreme court of the district where such facility is situated, which is
32 hereby authorized and empowered to enforce the provisions of this
33 section.

34 3. Duty to cooperate. Pursuant to sections 8-406, 8-407, and 8-415 of
35 the election law, the superintendent of each correctional facility shall
36 cooperate with the board of elections in developing and implementing a
37 plan to facilitate at least one method of voter access for all persons
38 eligible to vote who are detained or confined at each such facility,
39 including, but not limited to making available to such board space and
40 reasonable accommodations within such facility for the discharge of its
41 duties. The department shall issue regulations directing each such
42 facility to ensure the timely delivery, and to facilitate the timely
43 return if applicable, of all official election mail, forms, notices or
44 communications to any individual detained or confined at such facility
45 and that non-partisan plain language educational materials about the
46 voting rights of individuals currently incarcerated and formerly incar-
47 cerated are included in the inmate handbook or similar materials and
48 reentry resources. Nothing in this subdivision shall prohibit the inclu-
49 sion or distribution of non-partisan educational materials in additional
50 resources provided to or made available to incarcerated or formerly
51 incarcerated individuals. Without limiting any rights or remedies
52 provided to voters under the law, there shall be a presumption of a
53 violation of subdivision one of section 17-212 of the election law when
54 any superintendent, employee, or agent of such correctional facility, by
55 commission or omission, intentionally frustrates the purposes of this
56 section.

1 4. Rights restoration upon release and registration. Prior to the
2 release from a correctional facility of any person the department shall
3 notify such person verbally and in writing, that his or her voting
4 rights will be restored upon release and provide such person with a form
5 of application for voter registration and a declination form, offer such
6 person assistance in filling out the appropriate form, and provide such
7 person written information distributed by the board of elections on the
8 importance and the mechanics of voting. Upon release, such person may
9 choose to either submit his or her completed application to the state
10 board or county board where such person resides or have the department
11 transmit it on his or her behalf. Where such person chooses to have the
12 department transmit the application, the department shall transmit the
13 completed application upon such person's release to the state board or
14 county board where such person resides.

15 § 8. Section 510 of the correction law, as added by chapter 103 of the
16 laws of 2021, is amended to read as follows:

17 § 510. Voting [~~upon release~~]. 1. Freedom to vote. All persons who may
18 have been or may hereafter be detained or confined at, or committed to
19 or taken charge of by any local correctional facility, who are qualified
20 to register for and vote at any election pursuant to section 5-102 of
21 the election law and not subject to exclusion by section 5-106 of the
22 election law, are hereby declared to be entitled to the free exercise
23 and enjoyment of the elective franchise without discrimination or pref-
24 erence.

25 2. Opportunity to register to vote and request ballots. The rules and
26 regulations established for the government of local correctional facili-
27 ties shall recognize the right of detained or incarcerated individuals,
28 who are qualified to register for and vote at any election pursuant to
29 section 5-102 of the election law and not subject to exclusion by
30 section 5-106 of the election law, to the free exercise of their right
31 to vote in accordance with the provisions of the constitution and, to
32 effectuate such end, shall allow for access by the eligible individuals
33 to electronic personal voter registration or voter registration by
34 application pursuant to article five of the election law and to access
35 absentee balloting services through the electronic absentee ballot
36 application transmittal system or by paper application pursuant to title
37 four of article eight of the election law, in such manner as may best
38 carry into effect the spirit and intent of this section and be consist-
39 ent with the proper discipline and management of the correctional facil-
40 ity. Such services shall be made available within the buildings or
41 grounds, whenever possible, where the detained or incarcerated individ-
42 uals are required by law to be confined, in such manner and at such
43 hours as will be in harmony with the rules and regulations of both the
44 facility and the board of elections, and secure to such individuals the
45 free exercise of their right to vote in accordance with the provisions
46 of this section. In case of a violation of any of the provisions of this
47 section, any person feeling himself or herself aggrieved thereby may
48 exercise any rights and remedies provided for under state and federal
49 law, including by instituting proceedings in the supreme court of the
50 district where such facility is situated, which is hereby authorized and
51 empowered to enforce the provisions of this section.

52 3. Duty to cooperate. Pursuant to sections 8-406, 8-407, and 8-415 of
53 the election law, the superintendent of each local correctional facility
54 shall cooperate with the board of elections in developing and implement-
55 ing a plan to facilitate at least one method of voter access for all
56 persons eligible to vote who are detained or confined at each such

1 facility, including, but not limited to making available to such board
2 space and reasonable accommodations within such facility for the
3 discharge of its duties. The department shall issue regulations direct-
4 ing each such facility to ensure the timely delivery, and to facilitate
5 the timely return if applicable, of all official election mail, forms,
6 notices or communications to any individual detained or confined at such
7 facility and that non-partisan plain language educational materials
8 about the voting rights of individuals currently incarcerated and
9 formerly incarcerated are included in the inmate handbook or similar
10 materials and reentry resources. Nothing in this subdivision shall
11 prohibit the inclusion or distribution of non-partisan educational mate-
12 rials in additional resources provided to or made available to incarcer-
13 ated or formerly incarcerated individuals. Without limiting any rights
14 or remedies provided to voters under the law, there shall be a presump-
15 tion of a violation of subdivision one of section 17-212 of the election
16 law when any superintendent, employee, or agent of such local correc-
17 tional facility, by commission or omission, intentionally frustrates the
18 purposes of this section. This subdivision shall not apply to any facil-
19 ity where the persons detained or confined at such facility are exclu-
20 sively under the age of eighteen.

21 4. Rights restoration upon release and registration. Prior to the
22 release from a local correctional facility of any person convicted of a
23 felony the chief administrative officer shall notify such person verbal-
24 ly and in writing that his or her voting rights will be restored upon
25 release and provide such person with a form of application for voter
26 registration and a declination form, offer such person assistance in
27 filling out the appropriate form, and provide such person written infor-
28 mation distributed by the board of elections on the importance and the
29 mechanics of voting. Upon release, such person may choose to either
30 submit his or her completed application to the state board or county
31 board where such person resides or have the department transmit it on
32 his or her behalf. Where such person chooses to have the department
33 transmit the application, the chief administrative officer shall trans-
34 mit the completed application upon such person's release to the state
35 board or county board where such person resides.

36 § 9. Subdivision 6 of section 137 of the correction law is amended by
37 adding a new paragraph (p) to read as follows:

38 (p) Any incarcerated individual confined in a cell or room, apart from
39 the accommodations provided for individuals who are participating in
40 programs of the facility, or any incarcerated individual held in segre-
41 gated confinement who is eligible to vote shall be entitled to register
42 to vote and vote as set forth in sections 8-407 and 8-415 of the
43 election law.

44 § 10. This act shall take effect on the first of July next succeeding
45 the date on which it shall have become a law. Effective immediately, the
46 addition, amendment and/or repeal of any rule or regulation necessary
47 for the implementation of this act on its effective date are authorized
48 to be made and completed on or before such effective date.