HOUSE DOCKET, NO. 2728 FILED ON: 2/18/2021

HOUSE . . . . . No. 798

The Commonwealth of Massachusetts

PRESENTED BY:

Russell E. Holmes

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act increasing voter registration and participation to help prevent recidivism.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Russell E. Holmes	*6th Suffolk*	*2/18/2021*

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HOUSE . . . . . No. 798

By Mr. Holmes of Boston, a petition (accompanied by bill, House, No. 798) of Russell E. Holmes relative to increasing voter registration and participation of people incarcerated for felony convictions to help prevent recidivism. Election Laws.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *669* OF 2019-2020.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act increasing voter registration and participation to help prevent recidivism.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Court finds and declares that:

(1) Suffrage is the vanguard of civil rights and liberties and the cornerstone of democracy. It is both a fundamental right and a civic responsibility. Reinstating the right to suffrage fortifies our democracy by boosting voter turn-outs and helps ex-offenders upon their release to reintegrate into society. Voting is an essential part to reassuming the duties of full citizenship. Though Massachusetts recognizes these facts, Congress can do more to increase voter participation by protecting eligible voters while incarcerated. Congress can also do more to enhance voter registration among returning citizens and thereby help deter recidivism.

(2) Massachusetts people incarcerated for felony convictions cannot vote in any elections in the state while incarcerated. As a result, approximately 8,234 people in Massachusetts are currently denied the right to vote. Unfortunately the majority of these disfranchised citizens come from the same communities, diminishing the voting power of these communities. From 2015 to 2018 over 60 per cent of those who received new criminal sentences were from just 4 counties: Suffolk county, Essex county, Middlesex county and Hampden county.

(3) Massachusetts disparately incarcerates people of color as well, so while people of color make up 18.2 per cent of the state's population, 58 per cent (or 4,982) of people disfranchised due to imprisonment are people of color. People incarcerated in prison for other reasons, such as pre-trial detention or civil commitments, are allowed to vote by absentee ballot.

(4) Maine and Vermont are the only states that allow all incarcerated citizens to vote.

(5) Most of the approximately 9,800 people incarcerated in Massachusetts county jails and houses of correction can vote in all federal, state, and municipal elections by absentee ballot - as long as they are 18 years of age or older, United States citizens and are not incarcerated for felony convictions or voter fraud. However, many jails and houses of correction across the state do not help incarcerated people obtain absentee ballots, and in fact some give false information regarding their voting eligibility. Even when incarcerated people have the funds and knowledge to request an absentee ballot, some city and town clerks illegally reject these ballots, leaving incarcerated people with little recourse.

(6) 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 offender disfranchisement. However, evidence suggest that many people assume they remain disfranchised upon release.

(7) This bill would, though it requires the cooperation of different government agencies, concentrate within the department of correction and houses of correction, the responsibility of helping eligible voters in their custody obtain absentee ballots and the responsibility of initiating the restoration by helping ineligible voters get pre-registered upon anticipation of their release. Streamlining these processes conserves government resources and saves taxpayer dollars. This act will also require the secretary of state to train city and town clerks on the laws relevant to this act.

SECTION 2. Chapter 51 of the General Laws is hereby amended by adding the following section:–

Section 65. (a) A correctional facility, as defined in section 1 of chapter 125, shall be a designated agency for the registration of voters pursuant to 52 U.S.C. § 20506. Upon request, a correctional facility shall provide voter absentee ballot applications to eligible voters within the custody of the facility.

(b) The correctional facility shall either provide requesters with a sufficient size envelope and postage stamps, or transmit the completed voter absentee ballot application to the appropriate city or town clerk responsible for processing absentee ballot request applications in the county where the requester claims residence.

(c) As part of the release process leading to the discharge of a person who has been disfranchised because of a felony conviction, the correctional facility shall provide that person with a voter registration form and a declination form, and offer that person assistance in filling

out the appropriate form. Unless the registrant refuses to permit it to do so, the correctional facility shall provide registrant with a sufficient size envelope and postage stamps, or transmit the completed voter registration form to the city or town in the county where the registrant claims residence.

SECTION 3. Chapter 127 of the General Laws is hereby amended by inserting after section 150 the following section:–

Section 150A. (a) Prior to the expiration of a prisoner's term, the superintendent or administrator of the state or county correctional facility shall, in writing, notify the prisoner whose term expires that his or her voting rights shall be restored upon discharge; provided, that such person's right to vote was suspended while incarcerated pursuant to Article III of the Articles of Amendment of the Constitution.

(d) Each superintendent of a state correctional facility and each administrator of a county correctional facility shall, on or before the fifteenth day of each month, transmit to the secretary of the commonwealth 2 lists. The first list shall contain the following information about persons convicted of a felony who, during the preceding period, have become ineligible to vote because of their incarceration; the second list shall contain the following information about persons convicted of a felony who, during the preceding period, have become eligible to vote because of their discharge from incarceration:

(i) name;

(ii) date of birth;

(iii) date of entry of judgement of conviction;

(iv) sentence; and

(v) last 4 digits of social security number, or driver's license number, if available.

(e) The state secretary shall ensure that the names of persons who are eligible and registered to vote following their discharge from incarceration are added to the statewide voter registration database in the same manner as all other names are added to that database.

(f) The state secretary shall ensure that persons who have become eligible to vote because of their discharge from incarceration face no continued barriers to registration or voting resulting from their felony convictions.

(g) The state secretary shall ensure that registrants who submitted registration forms upon anticipation of release shall be pre-registered until finally discharged.

(h) The state secretary shall develop and implement a program to educate: attorneys; judges; election officials; each superintendent of a state correctional facility and each administrator of a county correctional facility; the department of correction and corrections officials; including parole and probation officers; and members of the public about the requirements of this section, ensuring that:

(i) Judges are informed of their obligation to notify defendants facing disfranchisement of the potential loss and restoration of their voting rights, in accordance with section 29E of chapter 278;

(ii) The department of correction and county correctional facilities are prepared to help eligible voters in their custody obtain absentee ballots, including providing sufficient size envelopes and postage stamps for mailing, or by forwarding their completed absentee ballot

application to the appropriate elections official. The department of correction and county correctional facilities are also prepared to assist those convicted of a felony with registration to vote in anticipation of their discharge, including providing the registrant with sufficient size envelope and postage stamps or by forwarding his or her completed voter registration forms to the appropriate registration agency;

(iii) The language on voter registration forms makes clear that people who have been disqualified from voting because of felony convictions regain the right to vote when they are discharged from incarceration;

(iv) The department of correction is prepared to transmit to the state secretary the information specified in this section;

(v) Probation and parole officers are informed and prepared to notify probationers that their right to vote is restored; and

(vi) Accurate and complete information about the voting rights of people who have been charged with or convicted of crimes; whether disfranchising or not, is made available through a single publication to government officials and the public.

SECTION 4. Chapter 278 of the General Laws is hereby amended by inserting after section 29D the following section:–

Section 29E. The court shall not accept a plea of guilty, a plea of nolo contendere, or an admission to sufficient facts from any defendant in any criminal proceeding unless the court advises such defendant of the following: “You are hereby advised that the acceptance by this court of your plea of guilty, plea of nolo contendere, or admission to sufficient facts will result in

loss of the right to vote only if and for as long as you are incarcerated and your voting rights are restarted upon discharge." The court shall advise such defendant during every plea colloquy at which the defendant is proffering a plea of guilty, a plea of nolo contendere, or an admission to sufficient facts in any matter considered to be a felony pursuant to Article III of the Articles of Amendments of the Constitution.

If the court fails so to advise the defendant, and the defendant later at any time shows that the defendant's plea and conviction may have or has had the enumerated consequence, the court, on the defendant's motion, shall vacate the judgment, and permit the defendant to withdraw the plea of guilty, plea of nolo contendere, or admission of sufficient facts, and enter a plea of not guilty. Absent an official record or a contemporaneously written record kept in the court file that the court provided the advisement as prescribed in this section, including but not limited to a docket sheet that accurately reflects that the notice was given as required by this section, the defendant shall be presumed not to have received advisement. An advisement previously or subsequently provided the defendant during another plea colloquy shall not satisfy the advisement required by this section.