

Timeline of Massachusetts Incarcerated Voting Rights

June 15, 1780 Massachusetts Constitution is ratified – Chapter I Section III Article IV states, “Every male person, being twenty-one years of age, and resident in any particular town in this commonwealth for the space of one year next preceding, having a freehold estate within the same town, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to vote in the choice of a representative, or representatives for the said town.”¹

April 19, 1792 Kentucky passes first state statute disenfranchising people due to criminal records, other states follow with similar statutes and constitutional amendments.²

November 5, 1912 Massachusetts voters amend the Constitution to include Article XL, prohibiting people who have engaged in election fraud from voting or running for office.³

Voter Eligibility Restrictions

1811 The Massachusetts Supreme Judicial Court rules that Massachusetts residents must also be citizens of the United States to be eligible to vote. In 1821, Massachusetts voters amend the Constitution to include this requirement.^a

1857 and 1859 Massachusetts Legislature passes laws requiring eligible voters pass a literacy test, and requiring that naturalized citizens reside in Massachusetts for two years before becoming eligible to vote.^b

^a *In re Opinion of Justices*, 7 Mass. 523 (Mass. 1811); History of Immigrant Voting Rights in Massachusetts, <http://ronhayduk.com/immigrant-voting/around-the-us/state-histories/massachusetts-history/>

^b Harper-Ho, Virginia. “Noncitizen Voting Rights: The History, the Law and Current Prospects for Change,” *Law & Inequality: A Journal of Theory and Practice* (2000)

¹ Massachusetts Constitution, <https://malegislature.gov/Laws/Constitution>

² Dunman, Joe. “Commentary: Kentucky worst in the U.S. when it comes to disenfranchising black voters – and Gov. Bevin could change that,” *Insider Louisville*, October 7, 2016 <https://insiderlouisville.com/metro/kentucky-worst-disenfranchising-black-voters>

³ Massachusetts Constitution, <https://malegislature.gov/Laws/Constitution#articlesOfAmendment>

Suffrage for Women and People of Color

1780 Massachusetts never legally barred people from voting on the basis of race, however, as in other states, men of color routinely encountered discrimination and violence when attempting to exercise their right.^c

1870 Fifteenth Amendment to the United States Constitution ratified. “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”^d

1879 Massachusetts Legislature passes law allowing women to vote for school committee members. However, the Legislature also required women to pay a poll tax in order to vote.^e

1920 Nineteenth Amendment to the United States Constitution ratified. “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”^f

^c Massachusetts Secretary of State, Freedom’s Agenda: African-American Petitions to the Massachusetts Government 1600–1900, www.sec.state.ma.us/mus/muspdf/Lobby-Exhibits/Freedoms-Agenda-Petitions.pdf

^d Many men of color were still barred from voting due to restrictive state election laws, citizenship eligibility, and discrimination. Native American men were not granted citizenship until 1924, with passage of the Indian Citizenship Act, and African-American men were largely blocked from voting until the Voting Rights Act of 1965.

^e Timeline of Woman Suffrage in Massachusetts, primaryresearch.org/woman-suffrage-in-massachusetts

^f Despite the constitutional amendment, many women and particularly women of color were still barred from voting due to restrictive state election laws, citizenship eligibility, and discrimination. Native American women were not granted citizenship until 1924, with passage of the Indian Citizenship Act, and African-American women were largely blocked from voting until the Voting Rights Act of 1965.

1973 Formerly incarcerated people in Massachusetts, led by Dave Collins, partner with the American Friends Service Committee (AFSC)⁴ to research financial and political relationships between prisons and the towns in which they are located in, as well as election laws. Upon learning that currently incarcerated people are allowed to vote, they begin registering people incarcerated in MCI-Concord prison.⁵

October 19, 1974 Massachusetts Supreme Judicial Court rules in *Evers v. Davoren* that citizens incarcerated in Massachusetts are entitled to vote by absentee ballot, and the legislature must give them equal access to ballots.⁶ The Department of Correction had argued that although citizens retained the right to vote while incarcerated, they could only exercise that right while on furlough and able to enter voting booths in person.⁷

January 22, 1976 Carl Velleca, who is incarcerated at MCI-Concord prison, announces his candidacy for Concord Selectman.⁸ "I saw an ad in the local newspaper last January asking for candidates...so I took an hour-long furlough and went down to register," Velleca told *People* magazine.⁹ Among other campaign issues, Velleca calls for relocating the Greyhound bus stop closer to MCI-Concord prison to accommodate people visiting prisoners.¹⁰ Soon after his announcement, Massachusetts legislators file five bills to restrict incarcerated people's voting rights.¹¹

January 23, 1976 Deputy Massachusetts State Secretary and Director of Elections sends a memorandum to city and town clerks and election commissioners "concerning the registration and voting of mental patients and inmates of correctional institutions." The memorandum states, "[P]risoners may register to vote in the community in which the prison is located if they swear on the affidavit of registration that they consider that residence to be their home."¹²

⁴ American Friends Service Committee, www.afsc.org

⁵ *Instead of Prisons: A Handbook for Abolitionists*, Chapter 9 (1976)

⁶ *Evers v. Davoren*, Docket No. J74-118 CI (1974)

⁷ *Emery v. State*, 177 Mont. 73 (Mont. 1978)

⁸ "Felon Enters Political Race," *New York Times*, January 22, 1976

⁹ Curwood, Steve, "Is Turnabout Fair Play? Ask Carl Velleca, a Crook Who Is Becoming a Politician," *People*, April 5, 1976

¹⁰ Neilson, Larz. "Concord prison 'Godfather' ran for selectman," *Wilmington Town Crier*, January 14, 2017

¹¹ "Inmate Runs for Selectman in Concord," *New York Times*, April 26, 1976;

¹² *Dane v. Board of Registrars of Voters of Concord*, 371 NE 2d 1358 (1978)

February 1, 1976 Around 300 men incarcerated in MCI-Concord prison register to vote in Concord, Massachusetts. A resident of Concord files a complaint with the Board of Registrars alleging the men should not have been allowed to register. The Massachusetts Supreme Judicial Court decides this case in 1978, *Dane v. Board of Registrars of Concord*.¹³

April 21, 1976 Concord holds election for selectman. Carl Velleca receives 599 votes total – including 500 from people outside of the prison – however loses to two free-world candidates, who each receive around 4,000 votes.¹⁴

September 29, 1976 People incarcerated at MCI-Norfolk prison file an action to compel the Norfolk Board of Registrars to hold a voter registration session at MCI-Norfolk prison. The Norfolk County Court orders the registrar to comply, and in October registrars hold a voter registration session inside the prison. Six hundred and twenty one men attempt to register to vote listing the prison as their address. Registrars ask each man about his sentence, prior residence, prior voter registration, marital status and parole eligibility, and ultimately only register 2 of the 621 men - both of whom lived in Norfolk prior to their incarceration. The remaining 619 prisoners re-file their action, which the Massachusetts Supreme Judicial Court decides in 1978, *Ramos v. Board of Registrars of Voters of Norfolk*.¹⁵

January 5, 1978 The Massachusetts Supreme Judicial Court rules on criminal disenfranchisement in two cases, *Dane v. Board of Registrars of Concord* and *Ramos v. Board of Registrars of Voters of Norfolk*.

In *Dane*, the Court rules that incarcerated people must vote in the district where they lived prior to incarceration, unless they can demonstrate they have willingly established themselves as residents of the prison district. The Court orders the Concord Board of Registrar to remove the 300 prisoners from the voter registry and to hold another registration session and question each prisoner about their intent to reside in the prison district.

We here recognize the capability of those imprisoned in Massachusetts correctional institutions to form the requisite intent to make the city or town of the place of their incarceration their domicile

¹³ *Dane v. Board of Registrars of Voters of Concord*, 371 NE 2d 1358 (1978)

¹⁴ "Inmate Loses in Voting for Concord Selectman," *New York Times*, April 21, 1976; "Inmate Runs for Selectman in Concord," *New York Times*, April 26, 1976

¹⁵ *Ramos v. Board of Registrars of Voters of Norfolk*, 374 Mass. 176 (1978)

for voting purposes.¹⁶

In *Ramos*, the Court rules that the Norfolk registrars did not violate the rights of the 619 men incarcerated at MCI-Norfolk prison by refusing to register them because the men did not “establish the requisite intent” to be considered residents of the town.¹⁷

August 16, 1983 Massachusetts Supreme Judicial Court rules in *Cepulonis v. Secretary of the Commonwealth* that the legislature must create a way for incarcerated people to register to vote through absentee ballot in the district where they lived prior to incarceration, since statutes at the time required people to register to vote in person unless unable to do so because of a physical disability.¹⁸

January 30, 1988 Boston Globe reports that people incarcerated on life sentences at MCI-Norfolk prison are launching a “vigorous voter registration drive” to oppose a bill to ban prison furloughs, filed by Representative Giordano. In response, Representative Hermann files a bill to disenfranchise people incarcerated for murder, sale or possession of drugs, rape and “other sex-related offenses.” However, the bill does not pass.¹⁹

September 21, 1988 The National Security Political Action Committee (NSPAC) runs a television ad called “Weekend Passes” endorsing vice president George H.W. Bush over Massachusetts Governor Michael Dukakis in the 1988 presidential election. The ad features an image of William “Willie” Horton, a Black man convicted of murder and sentenced to life without parole in Massachusetts who then subsequently committed new crimes while out on furlough, and calls Dukakis soft on crime. Dukakis loses the election, which many attribute to the incendiary and racist ad.²⁰

January 1, 1997 Representatives Marini and Lewis introduce House bill 1105 in the Massachusetts House of Representatives. Similar to

¹⁶ *Dane v. Board of Registrars of Voters of Concord*, 371 NE 2d 1358 (1978)

¹⁷ *Ramos v. Board of Registrars of Voters of Norfolk*, 374 Mass. 176 (1978)

¹⁸ *Cepulonis v. Secretary of the Commonwealth*, 452 NE 2d 1137 (1983)

¹⁹ Jacobs, Salley. “Inmates’ Right to Vote is Challenged Mass. Lawmaker Seeks to Deny Ballot to Serious Offenders,” *Boston Globe*, January 30, 1988

²⁰ Keller, Bill and Beth Schwartzapfel, “Willie Horton Revisited,” *Marshall Project*, May 13, 2015 www.themarshallproject.org/2015/05/13/willie-horton-revisited Many people view this moment as a turning point in Massachusetts correctional history, when penal policy became stricter as a result of politicians fearing the “Dukakis Effect.”

Ballots Over Bars, Emancipation Initiative Against Life Without Parole (2018)
<http://emancipationinitiative.org/ballots-over-bars/returning-the-right-to-vote/>

Representative Hermann's 1988 bill, the bill would amend the Constitution to disenfranchise people in Massachusetts "convicted of murder in any degree, rape, other sex related offenses or the possession or sale of controlled substances and who are incarcerated in a state prison."²¹

August 2, 1997 The Boston Globe reports that people incarcerated in MCI-Norfolk prison are planning to file paperwork to form the first-ever prison political action committee. The article includes quotes from incarcerated vice-chair of the PAC and chair of the Norfolk Lifers Group, Joe Labriola.²²

August 11, 1997 Members of the Norfolk Lifers Group²³ file statement of organization with Massachusetts Office of Campaign and Political Finance, forming the Massachusetts Prisoners Association Political Action Committee (MPAPAC). The statement of organization states that the PAC was formed:

[F]or the purpose of providing educational material to prisoners of the Commonwealth and their family members dealing with the voting records of elected officials as it pertains to prisons...[to] encourage all prisoners and family members to register to vote, as well as to participate in the electoral process, [and contribute money to political candidates with] a track record of being fair and open minded on prisoner issues.²⁴

August 12, 1997 Acting Governor Cellucci holds a press conference from a Nashua Street Jail cell, at which he announces he has filed a constitutional amendment to disenfranchise people in Massachusetts prisons.²⁵ Cellucci says:

Criminals behind bars have no business deciding who should govern the law-abiding citizens of the Commonwealth. This proposed

²¹ House No. 1105. Legislative Documents - House - 1997 - 1006-1400; Journal of House of Representatives - 1997-98 - Vol III p. 3019. The bill was referred to House and Senate committees on Election Laws, where it was heard on 3/25/98; both committees recommended the amendment ought NOT to pass and it was placed on file on 5/5/98.

²² Dowdy, Zachary R. "Prisoners forming Mass. PAC," *Boston Globe*, August 2, 1997.

²³ MCI Norfolk Lifers Group is a nonprofit organization run by an elected board of directors composed primarily of men incarcerated on life sentences in Massachusetts. <http://www.cjpc.org/mci-norfolk.html>

²⁴ *Mass Prisoners Association Political Action Committee v. Acting Governor*, 435 Mass. 811 (2002)

²⁵ Dowdy, Zachary R. "Cellucci files executive order barring Prisoners' PACs," *Boston Globe*, August 13, 1997; *Mass Prisoners Association Political Action Committee v. Acting Governor*, 435 Mass. 811 (2002)

amendment will ensure that criminals pay their debt to society before they regain their right to participate in the political process.

Cellucci also signs Executive Order 399 barring prisoners from forming PACs, and directs the Department of Correction “to enforce an absolute prohibition on prisoners engaging in any form of solicitation of money or other things of value for political purposes.”²⁶ Cellucci instructs the Department of Correction to enforce the law vigorously, “using punishments such as isolation, restriction and loss of privileges.”²⁷

August 13, 1997 Department of Correction officials search the cells of several incarcerated people connected to MPAPAC, and seize papers related to the PAC. Two weeks later, Michael Shea (PAC chair), Joseph Labriola (vice chair) and Kevin LeMay (board member) are put in solitary confinement for their involvement in MPAPAC.²⁸

Voting Rights for People in Prison Across the U.S.

1998 Of the fifty states, only Maine, Massachusetts, New Hampshire, Utah and Vermont allow people incarcerated in state prisons to vote at this time.⁹

⁹ In 1998, Utah amends its state constitution through voter referendum to disenfranchise people in prison. In 1998, the New Hampshire Superior Court rules the state’s disenfranchisement of people in prison is unconstitutional, however the New Hampshire Supreme Court overrules the decision in 2000, taking the right to vote away from people in prison *again*. Thompson, Eliot, *Felon Disenfranchisement: Why Perverts, Pedophiles, Larsonists and Arsonists Should All Be Allowed to Vote*.

²⁶ Executive Order 399, “Prohibiting prisoners from raising money for political purposes,” www.mass.gov/executive-orders/no-399-prohibiting-prisoners-from-raising-money-for-political-purposes. The Department of Correction later amends the Code of Massachusetts Regulations (CMR) to forbid incarcerated people from using political action committees to raise money for political purposes. 103 Code Mass. Regs. § 405.16 (1999) “Inmates shall not be permitted to use political action committees to raise money for political purpose. All such donations may be seized by the Department for the purposes set forth in 103 CMR 405.09.”

²⁷ Dowdy, Zachary R. “Guards Search Cells for PAC Literature,” *Boston Globe*, August 15, 1997; *Mass Prisoners Association Political Action Committee v. Acting Governor*, 435 Mass. 811 (2002) “The Acting Governor prescribed that enforcement measures were to include the “immediate confiscation of any materials related to solicitation of money or other things of value for political purposes,” the imposition of disciplinary sanctions, and referral to law enforcement for criminal prosecution.”

²⁸ Brelis, Matthew. “Politically Active Inmates Segregated, Advocate Says,” *Boston Globe*, August 29, 1997

July 28, 1998 Joint session of Massachusetts Legislature reads House bill 1105 to disenfranchise people incarcerated in prison for *certain* crimes by means of constitutional amendment. To amend the constitution, the bill must pass both the 1998 and 2000 legislative sessions with yeas from at least 50% of legislators before appearing as a referendum ballot question, where it must receive yeas from at least 50% of the public who vote on it. On July 29, the bill passes the initial stage with 155 yeas to 34 nays.²⁹

October 16, 1998 Suffolk Superior Court Judge Cratsley rules that Massachusetts did not violate incarcerated people's first amendment rights by forbidding participation in MPAPAC.³⁰

May 8, 2000 Representative Jones introduces House Bill 5148 and calls for consideration of amended House Bill 1005 in joint session. The amended bill disenfranchises people "incarcerated in a correctional facility due to a felony conviction," which is the vast majority of people in state prison.³¹

June 28, 2000 Joint session of Massachusetts Legislature votes on the modified bill, which passes the second stage with 144 yeas to 45 nays.

November 7, 2000 Massachusetts residents vote on Ballot Question 2 to amend Article III of the state constitution to prohibit people incarcerated for felonies in state prison from voting. People incarcerated across the state vote in large numbers, however the amendment passes the final stage with 60.3% yeas, 33.9% nays and 5.8% of people not voting on the question. The amendment only applies to elections governed by state constitution – governor, lieutenant governor, and U.S. senators and representatives - but not municipal or presidential elections.³²

November 27, 2001 Governor Cellucci signs Bill 2883, prohibiting people incarcerated in state prison for felony convictions from voting in presidential and municipal elections, and changing the requirements for obtaining absentee ballots.³³

²⁹ Journal of the Senate – 1997-98 – Volume II Jan 7,1998 - Jan 5, 1999 p. 2201-2205

³⁰ In 2002, the Massachusetts Supreme Judicial Court decides *Massachusetts Prisoners Association Political Action Committee v. Acting Governor*, holding that the Executive Order barring prisoners from political fundraising is constitutional due to security concerns. *Mass Prisoners Association Political Action Committee v. Acting Governor*, 435 Mass. 811 (2002)

³¹ Legislative Documents - House - 1999-00 - 5101-5210

³² *Simmons v. Galvin*, US Court of Appeals First Circuit, 08-1569 (2009)

³³ *Simmons v. Galvin*, US Court of Appeals First Circuit, 08-1569 (2009)

Efforts to Overturn Constitutional Amendment

August 5, 2001 Paul Simmons, Pedro Valentin and Dennis Beldotti, three men incarcerated for felonies in Massachusetts prisons, sue the state in federal court for violating their constitutional right to vote, in *Simmons v. Galvin*.^h

August 30, 2007 United States District Court of Massachusetts decides *Simmons v. Galvin*, rejecting the ex post facto claims but ruling that the Voting Rights Act challenge should proceed to trial. The state appeals.ⁱ

July 31, 2009 United States Court of Appeals for the First Circuit three-judge panel affirms in part and reverses in part the District Court's decision, ruling that the amendment was not a violation of the federal Voting Rights Act. Simmons and the other plaintiffs file a petition for panel rehearing and rehearing en banc, which are denied September 2, 2009. Plaintiffs then file a petition for a writ of certiorari to appeal the case to the United States Supreme Court, which is denied October 2010.^j

^h *Simmons v. Galvin*, US Court of Appeals First Circuit, 08-1569 (2009) The plaintiffs argue that the constitutional amendment violates the ex post facto and equal protection clauses of the U.S. Constitution, and 42 USC § 1973(b) of the Voting Rights Act because it is punitive in purpose and has a disproportionate impact on people of color.

ⁱ *Simmons v. Galvin*, 652 F. Supp. 2d 83 (2007) The court rejected plaintiffs' ex post facto challenge on basis that plaintiffs failed to prove that "what was manifestly intended to be a civil, regulatory measure" was transformed "into a criminal penalty."

^j *Simmons v. Galvin*, US Court of Appeals First Circuit, 08-1569 (2009)

Where We Are in 2018

State prisons: People incarcerated in Massachusetts state prisons for felony convictions cannot vote in any elections in Massachusetts while incarcerated. This means about 8,234 people are currently denied the right to vote in Massachusetts due to imprisonment.³⁴ Massachusetts disproportionately incarcerates people of color, so while the state is 18.2% people of color, 58% (or 4,982) of people disenfranchised due to imprisonment are people of color.³⁵ People incarcerated in prison for other reasons – such as pre-trial detention or civil commitments are allowed to vote by absentee ballot. Maine and Vermont are the only U.S. states that allow all incarcerated citizens to vote.³⁶

County jails and houses of correction: Most of the approximately 9,800 people incarcerated in Massachusetts county jails and houses of correction on any given day can vote in all (federal, state and municipal) elections by absentee ballot, as long as they are citizens and are not incarcerated for felony convictions or voter fraud.³⁷ However, evidence indicates that many Massachusetts jails and houses of correction do not help incarcerated people obtain absentee ballots, and even give false information on eligibility to vote. Even when an incarcerated person has the funds and knowledge to request and submit an absentee ballot, town clerks often illegally reject these ballots, leaving incarcerated people with little recourse.

Formerly incarcerated people: Massachusetts is one of 14 states that prohibit people from voting while incarcerated in prison but return the right to vote immediately upon release, considered the “least restrictive” category of criminal disenfranchisement.³⁸ However, anecdotal and empirical evidence suggest that many people assume they remain disenfranchised upon release.³⁹

³⁴ As of January 1, 2017, the Department of Correction incarcerated 8,234 criminally-sentenced people, 91% of whom are serving sentences for felonies. Massachusetts Department of Correction, *Prison Population Trends 2016* (2017) p. 13 <http://www.mass.gov/eopss/docs/doc/research-reports/pop-trends/prisonpoptrends-2016-final.pdf>

³⁵ Census QuickFacts 2017, <https://www.census.gov/quickfacts/fact/table/MA/RHI125216>

³⁶ Sentencing Project, *Six Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016* (2016) www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016

³⁷ Prison Policy Initiative, *Massachusetts Incarceration Pie Chart 2016* (May 2016) https://www.prisonpolicy.org/graphs/50statepie/MA_pie_2016.html

³⁸ See fn 36

³⁹ Meredith, Marc and Michael Morse, *The Politics of the Restoration of the Ex-Felon Voting Rights: The Case of Iowa*, *Quarterly Journal of Political Science* 10 (2015) <https://scholar.harvard.edu/files/morse/files/iowa.pdf>