

**BRENNAN
CENTER
FOR JUSTICE**

at New York University School of Law

**Testimony of Sean Morales-Doyle
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before the
New York City Council Committees on Governmental Operations & Criminal Justice
concerning
Int. 367 - In relation to the department of probation informing persons of their voting
rights;
Int. 514 - In relation to the department of correction informing released persons of their
voting rights; and
Int. 1115 - In relation to agencies assisting eligible parolees with voter registration**

October 3, 2018

Good afternoon Chairpersons Cabrera and Powers, and members of the Committees on Governmental Operations and Criminal Justice. My name is Sean Morales-Doyle and I serve as Counsel for the Brennan Center for Justice at NYU School of Law in the Democracy Program. I would like to thank the committees for holding this joint hearing and inviting public testimony regarding Introductions 367, 514, and 1115.

The Brennan Center is a nonpartisan law and public policy institute based in New York City that seeks to improve our systems of democracy and justice. We work on a range of voting rights and election issues and has a long record of supporting efforts to reform felony disenfranchisement laws at the state and federal levels, including in New York. For years, we have advocated for both legislative and executive action to restore rights to Americans living in New York's community with convictions in their past.

We were pleased when Governor Cuomo announced that he would begin using his pardon power to restore voting rights to over 24,000 people successfully living in the community on state parole.¹ We continue to advocate for the passage of legislation to codify and improve upon the Governor's action, and encourage the City Council to express their support for such legislation as well. But whether or not the state legislature acts, there is much work that should be done to make sure that the legal restoration of voting rights actually leads to registration and voting by impacted New Yorkers. The passage of introductions 367, 514, and 1115 would go a long way towards achieving this goal.

As you know, New York statutes disenfranchise people with felony convictions during any period of incarceration and until they complete the terms of their parole. Prior to Governor

¹ Press Release, Governor Andrew Cuomo, Governor Cuomo Signs Executive Order to Restore Voting Rights to New Yorkers on Parole (April 18, 2018), <https://www.governor.ny.gov/news/governor-cuomo-signs-executive-order-restore-voting-rights-new-yorkers-parole>.

Cuomo's executive action, that has meant New York lags behind sixteen other states and D.C. that restore voting rights to everyone living in the community.² For decades, tens of thousands³ of New Yorkers living, working, and paying taxes in their communities have been denied the right to vote.

And New York is one of only a handful of states that statutorily denies the right to vote to people on parole while allowing people on probation to vote. This policy has caused bewilderment among everyone from election officials to prospective voters themselves about who is eligible to vote. Most people don't know the difference between probation and parole, and the consequences for registering or voting while ineligible are potentially severe. This has resulted in many people on probation, who are legally able to vote, declining to register because of the mistaken belief they are ineligible. We call this problem *de facto* disenfranchisement.

Governor Cuomo's recent efforts to pardon people on parole go a long way to remedying that confusion by creating a system where virtually everyone living the community can vote. But this is by no means a perfect solution to the problem. Each month, the Department of Corrections and Community Supervision (DOCCS) must provide a list of everyone released on parole to the governor's staff, which then must conduct a review and grant pardons on an individual basis. Not only is this a cumbersome process but it creates a lag in rights restoration and leaves room for continued confusion among election officials about who is actually eligible to register. The only way to verify eligibility is to rely on pardon certificates or check a person's status on the DOCCS website.

While we wait for the New York legislature to cure this problem, the bills before the committees today will help to remedy that lingering confusion in New York City. By providing for written notice of New York's policy to people while on probation and upon release from New York City Department of Correction (DOC) custody, Introductions 367 and 514 help diminish the possibility of *de facto* disenfranchisement. And by providing guidance to voter registration agencies, Introduction 1115 reduces the chance that confusion among agency employees might make it difficult for eligible voters to get registered. Finally, Introduction 1115 ensures that these agencies will know how to help a potential voter check their pardon status on the DOCCS website.

These are all steps in the right direction and we urge the committees to refer these bills to the full Council. But we also recommend you consider a few small changes that will make these bills even more impactful.

First, we think it is important to require verbal notice of voting rights to people in custody and on probation in addition to written notice. This will make it more likely that the people receiving the information take note and consider the possibility of registering.

² Vermont and Maine never disenfranchise citizens on the basis of a conviction. Hawai'i, Illinois, Indiana, Massachusetts, Maryland, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, and Washington, D.C. restore voting rights upon release from prison. See Brennan Center for Justice, "Criminal Disenfranchisement Laws Across the United States," available at <http://www.brennancenter.org/criminal-disenfranchisement-laws-across-united-states>.

³ In 2017, there were 35,415 New Yorkers on parole under active community supervision. State of New York, Dep't of Corrections & Community Supervision, Community Supervision Legislative Report 5 (2017), available at http://www.doccs.ny.gov/Research/Reports/2017/Legislative_Report.pdf.

Second, while we appreciate that Introduction 514 requires DOC to provide a voter registration form to people upon their release from custody, we recommend that they also be provided an opportunity to register, if eligible, at the earliest possible point in their time in custody. Most people in DOC custody have not been sentenced to prison for a felony conviction, and they are therefore eligible to vote. In fact, they have a constitutional right to vote even while in custody.⁴ While Section 1057-a of the City Charter technically already requires DOC to provide voter registration applications, it treats DOC like all other participating agencies by requiring registration forms to be distributed “with written applications for services.” Because DOC inmates are unlikely to ever make a written application for services, this is an ineffective mandate. Instead, DOC should be required to provide voter registration forms at the earliest point practicable, and again upon release.

With these recommendations in mind, I want to conclude with a few points about the importance of bills like those before the committees. First, I want to highlight that this is a racial justice issue. Given the structural inequality in the criminal justice system, it is no surprise that impact of New York’s disenfranchisement law falls disproportionately on people of color. Nearly three-quarters of New Yorkers on parole are African American or Latino.⁵ But this is also no accident. New York’s disenfranchisement law has its roots in Jim Crow-era attempts to evade the Fifteenth Amendment’s mandate that African American men be given the right to vote.⁶

Second, encouraging voting among justice-involved individuals is a smart approach to criminal justice. Indeed, correctional officers’ organizations like the American Probation and Parole Association⁷ and the Association of Paroling Authorities International⁸ support the restoration of voting rights upon release from prison. This makes sense. What better way for someone to reintegrate into their community and demonstrate a commitment to society than by voting?

Finally, we will only truly see these benefits manifest through concerted efforts to inform and register voters. Both as a result of the confusion I have described and because of so many other pressing concerns in their lives, people who have been involved in the criminal justice system are less likely to register and vote than others. But efforts like those under your consideration can make a difference. I believe you will hear from a number of my colleagues today, including the National Action Network and VOCAL-NY, about the work they have done to register people on parole in the four months since Governor Cuomo began issuing pardons. The Brennan Center has

⁴ *O’Brien v. Skinner*, 414 U.S. 524 (1974).

⁵ State of New York, Dep’t of Corrections & Community Supervision, Community Supervision Legislative Report 12 (2017), available at http://www.doccs.ny.gov/Research/Reports/2017/Legislative_Report.pdf.

⁶ Erika Wood, et al, Brennan Ctr. for Justice, *Jim Crow in New York* (2010), available at <https://www.brennancenter.org/publication/jim-crow-new-york>.

⁷ American Probation and Parole Association, “Resolution: Restoration of Voting Rights” (Sep. 2007), available at https://www.appa-net.org/eweb/Dynamicpage.aspx?webcode=IB_Resolution&wps_key=3c8f5612-9e1c-4f60-8e8b-1bf46c00138e.

⁸ Association of Paroling Authorities International, “Resolution on Restoring Voting Rights” (April 30, 2008), available at <http://www.apaintl.org/about/resolutions.html>.

tracked these efforts and can confirm that about one thousand people that the Governor pardoned were registered in time for the September primary. That is not a large number, and it needs to grow, but it is a sign of the progress that can be made in just a few short months by dedicated re-entry advocates. We urge the City to join in that work.

For these reasons, we ask the committees to approve Introductions 367, 514, and 1115. Thank you again for your time and consideration. I am happy to answer any questions.