

# STATE OF NEW YORK

4499

2023-2024 Regular Sessions

## IN ASSEMBLY

February 16, 2023

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Election Law

AN ACT to amend the election law and the correction law, in relation to enabling persons charged with or convicted of a crime to register to vote and to vote; to amend the New York city charter, in relation to making conforming changes; to repeal subdivision 5 of section 8-504 of the election law relating to voter challenges at polling places; and to repeal subdivisions 10 of section 1057-a of the New York city charter relating to notice of voter rights

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 8-409  
2 to read as follows:

3 § 8-409. Voting by incarcerated persons. 1. Any person incarcerated in  
4 a state or local correctional facility, as defined in section two of the  
5 correction law, shall be entitled to vote by absentee ballot as provided  
6 in section seventy-five of the correction law.

7 2. All ballots cast pursuant to this section and section seventy-five  
8 of the correction law shall be cast in the manner provided by this chap-  
9 ter for the casting of absentee ballots.

10 3. All ballots cast pursuant to the provisions of this section and  
11 section seventy-five of the correction law which are received before  
12 the close of the polls on election day by the board of elections charged  
13 with the duty of casting and canvassing such ballots, may be  
14 delivered to the inspectors of election in the manner prescribed by this  
15 chapter or retained at the board of elections and cast and canvassed  
16 pursuant to the provisions of section 9-209 of this chapter.

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

19 § 75. [~~Notice of voting~~] Voting rights. [~~Prior to the release from a~~]  
20 1. Upon the admission of an incarcerated individual to a state or local

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

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1 correctional facility [~~of any person~~], the department shall notify such  
2 [~~person verbally and in writing, that~~] incarcerated individual of his or  
3 her voting rights [~~will be restored upon release and provide such person~~  
4 ~~with a form of application for voter registration and a declination~~  
5 ~~form, offer such person assistance in filling out the appropriate form,~~  
6 ~~and provide such person written information distributed by the board of~~  
7 ~~elections on the importance and the mechanics of voting. Upon release,~~  
8 ~~such person may choose to either submit his or her completed application~~  
9 ~~to the state board or county board where such person resides or have the~~  
10 ~~department transmit it on his or her behalf. Where such person chooses~~  
11 ~~to have the department transmit the application, the department shall~~  
12 ~~transmit the completed application upon such person's release to the~~  
13 ~~state board or associated with an absentee ballot without interference,~~  
14 ~~county board where such person resides.] and, upon the request of such~~  
15 incarcerated individual, provide such individual with a form of applica-  
16 tion for voter registration together with written information distrib-  
17 uted by the board of elections on the importance and mechanics of  
18 voting, or with access to the electronic voter registration transmittal  
19 system described in title five of article eight of the election law. The  
20 superintendent of the correctional facility shall ensure that all  
21 completed voter registrations are:

22 (a) properly and immediately submitted electronically to the applica-  
23 ble board of elections if the electronic voter registration transmittal  
24 system is utilized; or

25 (b) deposited with the United States Post Office within three days of  
26 being filled out by an incarcerated individual if registration is  
27 submitted on paper.

28 2. Each incarcerated individual who is qualified to vote and regis-  
29 tered to vote may apply to his or her county board of elections for an  
30 absentee ballot in the manner provided for by the mail provisions of  
31 section 8-400 of the election law. There shall be a presumption that  
32 incarcerated individuals are qualified to vote and registered to vote.  
33 The superintendent of the correctional facility shall ensure that each  
34 such application for an absentee ballot is deposited with the United  
35 States Post Office within three days of being filled out by an incarcer-  
36 ated individual.

37 3. Each absentee ballot received at the correctional facility shall be  
38 delivered to the incarcerated individual to whom it is addressed  
39 within two days of receipt at the correctional facility. The super-  
40 intendent of the correctional facility shall ensure that each absentee  
41 ballot is deposited with the United States Post Office within three days  
42 of being filled out by the incarcerated individual to whom it has been  
43 addressed.

44 4. Voter registrations, applications for absentee ballots and absentee  
45 ballots shall be processed by the correctional facility separately from  
46 other incarcerated individual mail. Notwithstanding any law, rule or  
47 regulation to the contrary, no person shall open any correspondence  
48 between an incarcerated individual and a board of elections, including  
49 an incarcerated individual's voter registration, application for an  
50 absentee ballot or filled out absentee ballot. Incarcerated individ-  
51 uals shall be permitted to cast their votes privately and to seal all  
52 envelopes associated with an absentee ballot without interference.

53 § 3. Section 5-106 of the election law, subdivisions 2, 3 and 4 as  
54 amended by chapter 103 of the laws of 2021, subdivision 5 as amended by  
55 chapter 234 of the laws of 1976 and subdivision 6 as amended by chapter  
56 82 of the laws of 1982, is amended to read as follows:

1 § 5-106. Qualifications of voters; reasons for exclusion.

2 1. No person who shall receive, accept, or offer to receive, or pay,  
3 offer or promise to pay, contribute, offer or promise to contribute to  
4 another, to be paid or used, any money or any other valuable thing as a  
5 compensation or reward for the giving or withholding a vote at an  
6 election, or for registering or refraining from registering as a voter,  
7 or who shall make any promise to influence the giving or withholding of  
8 any such vote or registration, or who shall make or become directly or  
9 indirectly interested in any bet or wager depending upon the result of  
10 an election, shall vote at such election.

11 ~~2. [No person who has been convicted of a felony and sentenced to a~~  
12 ~~period of imprisonment for such felony pursuant to the laws of this~~  
13 ~~state, shall have the right to register for or vote at any election~~  
14 ~~while he or she is incarcerated for such felony.~~

15 ~~3. No person who has been convicted in a federal court, of a felony,~~  
16 ~~or a crime or offense which would constitute a felony under the laws of~~  
17 ~~this state, and sentenced to a period of imprisonment for such felony,~~  
18 ~~shall have the right to register for or vote at any election while he or~~  
19 ~~she is incarcerated for such felony.~~

20 ~~4. No person who has been convicted in another state for a crime or~~  
21 ~~offense which would constitute a felony under the laws of this state and~~  
22 ~~sentenced to a period of imprisonment for such felony, shall have the~~  
23 ~~right to register for or vote at any election in this state while he or~~  
24 ~~she is incarcerated for such felony.~~

25 ~~5. The provisions of subdivisions two, three and four of this section~~  
26 ~~shall not apply if the person so convicted is not sentenced to either~~  
27 ~~death or imprisonment, or if the execution of a sentence of imprisonment~~  
28 ~~is suspended.~~

29 ~~6.]~~ No person who has been adjudged incompetent by order of a court of  
30 competent judicial authority shall have the right to register for or  
31 vote at any election in this state unless thereafter he or she shall  
32 have been adjudged competent pursuant to law.

33 § 4. Subdivision 3 of section 5-210 of the election law, as amended by  
34 chapter 765 of the laws of 2022, is amended to read as follows:

35 3. Completed application forms, when received by any board of  
36 elections and, with respect to application forms promulgated by the  
37 federal election commission, when received by the state board of  
38 elections, or showing a dated cancellation mark of the United States  
39 Postal Service or contained in an envelope showing such a dated cancel-  
40 lation mark which is not later than the fifteenth day before the next  
41 ensuing primary, general or special election, and received no later than  
42 the tenth day before such election, or delivered in person to such board  
43 of elections not later than the tenth day before such election, shall  
44 entitle the applicant to vote in such election, if he or she is other-  
45 wise qualified, provided, however, such applicant shall not vote on a  
46 voting machine until his or her identity is verified. Any board of  
47 elections receiving an application form from a person who does not  
48 reside in its jurisdiction but who does reside elsewhere in the state of  
49 New York, shall forthwith forward such application form to the proper  
50 board of elections; provided, however, that the residence of a person  
51 incarcerated in a correctional facility, as defined in section two  
52 of the correction law, or in a county jail, is not included in the  
53 jurisdiction where a person is incarcerated unless such person had  
54 resided in that jurisdiction prior to incarceration, and any such person  
55 may apply to register to vote in the jurisdiction where that person has  
56 previously established a fixed and principal home to which the person

1 intends to return. Each board of elections shall make an entry on each  
2 such form of the date it is received by such board.

3 § 5. Subdivision 1 of section 5-400 of the election law, as amended by  
4 chapter 659 of the laws of 1994, paragraph (a) as amended by chapter 3  
5 of the laws of 2019, is amended to read as follows:

6 1. A voter's registration, including the registration of a voter in  
7 inactive status, shall be cancelled if, since the time of his or her  
8 last registration, he or she:

9 (a) Moved his or her residence outside the state.

10 (b) [~~Was convicted of a felony disqualifying him from voting pursuant~~  
11 ~~to the provisions of section 5-106 of this article.~~

12 (c) Has been adjudicated an incompetent.

13 (d) Refused to take a challenge oath.

14 (e) Has died.

15 (f) Did not vote in any election conducted by the board of  
16 elections during the period ending with the second general election at  
17 which candidates for federal office are on the ballot after his or her  
18 name was placed in inactive status and for whom the board of elections  
19 did not, during such period, in any other way, receive any information  
20 that such voter still resides in the same county or city.

21 (g) Personally requested to have his or her name removed from  
22 the list of registered voters.

23 (h) For any other reason, is no longer qualified to vote as  
24 provided in this chapter.

25 § 6. Paragraph b of subdivision 4 of section 5-708 of the election  
26 law, as added by chapter 659 of the laws of 1994, is amended to read as  
27 follows:

28 b. The state board shall arrange such notices and the names received  
29 pursuant to the other provisions of this section by county of residence  
30 and transmit such notices [~~and any notices of conviction for a felony~~  
31 ~~received from a United States attorney~~] to the appropriate board of  
32 elections.

33 § 7. Subdivision 3 of section 7-123 of the election law, as amended by  
34 chapter 104 of the laws of 2010, and the opening paragraph as amended by  
35 chapter 411 of the laws of 2019, is amended to read as follows:

36 3. There shall be three envelopes for each military absentee ballot  
37 issued when the military voter's preferred method of transmission is by  
38 mail: the inner affirmation envelope into which a voter places his or  
39 her voted ballot, the outer envelope which shall be addressed to the  
40 absentee voter, and the mailing envelope which is addressed to the coun-  
41 ty board of elections. The board of elections shall furnish an inner  
42 affirmation envelope with each military ballot upon which envelope shall  
43 be printed:

44 BALLOT FOR MILITARY VOTER  
45 AFFIRMATION

46 I swear or affirm that:

47 (a) I am a member of the uniformed services or merchant marine on  
48 active duty or an eligible spouse, parent, child or dependent of such a  
49 member, and

50 (b) I am a United States citizen, at least eighteen years of age (or  
51 will be by the day of the election), eligible to vote in the requested  
52 jurisdiction, and

(c) I have [~~neither been convicted of a felony or other disqualifying offense nor~~] **not** been adjudicated mentally incompetent, or if so, my voting rights have been reinstated, and

(d) I am not registering, requesting a ballot, or voting in any other jurisdiction in the United States, and

(e) My signature and date below indicate when I completed this document, and

(f) The information on this form is true and complete to the best of my knowledge.

I understand that a material misstatement of fact in the completion of this document may constitute grounds for conviction of a crime.

Date ..... 20....

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Signature or mark of voter

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Signature of Witness (required only if voter does not sign his or her own name)

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Address of Witness

§ 8. Subdivision 2 of section 7-124 of the election law, as amended by chapter 104 of the laws of 2010, and the opening and closing paragraphs as amended by chapter 411 of the laws of 2019, is amended to read as follows:

2. There shall be three envelopes for each special federal absentee ballot issued by mail: the inner affirmation envelope into which a voter places his or her voted ballot, the outer envelope which shall be addressed to the absentee voter, and the mailing envelope which is addressed to the county board of elections. The board of elections shall furnish an inner affirmation envelope with each special federal ballot upon which envelope shall be printed:

I swear or affirm that:

(a) I am a United States citizen residing outside the United States, and

(b) I am at least eighteen years of age (or will be by the day of the election), eligible to vote in the requested jurisdiction, and

(c) I have [~~neither been convicted of a felony or other disqualifying offense nor~~] **not** been adjudicated mentally incompetent, or if so, my voting rights have been reinstated, and

(d) I am not qualified to register, request a ballot, or vote in any other jurisdiction in the United States, and

(e) My signature and date below indicate when I completed this document, and

(f) The information on this form is true and complete to the best of my knowledge.

I understand that a material misstatement of fact in the completion of this document may constitute grounds for conviction of a crime.

Date.....20....

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Signature or mark of voter

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Signature of Witness (required only if voter does not sign his or her own

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Address of Witness

§ 9. Paragraph (d) of subdivision 1 of section 8-400 of the election law, as amended by chapter 63 of the laws of 2010, is amended to read as follows:

(d) absent from his or her voting residence because he or she is detained in jail awaiting action by a grand jury or awaiting trial, or confined in jail or prison after a conviction [~~for an offense other than a felony~~], provided that he or she is qualified to vote in the election district of his or her residence.

§ 10. Subparagraph (iv) of paragraph (c) of subdivision 3 of section 8-400 of the election law, as amended by chapter 63 of the laws of 2010, is amended to read as follows:

(iv) detained in jail awaiting action by a grand jury or awaiting trial or confined in jail or prison after a conviction [~~for an offense other than a felony~~] and stating the place where he or she is so detained or confined.

§ 11. Subdivision 5 of section 8-504 of the election law is REPEALED.

§ 12. Paragraph (d) of subdivision 1 and subparagraph (iv) of paragraph (c) of subdivision 4 of section 15-120 of the election law, paragraph (d) of subdivision 1 as amended and subparagraph (iv) of paragraph (c) of subdivision 4 as added by chapter 289 of the laws of 2014, are amended to read as follows:

(d) absent from his or her voting residence because he or she is detained in jail awaiting action by a grand jury or awaiting trial, or confined in jail or prison [~~after a conviction for an offense other than a felony~~], provided that he or she is qualified to vote in the election district of his or her residence.

(iv) detained in jail awaiting action by a grand jury or awaiting trial or confined in jail or prison [~~after a conviction for an offense other than a felony~~] and stating the place where he or she is so detained or confined.

§ 13. Subdivisions 10 of section 1057-a of the New York city charter are REPEALED.

§ 14. The opening paragraph of section 1057-a of the New York city charter, as amended by local law number 80 of the city of New York for the year 2020, is amended to read as follows:

Each agency designated as a participating agency under the provisions of this section shall implement and administer a program of distribution of voter registration forms pursuant to the provisions of this section. The following offices are hereby designated as participating voter registration agencies: The administration for children's services, the business integrity commission, the city clerk, the civilian complaint review board, the commission on human rights, community boards, the department of small business services, the department for the aging, the department of citywide administrative services, the department of city planning, the department of consumer and worker protection, the department of correction, the department of cultural affairs, the department of environmental protection, the department of finance, the department of health and mental hygiene, the department of homeless services, the department of housing preservation and development, the department of parks and recreation, the department of probation, the department of records and information services, the taxi and limousine commission, the

1 department of transportation, the department of youth and community  
2 development, the fire department, and the human resources adminis-  
3 tration. Participating agencies shall include a mandate in all new or  
4 renewed agreements with those subcontractors having regular contact with  
5 the public in the daily administration of their business to follow the  
6 guidelines of this section. Such participating agencies shall be  
7 required to offer voter registration forms to all persons together with  
8 written applications for services, renewal or recertification for  
9 services and change of address relating to such services, in the same  
10 language as such application, renewal, recertification or change of  
11 address form where practicable; provided however that this section shall  
12 not apply to services that must be provided to prevent actual or poten-  
13 tial danger to the life, health, or safety of any individual or of the  
14 public. Such agencies shall provide assistance to applicants in complet-  
15 ing voter registration forms, including the section of the form allowing  
16 for registration to become an organ donor, and in cases in which such an  
17 agency would provide assistance with its own form, such agency shall  
18 provide the same degree of assistance with regard to the voter registra-  
19 tion and organ donor forms as is provided with regard to the completion  
20 of its own form, if so requested. [~~As part of such assistance, such~~  
21 ~~agencies shall also, upon request by an applicant who identifies himself~~  
22 ~~or herself as being on parole and when practically feasible, check~~  
23 ~~publicly available information to inform such applicant if a restoration~~  
24 ~~of their right to vote has been granted, provided that such assistance~~  
25 ~~may be provided by a person other than the person to whom the request~~  
26 ~~was made and further provided that such assistance shall not be consid-~~  
27 ~~ered an endorsement of the accuracy of any publicly available informa-~~  
28 ~~tion not maintained by the city.~~] Such agencies shall also receive and  
29 transmit the completed application form from any applicants who request  
30 to have such form transmitted to the board of elections for the city of  
31 New York.

32 § 15. The state board of elections is directed to revise all paperwork  
33 utilized for voter registration, and for the process of applying for and  
34 voting by absentee ballot to remove all references to felonies or the  
35 limitation of the right to vote due to conviction of a felony.

36 § 16. This act shall take effect on the first of January next succeed-  
37 ing the date on which it shall have become a law. Effective immediately,  
38 the addition, amendment and/or repeal of any rule or regulation neces-  
39 sary for the implementation of this act on its effective date are  
40 authorized to be made and completed on or before such date.