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## Casting Out from the Inside: Abolishing Felony Disenfranchisement in New York

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## Casting Out from the Inside: Abolishing Felony Disenfranchisement in New York

### Acknowledgements

This Comment is dedicated to the incarcerated individuals that she has had the privilege of working with. The author is grateful to the CUNY Law Review editors and staff, especially Yulia Marshak, for her dedication and encouragement throughout, thank you.

# CASTING OUT FROM THE INSIDE: ABOLISHING FELONY DISENFRANCHISEMENT IN NEW YORK

*Elizabeth Neuland*<sup>†</sup>

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## INTRODUCTION

On May 4, 2021, New York became the 20th state to restore the right to vote to individuals upon release from custody, regardless of parole status.<sup>1</sup> In a time when the United States government is trying to protect voting rights through the “For the People Act”<sup>2</sup> and “The John Lewis Voting Rights Advancement Act,”<sup>3</sup> and while some states are seeing radical legislation proposed that would potentially suppress the right to vote,<sup>4</sup> New York needs to abolish the antiquated practice of felony disenfranchisement and guarantee the right to vote to all eligible New Yorkers regardless of incarceration status.

The practice of felony disenfranchisement does not align with the values and core curriculum of the programs being provided by the New York State Department of Corrections and Community Supervision (“DOCCS”) within state correctional facilities.<sup>5</sup> The overview statement for program services reads, “DOCCS offers an extensive array of programs and services for incarcerated individuals to assist them in redirecting their lives and becoming productive, law-abiding members

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<sup>1</sup> *Voting Rights Restoration Efforts in New York*, BRENNAN CTR. FOR JUST. (May 4, 2021), <https://perma.cc/96B2-ZDH7>.

<sup>2</sup> See Maureen Chowdhury et al., *Republicans Block Democrats’ Sweeping Voting Rights Bill*, CNN (July 13, 2021, 11:53 AM), <https://perma.cc/4CHX-FRRR> (allowing automatic and same-day registration, vote-by-mail, and early voting methods, as well as solutions proposed in the House of Representatives in the “For The People Act,” aimed to expand voter registration and access, as well as election security, campaign finance, and ethics solutions in a bill passed on March 3, 2021 and defeated in the U.S. Senate in July 2021); see *For the People Act of 2021*, H.R. 1, 117<sup>th</sup> Cong. (2021), <https://perma.cc/6CNB-LDRQ>.

<sup>3</sup> Fredreka Schouten, *Despite Joe Manchin’s Latest Pitch, Voting Rights Bills Remain Imperiled in Congress. Here Are the Differences Among Them*, CNN (July 13, 2021, 11:53 AM), <https://perma.cc/999K-WJDC> (describing the potential for restoring provisions of the Voting Rights Act of 1965 under “The John Lewis Voting Rights Advancement Act” by requiring states with a history of discriminatory voting practices to pre-clear changes to election procedures with federal authorities).

<sup>4</sup> *Voting Laws Roundup: July 2021*, BRENNAN CTR. FOR JUST. (July 22, 2021), <https://perma.cc/4HXG-LMPZ> (stating that 30 laws restricting voter access were passed in 18 states; another 400 bills have been introduced in 49 states thus far as of July 2021).

<sup>5</sup> See generally *Program Services*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION [hereinafter DOCCS Program Services], <https://perma.cc/U5E5-U5P8> (last visited Aug. 19, 2021).

of society.”<sup>6</sup> Although the word “rehabilitation” is absent, this statement essentially summarizes what rehabilitation is.<sup>7</sup>

The argument to abolish felony disenfranchisement is highlighted by the vast rehabilitation efforts taken by DOCCS, through numerous employment and vocational programs, temporary release programs, and educational opportunities.<sup>8</sup> Felony disenfranchisement stands in stark opposition to rehabilitation because it alienates individuals from the very communities to which DOCCS is taking great measures to help them to return.<sup>9</sup>

In addition to rehabilitation, restoring the right to vote to all eligible New Yorkers regardless of incarceration status would raise the level of accountability for state politicians, lawmakers, and DOCCS itself.<sup>10</sup> It is no secret that correctional facilities can be dangerous places, due to both interpersonal violence and acts of self-inflicted harm, including suicide.<sup>11</sup> Accountability should apply to those that are the guardians of a vulnerable population.<sup>12</sup>

In Parts I and II, this Comment provides a brief overview of international and national practices of felony disenfranchisement to see where New York fits into the landscape. Part III concentrates on New York State. Its legislation affecting disenfranchisement and the number of individuals incarcerated are discussed to highlight how many people are affected by felony disenfranchisement. The argument to fully abolish felony disenfranchisement is made through discussions of rehabilitation and accountability.<sup>13</sup> Lastly, this Comment describes how all New York citizens could be enfranchised.

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<sup>6</sup> *Id.*

<sup>7</sup> See *Rehabilitation*, BLACK’S LAW DICTIONARY (11th ed. 2019), <https://perma.cc/6EWV-Z86J> (“The process of seeking to improve a criminal’s character and outlook that he or she can function in society without committing other crimes . . .”).

<sup>8</sup> See DOCCS Program Services, *supra* note 5 (listing offered programs such as Carpentry, Cosmetology, General Business, and Optical Shop).

<sup>9</sup> See Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 LA RAZA L.J. 407, 413 (2012).

<sup>10</sup> *Infra* Part III.C.5.

<sup>11</sup> See *DOCCS Fact Sheet*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION 1 (Dec. 1, 2021), <https://perma.cc/FSG8-PWGG> (reporting the number of assaults from 2016-2021); see also Keith Sanders, *Suicides in New York SHUs Surge to Epidemic Levels*, PRISON LEGAL NEWS (Dec. 1, 2020), <https://perma.cc/CD7K-GM2K>.

<sup>12</sup> See *Cuomo Signs Domestic Violence Survivors Act*, WHCU RADIO (May 15, 2019), <https://perma.cc/Q4PJ-4ACD>.

<sup>13</sup> *Infra* Part III.C.

## I. WORLD VIEW

Of the most cherished rights held by democracies around the world, the right to vote supremely guarantees the existence of a participatory government.<sup>14</sup> Having begun in ancient Greece and Rome, the once widespread practice of felony disenfranchisement<sup>15</sup> has since been nearly eradicated, or is practiced in a much narrower scope in most countries outside the United States.<sup>16</sup>

As of 2021, out of 45 countries reviewed for their voting restrictions laws, 21 countries have no voter restrictions: individuals who have been convicted or are incarcerated never lose the right to vote.<sup>17</sup> Countries with no felony disenfranchisement laws include Canada, the Czech Republic, Germany, Ireland, Israel, South Africa, and Ukraine.<sup>18</sup>

Fourteen of the 45 countries surveyed employ selective restriction measures.<sup>19</sup> There, some individuals convicted of a crime lose the right to vote, while incarcerated based on the type of crime or sentence length.<sup>20</sup> Countries that impose such selective voting restriction laws include Australia, Germany, Greece, Italy, and Romania.<sup>21</sup> Ten countries issue a complete ban on voting to those serving a prison sentence; however, the right to vote is automatically restored upon release from prison.<sup>22</sup> Examples of those countries include Brazil, India, Russia, and the United Kingdom.<sup>23</sup>

Lastly, four of the reviewed countries, including the United States, impose the strictest felony disenfranchisement laws.<sup>24</sup> Here, individuals lose the right to vote while incarcerated, they remain disenfranchised while on parole, and in some U.S. states, even post-parole their right to

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<sup>14</sup> See generally LALEH ISPAHANI, OUT OF STEP WITH THE WORLD: AN ANALYSIS OF FELONY DISFRANCHISEMENT IN THE U.S. AND OTHER DEMOCRACIES 13 (2006), <https://perma.cc/9JGM-7JBC> (“[T]he right to participate in voting helps teach democratic values and social responsibility.”).

<sup>15</sup> *What Can We Learn from the History of Felony Disenfranchisement?*, DEMOCRACY DOCKET (Nov. 5, 2021) [hereinafter *History of Felony Disenfranchisement*], <https://perma.cc/2M7K-WDL4>.

<sup>16</sup> See Bailey Figler, *A Vote for Democracy: Confronting the Racial Aspects of Felon Disenfranchisement*, 61 N.Y.U. ANN. SURV. AM. L. 723, 728 (2006).

<sup>17</sup> *International Comparison of Felon Voting Laws*, BRITANNICA PROCON.ORG, <https://perma.cc/PC9Z-6W9E> (last modified July 20, 2021); see ISPAHANI, *supra* note 14, at 6.

<sup>18</sup> *International Comparison of Felon Voting Laws*, *supra* note 17.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

vote is never restored.<sup>25</sup> Armenia, Belgium, and Chile are the remaining three countries with laws that impose post-release restrictions that disenfranchise their citizens.<sup>26</sup>

State laws for felony disenfranchisement in the United States mirror the spectrum of voting restrictions around the world, ranging from some states with no restrictions, to others with post-sentence restrictions.<sup>27</sup> In some parts of the United States, felony disenfranchisement laws target *all* individuals who committed *any* felony, from minor drug or property offenses, to murder.<sup>28</sup> Other countries take a more targeted approach and disenfranchise only those convicted of serious crimes or crimes connected to electoral fraud.<sup>29</sup>

In most democracies around the world, specifically in the countries that have similar government structures and share the same democratic principles as the United States, felony disenfranchisement laws where applied, operate in a much narrower scope.<sup>30</sup>

## II. NATIONAL VIEW

Felony disenfranchisement remains a state-by-state legislative choice, resulting in laws across the United States that vary greatly, ranging from maintaining the right to vote while incarcerated, to losing the right indefinitely as a consequence of a felony conviction.<sup>31</sup>

Felony disenfranchisement laws date back to early colonial America and remained a state's legislative choice after the ratification of the United States Constitution in 1788.<sup>32</sup> During the adoption of the Reconstruction Amendments, the popularity of state felony disenfranchisement laws grew to include 29 of the 37 states that existed in 1868, likely an effort to curb the new constitutional protections granted to formerly enslaved people.<sup>33</sup>

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<sup>25</sup> *Id.*; see also ISPAHANI *supra* note 14, at 3.

<sup>26</sup> *International Comparison of Felon Voting Laws*, *supra* note 17.

<sup>27</sup> See ISPAHANI, *supra* note 14, at 7.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> See generally ISPAHANI, *supra* note 14.

<sup>31</sup> For example, individuals convicted of a felony maintain the right to vote in Maine and Vermont, while individuals that have two or more felony convictions in Arizona permanently lose the right to vote. See CHRIS UGGEN ET AL., THE SENT'G PROJECT, LOCKED OUT 2020: ESTIMATES OF PEOPLE DENIED VOTING RIGHTS DUE TO A FELONY CONVICTION 5, <https://perma.cc/AT5T-DEZ8> (last modified Oct. 30, 2020).

<sup>32</sup> See Martha Guarnieri, *Comment, Civil Rebirth: Making the Case for Automatic Ex-Felon Voter Restoration*, 89 TEMP. L. REV. 451, 456-58 (2017).

<sup>33</sup> See *id.* at 458. The Reconstruction Amendments refer to the 13th, 14th, and 15th Amendments of the United States Constitution. The 13th Amendment ended slavery, the 14th Amendment granted citizenship, and the 15th Amendment prohibited disenfranchise-

In the late 1800s, the Supreme Court of the United States upheld felony disenfranchisement as constitutional in *Murphy v. Ramsey* and *Davis v. Beason*, colloquially referred to as the “Mormon Cases.”<sup>34</sup> In both cases, the Court “upheld territorial regulations that banned polygamy and bigamy and disenfranchised anyone convicted of either act.”<sup>35</sup> In 1974, in *Richardson v. Ramirez*, the Court held that felony disenfranchisement does not violate the Equal Protection Clause of the 14th Amendment, specifically Section 2, which allows states to deny the right to vote, to an individual that has “participat[ed] in rebellion” or been convicted of “other crime[s].”<sup>36</sup> Therefore, felony disenfranchisement laws are constitutional and remain within the legislative power of the state.

A. *Incarcerated People Maintain the Right to Vote: Maine, Vermont, Washington, D.C. & Puerto Rico*

In 2020, Washington, D.C. passed legislation to join Maine, Vermont, and the United States territory of Puerto Rico<sup>37</sup> to eradicate felony disenfranchisement.<sup>38</sup> Anyone convicted of a felony in Maine, Vermont, D.C., or Puerto Rico does not lose the right to vote, but instead is allowed to exercise it throughout the period of incarceration by use of absentee mail-in ballots.<sup>39</sup>

B. *The Right to Vote Is Restored upon Release from Custody: 20 States*

In 2020, California voted on and passed Proposition 17, which restores the right to vote to individuals released from custody, regardless

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ment on account of race. See *Landmark Legislation: Thirteenth, Fourteenth, & Fifteenth Amendments*, U. S. SENATE, <https://perma.cc/DS88-TAKN> (last visited Aug. 19, 2021).

<sup>34</sup> Central to both cases were the laws that prohibited the right to vote for any person who practiced bigamy or polygamy, which was contradictory to the teachings and practices of the Church of Jesus Christ of Latter-day Saints, also known as the Mormon Church. *Murphy v. Ramsey*, 114 U.S. 15, 43 (1885); *Davis v. Beason*, 133 U.S. 333, 347 (1890).

<sup>35</sup> See Guarnieri, *supra* note 32, at 459.

<sup>36</sup> *Richardson v. Ramirez*, 418 U.S. 24, 43 (1974); U.S. Const. amend. XIV, § 2.

<sup>37</sup> See UGGEN ET AL., *supra* note 31, at 6.

<sup>38</sup> See *Felon Voting Rights*, NAT’L CONF. OF STATE LEGISLATURES (June 28, 2021), <https://perma.cc/HK6E-4TFC>. Puerto Rico, along with other U.S. territories, including American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands cannot vote in federal presidential elections. See Ledyard King, *Puerto Rico: At the Center of a Political Storm, But Can Its Residents Vote for President?*, USA TODAY, <https://perma.cc/HMZ7-XKMW> (last modified May 7, 2019, 5:06 PM).

<sup>39</sup> See Nicole Lewis, *In Just Two States, All Prisoners Can Vote. Here’s Why Few Do*, MOTHER JONES (June 11, 2019), <https://perma.cc/BQ9G-NGGN>.



of parole status.<sup>40</sup> In April 2021, Washington State passed similar legislation, which went into effect on January 1, 2022.<sup>41</sup> Lastly, in May 2021, New York passed similar legislation, automatically restoring the right to vote to those convicted of a felony once they are released from custody, regardless of their parole status.<sup>42</sup> In 17 additional states, the right to vote is restricted during the period of incarceration and restored upon release.<sup>43</sup>

*C. The Right to Vote is Restored upon Completion of Parole: Two States*

Two states, Connecticut, and Louisiana, disenfranchise individuals during the period of incarceration for felony crimes and post-custody, while they are on parole.<sup>44</sup> Only after completing parole is the right to vote restored.<sup>45</sup> Prior to May 2021, New York fell into this category, disenfranchising all individuals while incarcerated for a felony conviction and post-release, while they remained on parole.<sup>46</sup>

*D. The most Severe State Laws Restricting the Right to Vote: 26 States*

15 states disenfranchise individuals during the period of felony incarceration and keep them disenfranchised while they are out on parole or probation.<sup>47</sup> Lastly, 11 states have the harshest disenfranchisement laws seen in the nation.<sup>48</sup> Individuals in these states lose the right to vote when incarcerated and remain disenfranchised while on parole or probation—in some instances, the right is permanently removed.<sup>49</sup> For example, people that have two or more

<sup>40</sup> See *Felon Voting Rights*, *supra* note 38.

<sup>41</sup> See Joseph O’Sullivan, *Bill Restores Voting Rights to Washingtonians with Felonies upon Release from Prison*, SEATTLE TIMES (Apr. 7, 2021, 7:09 PM), <https://perma.cc/ZFZ5-4SGV>.

<sup>42</sup> See *Voting Rights Restoration Efforts in New York*, *supra* note 1.

<sup>43</sup> These states are Colorado, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah. UGGEN ET AL., *supra* note 31, at 5 tbl.1.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* Under Executive Order 181, between April 2018 to May 2021, then-Governor Cuomo was able to restore the right to vote to individuals on parole by pardon. N.Y. Exec. Order No. 181 (Apr. 18, 2018), <https://perma.cc/6DTD-HATU>.

<sup>47</sup> These states are Alaska, Arkansas, Georgia, Idaho, Kansas, Minnesota, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, Washington, West Virginia, and Wisconsin. UGGEN ET AL., *supra* note 31, at 5 tbl.1.

<sup>48</sup> These states are Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Tennessee, Virginia, and Wyoming. UGGEN ET AL., *supra* note 31, at 5 tbl.1.

<sup>49</sup> *Id.*

felony convictions in Arizona are permanently disenfranchised, and so are people convicted of certain offenses in Mississippi.<sup>50</sup>

In addition to the sentence completion status, other factors, such as unpaid legal financial obligations, may further inhibit the right to vote.<sup>51</sup> These requirements vary greatly among the states. For example, Arkansas requires an individual who has been convicted of a felony to pay court costs, fines, and restitution prior to restoring their right to vote; Georgia and Texas require the payment of fines; South Dakota requires the payment of fines, fees, and restitution; and Tennessee requires the payment of restitution, court costs, and child support.<sup>52</sup>

#### *E. The Number of People Affected*

In 2020, the American criminal justice system held “almost 2.3 million people in 1,833 state prisons, 110 federal prisons, 1,772 juvenile correctional facilities, 3,134 local jails, 218 immigration detention facilities, and 80 Indian Country jails as well as in military prisons, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories.”<sup>53</sup> Worldwide, the United States leads in international incarceration rates, imprisoning 664 people per every 100,000.<sup>54</sup>

As of 2020, approximately 5.17 million people in the United States were unable to vote because of a current or prior felony conviction—one out of every 44 adults, or 2.27% of the country’s eligible voting population, were excluded from partaking in the democratic process.<sup>55</sup> This rate is not equally dispersed across the United States due to the various state statutes dealing with disenfranchisement, as explained in Parts A through D of this Comment. In Alabama, Mississippi, and Tennessee, one in every 13 adults is disenfranchised. That percentage is more than 8% of each state’s adult population.<sup>56</sup>

The racial disparity is also alarming: one of every 16 African Americans of voting age, or 6.2%, are disenfranchised in the United States—a rate that is 3.7 times greater than for non-African Americans.<sup>57</sup> This rate is again not equally concentrated across the

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<sup>50</sup> *Id.*

<sup>51</sup> *See id.*

<sup>52</sup> Thus, being indigent can further delay or forever prevent the right to vote from being restored. *See* UGGEN ET AL., *supra* note 31, at 6.

<sup>53</sup> Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, PRISON POL’Y INITIATIVE (Mar. 24, 2020), <https://perma.cc/HM4P-GC4K>.

<sup>54</sup> *New York Profile*, PRISON POL’Y INITIATIVE, <https://perma.cc/GY3X-QDAL> (last visited Aug. 20, 2021).

<sup>55</sup> UGGEN ET AL., *supra* note 31, at 4.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

country; in seven states, six of which are in the South, more than one in every seven African American adults are disenfranchised.<sup>58</sup>

It is evident from the data that the country is divided regarding felony disenfranchisement laws: Maine and Vermont never remove the right to vote, 20 states disenfranchise during the period of incarceration, while 28 states disenfranchise during incarceration and post-sentence completion.<sup>59</sup> And yet, it is critical to hear from those most affected, the incarcerated. As the president of the D.C.'s League of Women Voters, Kathy Chiron, articulated, "They have interacted with so many levels of our government that the rest of us haven't . . . Their voices need to be shouting out the loudest."<sup>60</sup>

### III. NEW YORK STATE

#### A. *The Legislative History of Felony Disenfranchisement*

Felony disenfranchisement laws first appeared on the books in New York State in 1821.<sup>61</sup> Article II, Section 3 of the New York State Constitution, as amended in 2001, states that the "legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime."<sup>62</sup> In 2018, Executive Order 181 began eroding the state statute,<sup>63</sup> and now with the 2021 legislation returning the right to vote to all individuals once released from custody,<sup>64</sup> the state is perfectly positioned to take the next step and completely abolish felony disenfranchisement laws.<sup>65</sup>

In April 2018, then-Governor of New York, Andrew Cuomo, signed Executive Order 181: Restoring the Right to Vote for New Yorkers on Parole ("E.O. 181").<sup>66</sup> The order restored to all parolees their right to vote, aiming to "reduce disenfranchisement and . . . help restore

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<sup>58</sup> These states are Alabama, Florida, Kentucky, Mississippi, Tennessee, Virginia, and Wyoming. *Id.*

<sup>59</sup> See UGGEN ET AL., *supra* note 31, at 5 tbl.1.

<sup>60</sup> Julie Zauzmer Weil & Ovetta Wiggins, *D.C. and Maryland Have New Policies Allowing Prisoners to Vote. Making it Happen is Hard.*, WASH. POST (Sept. 28, 2020), <https://perma.cc/KN7H-SUNT> (quoting Kathy Chiron's statement to the importance of the newly reenfranchised voters).

<sup>61</sup> N.Y. CONST. art. II, § 2 (1821); *see also* N.Y. PENAL LAW § 10.00 (McKinney 2019) (defining a "felony" as "an offense for which a sentence to a term of imprisonment in excess of one year may be imposed").

<sup>62</sup> N.Y. CONST. art. II, § 3 (2001).

<sup>63</sup> John Wagner, *New York Gov. Andrew Cuomo Signs Executive Order Giving Parolees in His State the Right to Vote*, WASH. POST (Apr. 18, 2018), <https://perma.cc/4JWT-WZTB>.

<sup>64</sup> Assemb. B. A4448A, 2021 Assemb., 2021-2022 Reg. Sess. (N.Y. 2021).

<sup>65</sup> *See infra* Conclusion.

<sup>66</sup> N.Y. COMP. CODES R. & REGS. tit. 9, § 8.181 (2018).

justice and fairness to . . . the democratic process.”<sup>67</sup> Additionally, with 71% of those disenfranchised by felony convictions being African American and Hispanic, the Executive Order aimed to reduce the disproportionate racial impact of incarceration on the voting franchise.<sup>68</sup>

Under E.O. 181, “individuals being released from incarceration onto parole supervision and individuals who are currently under parole supervision [were] given consideration for a conditional pardon that will restore voting rights.”<sup>69</sup> In accordance with that order, the DOCCS Commissioner began to submit a record of individuals on parole, and those newly eligible for parole, to the Governor to review whether their right to vote would be restored.<sup>70</sup> After the executive order was signed, Cuomo issued conditional pardons, returning the right to vote to more than 24,000 New Yorkers “under community supervision” by May 2018.<sup>71</sup>

Then, in early 2021, two bills came before the New York legislative bodies—New York State Assembly Bill A. 4448<sup>72</sup> and New York State Senate Bill S. 830<sup>73</sup>—with proposed amendments to election law, criminal procedure, and executive law.<sup>74</sup> Under these bills, individuals would remain disenfranchised while they are incarcerated on a felony conviction, but would regain the right to vote automatically once released from custody.<sup>75</sup>

The New York Assembly and Senate passed the bill in April, which was then signed into law by Governor Cuomo on May 4, 2021.<sup>76</sup> Although some portions of the new law were delayed for a period of 120 days after signing,<sup>77</sup> the law essentially went into effect immediately.<sup>78</sup> The newly amended section of the Election Law of New York State now reads: “No person who has been convicted of a felony and sentenced to

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<sup>67</sup> Wagner, *supra* note 63.

<sup>68</sup> *Id.*

<sup>69</sup> N.Y. COMP. CODES R. & REGS. tit. 9, § 8.181 (2018).

<sup>70</sup> Vivian Wang, *Cuomo Plans to Restore Voting Rights to Paroled Felons*, N.Y. TIMES (Apr. 18, 2018), <https://perma.cc/T4MH-VLGM>.

<sup>71</sup> *Cuomo Restores Voting Rights to 24,000 parolees*, WKBW BUFFALO (May 22, 2018, 4:05 PM), <https://perma.cc/TXE4-BJYE>.

<sup>72</sup> Assemb. B. A4448A, 2021 Assemb., 2021-2022 Reg. Sess. (N.Y. 2021).

<sup>73</sup> S. B. S830B, 2021 S., 2021-2021 Reg. Sess. (N.Y. 2021).

<sup>74</sup> *See* Assemb. B. A4448A, 2021 Assemb., 2021-2022 Reg. Sess. (N.Y. 2021).

<sup>75</sup> *Id.*

<sup>76</sup> *Voting Rights Restoration Efforts in New York*, *supra* note 1.

<sup>77</sup> S. B. S830B, 2021 S., 2021-2021 Reg. Sess. (N.Y. 2021) (stating that Sections 1-3 and 7 of the bill will go into effect immediately, while Sections 4-6 and 8-12 will go into effect on the 120th day after the bill becomes law).

<sup>78</sup> Taylor Romine & Chandelis Duster, *New York Gov. Cuomo Signs a Bill that Automatically Restores Felons’ Right to Vote after Release*, CNN (May 5, 2021, 8:23 PM), <https://perma.cc/4BRL-4VUH>.

a period of imprisonment for such felony pursuant to the laws of this state, shall have the right to register for or vote at any election *while he or she is incarcerated* for such felony.”<sup>79</sup> Completely removed from the state law is the requirement of completion of parole.<sup>80</sup>

The passage of the new legislation also amended New York Criminal Procedure Law adding subdivision 8 to Section 220.5:

Prior to accepting a defendant’s plea of guilty to a count or counts of an indictment or a superior court information charging a felony offense, the court must advise the defendant on the record that conviction will result in loss of the right to vote while the defendant is serving a felony sentence in a correctional facility and that right to vote will be restored upon the defendant’s release.<sup>81</sup>

This legislation codified E.O. 181, ensuring that the right to vote is automatically restored to those released from custody, removing the governor’s discretionary pardon process as unnecessary, and indefinitely erasing the administrative burden that restoration of voting rights through the prior pardon process entailed.<sup>82</sup>

#### B. Incarceration Rates

With a high of 72,649 individuals incarcerated in 1999, New York State’s prison population has steadily declined to 31,030 as of December 2021—a 57.3% decrease.<sup>83</sup> The decline has been so significant that 18 correctional facilities have closed since 2011.<sup>84</sup> Newly appointed NY State Governor Kathy Hochul announced the additional closure of six state facilities, that will officially close in March 2022.<sup>85</sup> As of publication of this article, the state is still operating 50 correctional facilities.<sup>86</sup>

This Comment focuses on felony disenfranchisement. In New York State, individuals convicted of a felony are given sentences for the

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<sup>79</sup> See Assemb. B. A4448A, 2021 Assemb., 2021-2022 Reg. Sess. (N.Y. 2021).

<sup>80</sup> *Id.*

<sup>81</sup> N.Y. CRIM. PROC. LAW § 220.50(8) (McKinney 2021).

<sup>82</sup> *Voting Rights Restoration Efforts in New York*, *supra* note 1.

<sup>83</sup> *DOCCS Fact Sheet*, *supra* note 11, at 1, 3. The presently lower incarceration rate is part of a response to the COVID-19 pandemic, when DOCCS released incarcerated individuals that met certain criteria, under Correction Law § 73. See N.Y. CORRECT. LAW § 73 (McKinney 2021).

<sup>84</sup> *DOCCS Fact Sheet*, *supra* note 11, at 3.

<sup>85</sup> Patrick M. Gallivan, *Senator Gallivan Says Closure of State Correctional Facilities Will Hurt Communities & Workers*, N.Y. STATE SENATE (Nov. 10, 2021), <https://perma.cc/STE6-ZTTX>.

<sup>86</sup> *DOCCS Fact Sheet*, *supra* note 11, at 1.

duration of one year or longer.<sup>87</sup> Individuals convicted on a felony charge are transferred from county jail to state prison.<sup>88</sup> While not included in the scope of this Comment, any discussion of state incarceration rates would be remiss without mentioning incarceration rates in county and city jails.

County and city jails' population represents a mixed populace, ranging from individuals awaiting bail and adjudication, to individuals convicted of a misdemeanor.<sup>89</sup> In 2020, the New York State Division of Criminal Justice Services published a ten-year composite of New York State jail trends, spanning from 2010 to 2019.<sup>90</sup> Using the Jails Daily Population Reporting System ("JDPRS"), the average daily jail census ("ADC") was recorded for all state county jails and New York City.<sup>91</sup> The report recorded a decrease in both New York City and non-New York City jail population rates: from 9,614 in 2016 to 4,471 in 2020 for New York City jails,<sup>92</sup> and 16,869 in 2011 to 8,219 in 2020 for non-New York City jails.<sup>93</sup>

Combining these numbers with those incarcerated in New York State prisons, jails, immigration detention centers, and juvenile facilities, New York has an incarceration rate of 376 per 100,000 people, which is a higher incarceration rate than in the United Kingdom (129 per 100,000), Canada (104 per 100,000), and a host of other countries.<sup>94</sup> Incarceration rates are important to highlight, to get a comprehensive view of the population affected. Every year in New York, roughly 267,000 individuals are processed through county and city jails.<sup>95</sup>

### C. *The Argument to Abolish Disenfranchisement Made Through Rehabilitation and Accountability*

The traditional justification and arguments in support of felony disenfranchisement laws have relied on the same pillars that the criminal

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<sup>87</sup> N.Y. PENAL LAW § 10.00(5) (McKinney 2019)

<sup>88</sup> See *Monthly Jail Population Trends, Jail Population in New York State*, N. Y. STATE DIV. OF CRIM. JUST. SERV. (Dec. 1, 2021), <https://perma.cc/SEP8-X4VH>. See also Elizabeth Gjelten, *New York Felony Crimes by Class and Sentences*, CRIMINALDEFENSELAWYER, <https://perma.cc/KHK2-5Y9F> (last visited Jan. 8, 2022).

<sup>89</sup> See generally #Free New York, *New York's Jails By The Numbers*, JUST LEADERSHIP USA (May 21, 2018), <https://perma.cc/EW8Y-BATF>.

<sup>90</sup> See *Annual Jail Population Trends, Jail Population in New York State*, N. Y. STATE DIV. OF CRIM. JUST. SERV. (Feb. 23, 2021), <https://perma.cc/M2E8-FQ3M>.

<sup>91</sup> See *id.* at 3-24.

<sup>92</sup> *Id.* at 2.

<sup>93</sup> *Id.*

<sup>94</sup> *New York Profile*, PRISON POL'Y INITIATIVE, <https://perma.cc/5VRM-GZ7C> (last visited Dec. 23, 2021).

<sup>95</sup> *Id.*

justice system relies upon as a whole: deterrence, incapacitation, and rehabilitation.<sup>96</sup> Supporters of felony disenfranchisement rationalize that losing the right to vote will deter crime; the opposition argues that very few affected people even know that losing the right to vote is a potential consequence of the criminal activity.<sup>97</sup> In relation to incapacitation, supporters explain that individuals convicted of a felony should forfeit their right to partake in a society, since they were unable to adhere to law-abiding societal norms.<sup>98</sup> Conversely, opponents of felony disenfranchisement would raise the counterpoint that incarcerated individuals are already deprived of personal and civil liberties, and removing their voices only harshens their sentences.<sup>99</sup>

Rehabilitation rationale is where supporters and detractors of felony disenfranchisement share some common ground. Proponents of felony disenfranchisement argue that the ability to exercise the right to vote will further motivate people to want to return to society as its full participants; detractors take this argument one step further and argue that allowing one to vote while incarcerated maintains the connection to the community to which the individual will eventually return.<sup>100</sup>

Rehabilitation is a central platform in DOCCS operations. Whether fully appreciated as such or not, it can be seen in the employment and vocational programming efforts, and the educational programming and family services offered within state prisons.<sup>101</sup>

### 1. Rehabilitation Through Employment and Vocational Programming Inside Prisons

All individuals who are incarcerated in New York State prisons are required to participate in various programs.<sup>102</sup> Depending on which facility an individual is housed and the program requirements, a person can choose and apply for employment or vocational opportunities.<sup>103</sup> A

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<sup>96</sup> Figler, *supra* note 16, at 732-37.

<sup>97</sup> Guarnieri, *supra* note 32, at 466-67.

<sup>98</sup> *Id.* at 457.

<sup>99</sup> Figler, *supra* note 16, at 737.

<sup>100</sup> Guarnieri, *supra* note 32, at 451; See Jean Chung, *Voting Rights in the Era of Mass Incarceration: A Primer*, THE SENTENCING PROJECT (July 28, 2021), <https://perma.cc/ZDJ5-EWFF> (“Research suggests that restoring voting rights to people impacted by the criminal legal system could aid their transition back into community life.”).

<sup>101</sup> As mentioned in the Introduction of this Comment, the word “rehabilitation,” does not appear in the overview statement for DOCCS program services, however, the principle of rehabilitation is clearly highlighted through the vast amount of offered programming. *Supra* Introduction; see DOCCS Program Services, *supra* note 5.

<sup>102</sup> DOCCS Program Services, *supra* note 5.

<sup>103</sup> For some programs offered, there are additional requirements. See, e.g., *Puppies Behind Bars*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, <https://perma.cc/SV8X->

variety of opportunities exist—all in hopes of “redirecting their lives and becoming productive, law-abiding members of society,” furthering the goal of a successful reintegration into the community.<sup>104</sup>

Vocational course offerings include carpentry, culinary arts, air conditioning, refrigeration and heating, computer information technology support, horse handling and care, and welding, just to name a few.<sup>105</sup> In ten all-male state facilities, a course in barbering is offered, providing individuals with the hours needed to take the New York State Barber Licensing Exam.<sup>106</sup> Cosmetology is offered in the three female state facilities, again providing participants with the hours needed to take the New York State Cosmetology Licensing Exam.<sup>107</sup> The “Puppies Behind Bars” program, a 16-month course offered in five state prisons, trains service dogs and explosive detection canines for law enforcement and first responders.<sup>108</sup> Incarcerated individuals who participate in this program are called “Animal Caretakers” and receive a certificate upon successful completion of the program.<sup>109</sup>

For individuals looking to learn a trade and better prepare themselves for life after release, opportunities exist within state prisons.<sup>110</sup> The benefits can be plentiful, including self-improvement, learning a new trade or skill set, earning a small wage, and in terms of

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PB7E (last visited Dec. 16, 2021) (listing considerations for the Puppies Behind Bars Programs: high school diploma or HSE, nature of crime, medications, disciplinary record, time in facility, and time to parole).

<sup>104</sup> DOCCS Program Services, *supra* note 5.

<sup>105</sup> *Id.*; *See, e.g., Carpentry*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, <https://perma.cc/NJU4-X92T> (last visited Jan. 8, 2022); *Culinary Arts*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, <https://perma.cc/V36L-89TA> (last visited Jan. 8, 2022); *Air Conditioning, Refrigeration & Heating*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, <https://perma.cc/J85F-2Y7T> (last visited Jan. 8, 2022); *Computer Information Technology Support*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, <https://perma.cc/4ZKJ-VB7H> (last visited Jan. 8, 2022); *Horse Handling and Care*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, <https://perma.cc/2YUS-W4TV> (last visited Jan. 8, 2022); *Welding*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, <https://perma.cc/Y5FD-YQ9J> (last visited Jan. 8, 2022); *Barbering*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION [hereinafter *Barbering*], <https://perma.cc/S2QL-BQ62> (last visited Dec. 23, 2021).

<sup>106</sup> *Barbering*, *supra* note 105.

<sup>107</sup> *Cosmetology*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, <https://perma.cc/P667-46NJ> (last visited Dec. 23, 2021).

<sup>108</sup> *Puppies Behind Bars*, *supra* note 103.

<sup>109</sup> *Id.*

<sup>110</sup> *See Programs*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, <https://perma.cc/2FGG-DX4T> (last visited Dec. 23, 2021) (“The Department offers a variety of programs and services for incarcerated individuals to redirect their lives and become productive, law-abiding members of society.”).



post-release prospects, this can assist in resume-building and future employment endeavors.<sup>111</sup>

## 2. Rehabilitation Through Temporary Release Programs

Temporary release programs include work release, furlough, industrial training leave, educational release, community services leave, and leave of absence.<sup>112</sup> All of these programs are available to individuals that are within two years of their release date.<sup>113</sup> Individuals must meet certain criteria, apply for, and be accepted to participate in programs.<sup>114</sup>

The work release program allows individuals to leave a correctional facility for up to 14 hours per day and seven days a week, to work in the community.<sup>115</sup> The educational release program also allows individuals who are incarcerated to leave prison up to 14 hours per day in pursuit of educational goals.<sup>116</sup> Same as the community services leave program, which gives individuals who are incarcerated up to 14 hours in the community to do volunteer work.<sup>117</sup>

The goals, listed by DOCCS, of the temporary release programming are “to assist incarcerated individuals in preparing to return to the community via the strengthening of family ties and obtaining employment and housing . . . [and] [t]o successfully reintegrate incarcerated individuals into their community and reduce the likelihood of future criminal activity.”<sup>118</sup> Work release allows individuals to gain employment, which can be maintained upon release as they transition fully back into the community.<sup>119</sup>

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<sup>111</sup> Incarcerated individuals, depending on the program and hours worked, earn a small wage. See *State and Federal Prison Wage Policies and Sourcing Information*, PRISON POL’Y INITIATIVE, <https://perma.cc/MMG7-R3AL> (last visited Dec. 16, 2021). See generally Aaron Yelowitz & Christopher Bollinger, *Prison-to-Work: The Benefits of Intensive Job Search Assistance for Former Inmates*, MANHATTAN INST. (Mar. 26, 2015), <https://perma.cc/NG74-URKA>.

<sup>112</sup> N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, TEMPORARY RELEASE ANNUAL REPORT 2018 2 (2018) [hereinafter TEMPORARY RELEASE ANNUAL REPORT 2018], <https://perma.cc/Q2VF-ABMW>.

<sup>113</sup> *Id.* at 5.

<sup>114</sup> N.Y. COMP. CODES R. & REGS. tit. 7, § 1900.3 (2020)

<sup>115</sup> TEMPORARY RELEASE ANNUAL REPORT 2018, *supra* note 112, at 2.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Temporary Release Program*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, <https://perma.cc/ZY46-24WD> (last visited Dec. 23, 2021).

<sup>119</sup> GRANT DUWE, THE EFFECTIVENESS OF EDUCATION AND EMPLOYMENT PROGRAMMING FOR PRISONERS 9 (2018).

### 3. Rehabilitation Through Education

High school education is available to individuals who have not earned their high school or high school equivalent diploma at all general confinement state correctional facilities.<sup>120</sup> Basic education is also available to those whose education level is below sixth grade, with the stated goal of “provid[ing] individuals with skills or competencies necessary to function successfully in contemporary society.”<sup>121</sup> Individuals who earn a high school diploma equivalency, or are already in possession of one, have the opportunity to continue their educational pursuits.<sup>122</sup> Of the 50 state correctional facilities, 30 offer various associate and bachelor’s degree programs,<sup>123</sup> and a master’s degree in Professional Studies taught by New York Theological Seminary.<sup>124</sup>

In 2014, when Governor Cuomo launched the initiative to bring college programs into state correctional facilities, he acted in response to the studies showing that the rate of recidivism is drastically decreased when individuals are provided with an education.<sup>125</sup> The drop in recidivism rates was in part due to better preparing individuals for post-release life, for employment and educational purposes.<sup>126</sup> In addition, by lowering the rate of recidivism, taxpayer spending is greatly reduced.<sup>127</sup>

It is perplexing to think that while DOCCS invested a great deal into vocational, employment, and educational programming, the State, by denying the right to vote, seems to suggest that individuals who are incarcerated are not able to make an informed decision regarding political affairs.<sup>128</sup> In addition to these efforts undertaken by the DOCCS, incarcerated individuals have access to television, newspapers, magazines, and books, and thus are capable of remaining up to date and well-informed about political candidates and relevant issues.<sup>129</sup>

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<sup>120</sup> *High School Equivalency (HSE)*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, <https://perma.cc/35CJ-LV9P> (last visited Dec. 21, 2021).

<sup>121</sup> *Id.*

<sup>122</sup> *College Programs*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, <https://perma.cc/6R3H-2XJY> (last visited Dec. 23, 2021).

<sup>123</sup> *Id.*

<sup>124</sup> *Masters of Professional Studies*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, <https://perma.cc/VC6C-3S4R> (last visited Dec. 23, 2021).

<sup>125</sup> *Governor Cuomo Launches Initiative to Provide College Classes in New York Prison*, LONGISLAND.COM (Feb. 16, 2014), <https://perma.cc/SBH6-63CJ>.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> See Jamelle Bouie, *Tell Me Again Why Prisoners Can’t Vote*, N.Y. TIMES, (Apr. 11, 2019) <https://perma.cc/E9Y2-S4L4> (“Losing your liberty doesn’t mean you’ve lost your capacity to reason.”).

<sup>129</sup> N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, INCARCERATED INDIVIDUAL PROPERTY, DIRECTIVE NO. 4913 (Nov. 2, 2021), <https://perma.cc/4Y8B-99MX>.

#### 4. Rehabilitation Through Family Services and the Proximity Bill

DOCCS understands the positive effects that family and friends can have on an individual during their period of incarceration.<sup>130</sup> This is so much so that DOCCS has incorporated a vast array of family services within correctional facilities.<sup>131</sup> For example, individuals who are incarcerated have a right to marry, and can marry within the facility where they reside.<sup>132</sup> Furthermore, if eligible, incarcerated individuals can participate in the Family Reunion Program, which allows legal spouses, children, parents, and grandparents to visit and stay on facility grounds in a trailer or modular.<sup>133</sup> Children born to an incarcerated mother can return and remain in the birth mother's care within a correctional facility, up to one year after birth, if she is able to provide such care.<sup>134</sup>

Recent legislation recognizes the need to maintain familial bonds, and the impact that family support has on lowering recidivism rates.<sup>135</sup> The Proximity Bill (S724A/A6710A), also known as "April's Law," which was signed by Governor Cuomo in December 2020, directs DOCCS to place incarcerated parents in a facility in the closest proximity to their minor children that also meets the incarcerated individuals' required security level, program, and health needs.<sup>136</sup> For the 80,000 children in New York State who have at least one parent in prison, this means that maintaining contact through visitation is more convenient and affordable.<sup>137</sup>

Visitation was back in operation as of May 2021. However, at different periods during the COVID-19 pandemic, visitation at

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<sup>130</sup> *Visitors*, N.Y. STATE DEP'T OF CORR. AND CMTY. SUPERVISION, <https://perma.cc/5XS4-VPJX> (last visited Dec. 23, 2021).

<sup>131</sup> N.Y. STATE DEP'T OF CORR. AND CMTY. SUPERVISION, FAMILY REUNION PROGRAM, DIRECTIVE NO. 4500 (Jan. 5, 2016) [hereinafter DIRECTIVE NO. 4500], <https://perma.cc/GA48-4S2V>; *see also*, N.Y. STATE DEP'T OF CORR. AND CMTY. SUPERVISION, HANDBOOK FOR THE FAMILIES AND FRIENDS OF NEW YORK STATE DOCCS INMATES 5-11 (Dec. 2019), <https://perma.cc/2DW5-7K9W> (instructing families and friends of incarcerated people on how to locate an inmate, send mail, email, a package, visitation information, etc.).

<sup>132</sup> N.Y. STATE DEP'T OF CORR. AND CMTY. SUPERVISION, MARRIAGES DURING CONFINEMENT, DIRECTIVE NO. 4201 (Sept. 11, 2020), <https://perma.cc/FFC6-P7TD>.

<sup>133</sup> DIRECTIVE NO. 4500, *supra* note 131.

<sup>134</sup> N.Y. CORR. LAW § 611 (McKinney 2021)

<sup>135</sup> *See* Rachel Vick, *New York's New 'Proximity' Law Will Help Incarcerated Parents Stay Close to Kids*, QUEENS DAILY EAGLE (Dec. 28, 2020), <https://perma.cc/4MMT-K2L2>.

<sup>136</sup> S. B. S724A, 2019 S., 2019-2020 Reg. Sess. (N.Y. 2019); Assemb. B. A6710A, 2019 Assemb., 2019-2020 Reg. Sess. (N.Y. 2019). Velmanette Montgomery, *Governor Cuomo Signs Proximity Legislation into Law Bringing Parents and Children Closer Together*, N.Y. STATE SENATE (Dec. 25, 2020), <https://perma.cc/7QPK-PKPT>.

<sup>137</sup> Montgomery, *supra* note 136.

correctional facilities across the state had to be suspended.<sup>138</sup> During those interruptions, DOCCS compensated this deficit by providing free weekly telephone calls, providing “stamps” on inmate tablets, allowing incarcerated individuals to send emails,<sup>139</sup> and when feasible, permitting video “visits” with family and friends.<sup>140</sup>

From all its stated efforts and undertakings, it is apparent that rehabilitation is at the center of DOCCS operations, carried out in hopes of returning a better prepared, more socially adjusted, and more productive member to society.<sup>141</sup> Moreover, abolishing felony disenfranchisement furthers rehabilitation by allowing incarcerated individuals, through civic responsibility, to remain vested in their local, state, and national governments.<sup>142</sup> Furthermore, voting promotes a sense of connectedness to society and an investment in the political issues that directly affect the incarcerated and their families.<sup>143</sup>

##### 5. Accountability and the Domestic Violence Survivor Justice Act and the Humane Alternatives to Long-Term Solitary Confinement Act

In addition to fighting for rehabilitation efforts, advocates for abolishing felony disenfranchisement laws highlight that allowing incarcerated individuals to vote would allow them to stay connected to their community, and at the same time, the community would also remain accountable to those individuals by holding politicians,

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<sup>138</sup> *DOCCS COVID-19 Report*, N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, <https://perma.cc/TM49-F489> (last modified Jan. 7, 2022).

<sup>139</sup> See N.Y. STATE DEP’T OF CORR. AND CMTY. SUPERVISION, INCARCERATED INDIVIDUAL TABLET PROGRAM, DIRECTIVE NO. 4425 (Oct. 15, 2020), <https://perma.cc/7MQK-CKHY> (providing all inmates in general population with tablets); see also *Email*, JPAY, <https://perma.cc/Y9RR-PWRB> (last visited Dec. 23, 2021) (describing messaging as secure and available on the tablets; however, all emails sent and received are subject to screening and requires a “stamp” or payment thereof, provided through JPay).

<sup>140</sup> *Visitors*, *supra* note 130.

<sup>141</sup> See *Programs*, *supra* note 110.

<sup>142</sup> See ERIKA WOOD, BRENNAN CTR. FOR JUST., RESTORING THE RIGHT TO VOTE 8 (2009), <https://perma.cc/T8Z4-JY8H> (quoting David Schimming, who was able to vote in his town’s mayoral race: “When you’re afforded the opportunity to vote, you think, ‘I am fully vested in my city, state, country; I’m just as much a citizen as anyone else.’ It signals rehabilitation. It presents a mindset that looks forward, not backward.”).

<sup>143</sup> The Southern District of Mississippi wrote:

Disenfranchisement is the harshest civil sanction imposed by a democratic society. When brought beneath its axe, the disenfranchised is severed from the body politic and condemned to the lowest form of citizenship, where voiceless at the ballot box ... [he] must sit idly by while others elect his civic leaders and ... choose the fiscal and governmental policies which will govern him and his family. *Id.* at 8 (quoting *McLaughlin v. City of Canton*, 947 F. Supp. 954, 971 (S.D. Miss. 1995)).

lawmakers, and DOCCS responsible for what happens within state prisons—to people directly impacted by the laws and policies they create.<sup>144</sup>

Physical and sexual abuse should never be part of the sentence, but the rate at which abuse occurs within the New York State correctional facilities is unsettling.<sup>145</sup> In 2020, 1,204 assaults on inmates and 1,047 assaults on staff were reported statewide.<sup>146</sup> Although the severity of the incidents varied, there have been fatal and life-altering injuries.<sup>147</sup> In 2015, Samuel Harris was beaten to death by up to 20 correctional officers, known as the “Beat Up Squad” at Fishkill Correctional Facility.<sup>148</sup> In 2016, Matthew Raymond was badly beaten while in Auburn Correctional Facility and, as a result, “he can no longer urinate without a catheter.”<sup>149</sup>

In 2016, 242 incidents of sexual misconduct perpetrated by DOCCS staff members against incarcerated individuals were reported in state correctional facilities.<sup>150</sup> While still high, this number has decreased from the 258 incidents previously reported in 2015.<sup>151</sup> It is well known that the majority of individuals who are incarcerated have experienced violence in their lifetimes; it is haunting that the cycle of abuse and violence continues for them when they are detained.<sup>152</sup>

The Domestic Violence Survivors Justice Act (DVSJA) of 2019 considered the violence that plagues incarcerated people, citing that over 90% of incarcerated women have experienced physical or sexual violence in their lifetimes.<sup>153</sup> DVSJA builds upon prior precedent that allowed judges to take into consideration the evidence of domestic violence and abuse when considering sentencing options.<sup>154</sup> DVSJA

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<sup>144</sup> See Bouie, *supra* note 128.

<sup>145</sup> See Jean Casella & Katie Rose Quandt, *New York's State Prisons Are Brutal and Deadly. That's Something We Can Change*, GOTHAMIST (Feb. 21, 2019, 9:37 PM), <https://perma.cc/PV3M-TTAC>.

<sup>146</sup> *DOCCS Fact Sheet*, *supra* note 11, at 1.

<sup>147</sup> Phil Miller et al., *Prison Violence Demands Attention, Too*, DAILY NEWS (June 9, 2020, 1:30 PM), <https://perma.cc/XR7P-7NBK>.

<sup>148</sup> Casella & Quandt, *supra* note 145.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> See *Women in Prison: Twice as Likely to Have History of Abuse*, JUST PUBLICS @365, <https://perma.cc/BQ54-82PM> (last visited Dec. 21, 2021); see also Alexi Jones, *Reforms Without Results: Why States Should Stop Excluding Violent Offenses from Criminal Justice Reforms*, PRISON POL'Y INITIATIVE (Apr. 2020), <https://perma.cc/4BT8-597A>.

<sup>153</sup> Assemb. B. A3974, 2019 Assemb., 2019-2020 Reg. Sess. (N.Y. 2019); S. B. S1077, 2019 S., 2019-2020 Reg. Sess. (N.Y. 2019).

<sup>154</sup> See generally Assemb. B. A3974, 2019 Assemb., 2019-2020 Reg. Sess. (N.Y. 2019); S. B. S1077, 2019 S., 2019-2020 Reg. Sess. (N.Y. 2019).

allows flexibility in sentencing, and the chance to apply for resentencing for those that have already been sentenced and are serving time on convictions related to domestic violence.<sup>155</sup>

Interpersonal violence is not the only violence committed within New York State prisons.<sup>156</sup> Between January 2015 and April 2020, 75 individuals who were incarcerated died by suicide.<sup>157</sup> 18 incarcerated individuals committed suicide in 2019 alone, the highest rate seen since 2000.<sup>158</sup> Overall, in the last 20 years, the suicide rates in New York prisons were higher than the national average.<sup>159</sup>

Data collected from a 52-month period from 2015 to 2019 showed that there were 688 suicide attempts within New York State prisons during that time frame—that is one suicide attempt every 2.27 days.<sup>160</sup> Also, within that period, there were 420 acts of self-inflicted injuries.<sup>161</sup> Research shows a correlation between suicide and the use of solitary confinement, where the rate of suicide is five times higher for those housed in solitary than general confinement.<sup>162</sup>

Due to the suicide risk and other known devastating effects of solitary confinement on physical and mental health, Governor Cuomo signed the Humane Alternatives to Long-Term Solitary Confinement Act (“HALT”) into law in April 2021.<sup>163</sup> HALT limits the time that an incarcerated individual can be placed in solitary confinement to 15 days, it reduces the types of infractions for which one could be given solitary confinement, and it excludes special or vulnerable populations from receiving solitary confinement: individuals younger than 21 and older than 55, individuals with a disability, and individuals that are pregnant (up to eight weeks postpartum or caring for a child in the facility).<sup>164</sup>

Additionally, the HALT legislation creates Residential Rehabilitation Units that will implement trauma-informed care to the

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<sup>155</sup> *Pass the Domestic Violence Survivors Justice Act*, SANCTUARY FOR FAMILIES, <https://perma.cc/WL2Y-54EC> (last visited Dec. 16, 2021).

<sup>156</sup> *See Sanders, supra* note 11.

<sup>157</sup> *Id.*

<sup>158</sup> THE WALLS ARE CLOSING IN ON ME: SUICIDE AND SELF-HARM IN NEW YORK STATE’S SOLITARY CONFINEMENT UNITS, 2015-2019, HALTSOLITARY CAMPAIGN 4 (May 2020), <https://perma.cc/3SSV-NV6G>.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 17.

<sup>161</sup> *Id.* at 19-21.

<sup>162</sup> *Id.* at 4.

<sup>163</sup> S.B. S2836, 2021S., 2021-2022 Reg. Sess. (N.Y. 2021); *see also* Christopher Robbins, *Cuomo Signs Bill Banning Long-Term Solitary Confinement in NY*, GOTHAMIST (Apr. 1, 2021, 7:20 PM), <https://perma.cc/6DT4-J94N>.

<sup>164</sup> S.B. S2836, 2021S., 2021-2022 Reg. Sess. (N.Y. 2021).

individuals housed there, with the staff receiving training in deescalation techniques and dispute resolution.<sup>165</sup>

It is clear that New York State prisons can be violent places, which as mentioned above, is not and should not be part of the sentence.<sup>166</sup> When an individual is convicted and sentenced for a crime, the state is holding that individual accountable for their actions.<sup>167</sup> By maintaining incarcerated individuals' right to vote, politicians, lawmakers, and DOCCS could be held accountable for the laws that directly impact incarcerated individuals and their families, and the conditions that the incarcerated are exposed to.<sup>168</sup>

If felony disenfranchisement were abolished, politicians and lawmakers might take heed of what is really happening beyond the walls of New York State prisons.<sup>169</sup> Legislation that impacts the lives of incarcerated individuals and their families might be proposed and enacted; for example, proposing an increase in wages for incarcerated people, and regulating outside commissary vendors and telephone fees.<sup>170</sup>

Additionally, if DOCCS were held accountable to the state and incarcerated people, a possible additional factor when considering facility closure could be the rate of violence and misconduct that is reported at a particular facility. As previously mentioned in this Comment, since 2011, 18 state correctional facilities have closed.<sup>171</sup> Governor Kathy Hochul announced the additional closure of six state facilities, that will officially close in March 2022.<sup>172</sup> Those incarcerated should be able to vote and elect politicians and partake in the political processes that impact them.

#### D. *How to Reenfranchise All New York Citizens*

If New York State were to completely abolish felony disenfranchisement and reenfranchise all eligible New Yorkers,

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<sup>165</sup> *Id.*

<sup>166</sup> See generally Casella & Quandt, *supra* note 146 (detailing reports of abuse within prisons).

<sup>167</sup> See generally Aaron Larson, *Sentencing in Criminal Cases - Fines, Probation and Jail*, EXPELAW (May 7, 2018), <https://perma.cc/J26B-JWNN> (describing what occurs after a person is convicted of an offense).

<sup>168</sup> See WOOD, *supra* note 142, at 8.

<sup>169</sup> See Casella & Quandt, *supra* note 146.

<sup>170</sup> For inmate vendor pricing, see *Availability & Pricing*, JPAY, <https://perma.cc/77CD-WAXW> (last visited Dec. 21, 2021). The current calling rate within the United States is \$0.043 per minute. See *Telephone Calls*, N.Y. STATE DEP'T OF CORR. AND CMTY. SUPERVISION, <https://perma.cc/7ZKK-HELH> (last visited Jan. 9, 2022).

<sup>171</sup> *DOCCS Fact Sheet*, *supra* note 11, at 2-3.

<sup>172</sup> Gallivan, *supra* note 85.

regardless of their incarceration status, the process would entail some work, but logistically would not require anything more than providing them with absentee ballots.<sup>173</sup> In Maine and Vermont, incarcerated individuals can vote by absentee ballot based on their last known address or county of incarceration.<sup>174</sup>

One of the arguments against allowing individuals who are incarcerated the exercise of the right to vote is the lack of proper identification and the inability to verify identity or residence.<sup>175</sup> New York has provided a solution to this issue. As addressed in Part III.B, roughly 267,000 people are processed through local jails every year, and the point of entry into the carceral system for *all* persons incarcerated in New York is a county or city jail.<sup>176</sup> Information gathered when booking and processing an individual after the arrest includes all information needed to register one to vote: name, date of birth (to verify age eligibility), and address.<sup>177</sup> All incarcerated individuals are provided with a DOCCS-issued identification card during period of incarceration that states name and date of birth.<sup>178</sup> This is sufficient documentation for identity verification, which would allow an individual to register to vote and request an absentee ballot.<sup>179</sup> Not to be solely placed in the hands of DOCCS, voter registration drives could be conducted within the prisons by voting advocacy organizations, such as, for example, the League of Women Voters and the NAACP, as they are in both Maine and Vermont.<sup>180</sup>

The 2020 presidential election saw record amounts of people casting absentee ballots due to the COVID-19 pandemic.<sup>181</sup> Research estimates that 46% of all voters cast an absentee ballot—up from 21% in the 2016 presidential election.<sup>182</sup> Thus, as the 2020 precedent shows, it

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<sup>173</sup> Lewis, *supra* note 39.

<sup>174</sup> *Id.*

<sup>175</sup> NICOLE D. PORTER, SENT'G PROJECT, VOTING IN JAILS 8 (2020), <https://perma.cc/MB6Y-2TDE>.

<sup>176</sup> See Sawyer & Wagner, *supra* note 53.

<sup>177</sup> For qualifications to register to vote in New York, see *Register to Vote*, N.Y. STATE BOARD OF ELECTIONS, <https://perma.cc/D5U4-FYZM> (last visited Dec. 21, 2021).

<sup>178</sup> *Incarcerated Individual Identification Cards*, N.Y. STATE DEP'T OF CORR. AND CMTY. SUPERVISION, DIRECTIVE No. 4035 (Feb. 24, 2021), <https://perma.cc/87ZC-DMJJ>.

<sup>179</sup> For verification requirements to vote in New York, see *Register to Vote*, *supra* note 177.

<sup>180</sup> Lewis, *supra* note 39.

<sup>181</sup> Nathaniel Rakick & Jasmine Mithani, *What Absentee Voting Looked Like In All 50 States*, FIVETHIRTYEIGHT (Feb. 9, 2021), <https://perma.cc/43ZA-NVLN>.

<sup>182</sup> *Id.*



should be possible to increase the number of sent out and processed absentee ballots.<sup>183</sup>

#### CONCLUSION

Felony disenfranchisement is an antiquated practice that holds no purpose other than to further alienate individuals who are incarcerated from their communities.<sup>184</sup> Felony disenfranchisement laws do not deter crime, as explained in Part III.C. Thus, such rationale for this practice seems to be unduly harsh, ineffective, and is in stark opposition to the rehabilitation efforts promoted and undertaken by DOCCS.<sup>185</sup>

To further guarantee implementation of the principle of rehabilitation, it is imperative to allow those who are incarcerated the right to vote.<sup>186</sup> To restore this fundamental right would be to promote, through democratic participation, a sense of belonging and responsibility to the community into which the individual would be returning to after prison.<sup>187</sup>

In addition to the rehabilitative gains, abolishing felony disenfranchisement would give individuals who have been convicted of felonies the opportunity to influence their own conditions through civic participation.<sup>188</sup> Politicians, lawmakers, and DOCCS might have a greater incentive to consider the rights and circumstances of incarcerated people if those affected by their policies had the power of the vote.

As the Comment has addressed in detail, New York is on the right path to reenfranchise all eligible citizens. There are no legitimate reasons for the State not to take the next step and restore the right to vote to all New Yorkers. This Comment serves as a call to action to the New York State Legislature to promote the equity of all New Yorkers and let their voices be heard from the inside out.

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<sup>183</sup> Denis Slattery, *New York Expands Access to Absentee Ballots, Enacts Other Election Reforms*, N.Y. DAILY NEWS (July 16, 2021), <https://perma.cc/223K-RTJP>.

<sup>184</sup> See generally *History of Felony Disenfranchisement*, *supra* note 15 (“Felony disenfranchisement is defined as the loss of voting rights on the basis of a felony conviction — whether [sic] that loss only applies during the time of incarceration or for differing periods after a prison sentence is completed varies from state to state.”).

<sup>185</sup> See Guarnieri, *supra* note 32, at 466.

<sup>186</sup> Hamilton-Smith & Vogel, *supra* note 9, at 414.

<sup>187</sup> *Id.* at 413; see also ESTELLE H. ROGERS, PROJECT VOTE, RESTORING VOTING RIGHTS FOR FORMER FELONS 5 (March 2014), <https://perma.cc/JF46-BM2Z>.

<sup>188</sup> Miller et al., *supra* note 147 (“As formerly incarcerated people, we know what it’s like not to have a voice when we most needed someone to listen. Today, more than ever, we are asking our legislative leaders to listen and to pass the prison oversight bill.”).