

Background

Sheriff Koutoujian invited the League of Women Voters to the Middlesex Jail & House of Corrections to assist individuals in custody with getting absentee ballots. He said this was the first time this had been done in this facility.

On October 3, 2016, Colleen Kirby, Patti Muldoon, and Doris Orellana, worked with Susan Rourke (volunteer coordinator with the Sheriff's office) to help non-felons register for the November 2016 national election. A total of 24 incarcerated individuals filled out "Massachusetts Official Absentee Ballot Applications." All applications were marked as "Specially Qualified" with the understanding that none of the applicants were convicted felons. As part of the form, all applicants needed to declare a "legal voting residence." We were told by the Secretary of State's Office that the individuals could fill out whatever address they felt was home, including using the address of the Jail/HOC. We mailed in all 24 forms so we know that all were sent.

We heard from Susan Rourke that she later mailed 7 ballots, and that others may have been mailed directly by the individuals themselves.

The intent of this research project was to follow-up with the respective town clerks where applicants declared their legal voting residence to determine:

- If the ballot request was received
- If the applicant was sent an absentee ballot
- If the applicant returned the ballot (i.e., did they vote)

What Does the Law Say?

As part of my research, I reached out to the Elections Division of the Massachusetts Secretary's Office to try and better understand the laws governing absentee voting for incarcerated individuals. I did this because I was hearing inconsistent information from the town registrars.

According to the Elections Division, Massachusetts state law allows unregistered voters who are otherwise eligible to vote, who are incarcerated, and whose present domicile is in Massachusetts to vote as specially qualified voters (G.L. c. 50, §1).

In addition, state law also allows registrars to investigate the qualifications of any resident claiming to be eligible to vote as a specially qualified voter. If the registrars are unable to certify the resident's eligibility, they must reject the voter's application and notify the resident in writing. G.L. c. 54, § 91A.

Voter cancellation notices sent to the Elections Division office from other states and from the Department of Justice are distributed to the various cities and towns. If the Elections Division receives a notice from the Department of Justice listing a Massachusetts resident, the notice is forwarded to the appropriate city or town. If a resident was incarcerated for a felony conviction, the local election official would be required to remove that resident from the voter list.

Finally, the Elections Division encourages local election officials to keep their voting lists clean. One way of doing this is to "delete" all absentee voters at the end of each year. Once the absentees have been

deleted, the absentee voter records are maintained through certain reports, but the voters are no longer flagged as absentee voters in the new year.

Summary of Research

In summary, I confirmed the following results of the voting registration effort:

Scenario	Count (out of 24)	Frequency
Ballot sent, applicant voted	15	63%
Ballot sent, applicant did not vote	5	21%
Clerk reported application never received	1	4%
Clerk requested more information – applicant didn't provide	1	4%
Clerk rejected the application	1	4%
Unable to confirm scenario	1	4%

The numbers above speak for themselves, but a few observations:

- Nearly two out of every three applications received a ballot and voted
- An additional five applicants received a ballot but never returned it
- Five applicants reported that the Middlesex House of Corrections was their residence. All five of these applicants received ballots (four returned the ballots). This was only after Patti had the Secretary of State's Office contact the Town Clerk of Billerica to clarify the regulations.
- The applicants reported residences in 13 different municipalities (i.e., 13 different Clerk's offices were contacted as part of this research)

Unusual Cases

The research process uncovered some cases that are worth summarizing in this report – they also reveal some inconsistencies in how various registrars handles these applications.

The Billerica Town Clerk called Patti thinking that the Jail/HOC was not a legal address. Patti had the Secretary of State's Office contact the Billerica Town Clerk to clarify that these detainees are eligible for absentee ballots. All five of these applicants did receive a ballot, and four returned it.

For instance, an applicant listed a residence in Belmont. The Belmont Clerk's office sent the applicant a ballot, but also noted to me that the applicant was on a list from the state of individuals who should be removed from the voter rolls. The Clerk told me this list is usually reporting out felons. It is unclear whether or not the Clerk observed the applicant was on this list before or after mailing the ballot (I can follow-up on this if it is relevant). In any case, the ballot was never returned. But, I did ask the Clerk how they would have treated this ballot had it been returned and the Clerk told me she would have followed up with Elections Division for help in determining whether or not the ballot should be counted.

An applicant reported a Salem residence. The Clerk has him already registered at a different address than the one on the application. Clerk also reported that they contacted the state Elections Division who advised them to send a letter inquiring whether or not he was a felon. I asked about this case directly in an email to the Elections Division and they neither confirmed nor denied providing this guidance. The Clerk sent the letter to the applicant but never received a response, so no ballot was sent.

A different applicant reported a Salem residence. The Clerk rejected his application because they didn't have a record of him being a "registered voter" in the city of Salem. I am not a lawyer, but I believe this application was mishandled by the Salem Clerk's office. Based on guidance from the Elections Division, my understanding is that a Specially Qualified voter does not need to be previously registered in the city where they report their residence. It is worth noting that this specific rejection only occurred in Salem out of the 13 municipalities contacted as part of this research.

Susan Rourke did receive a letter from the Salem Clerk and sent a letter back clarifying that the individual was a detainee. She does not know what happened with that ballot. It is unclear which of the above two cases she received a letter about.

An applicant reported that his residence was in Boston, but the Boston clerk's office reported that they would not have sent this applicant a ballot because he is registered to vote in Cambridge (eliminating his special qualification). Boston was unclear if they communicated anything back to the applicant. They told me even if he hadn't been registered in Cambridge they would normally research a Special Qualification request to find some evidence that the individual was indeed a resident of Boston. I followed up with the Cambridge Clerk's office who confirmed that the applicant voted in March 2016 but not in November. I was never able to get a final answer on what happened to this individual's application.

Finally, of the 24 cases, only one Clerk's office (Lawrence) told me they never received the application.

A Different Approach

The League of Women Voters of Boston was invited into the Nashua Street Jail by Sheriff Steven Tompkins and worked with volunteer coordinator Patricia O'Neill. Four League members, Judi Wright, Claire Hayes, Sarah Edwards, and Rachel Shaheen registered 75 individuals, all with Boston addresses or that used the jail as their home address, on October 5, 2016. They hand-delivered these registrations. Patricia was then going to follow up to get them absentee ballots. I have not heard back from her yet. I do not believe there was follow up on whether these individuals ended up voting.

Questions of Procedure

1. It appears that the regulations for individuals in custody to obtain absentee ballots are not clear. It appears to be valid to use the Jail/House of Corrections as a "legal residence" if the individual has no other residence, but the Billerica Town Clerk was not aware of that until receiving a call from the Secretary of State's Office. Are clerks where other Jails and Houses of Correction or other custodial institutions aware that this is the case?
2. A few clerks questioned whether or not an individual was a felon even though Susan Rourke had made sure that they were not before we had them fill out absentee forms. Is there a way that the Jail or House of Correction could give the applicant a form attesting to their status as a non-felon incarcerate? Or some sort of official stamp or something else to clarify this? We did circle that they were "specially qualified".
3. It is unclear what "legal residence" an individual in custody should use. Once the Salem Town Clerk understood the regulation, then the individuals received their ballots. As other individuals may or may not have voted in the past, they may or may not have been listed as residing in those towns and thus their ballots may not have been sent. If an individual votes from the

community in which they are incarcerated, does that make a difference in terms of state funding going to that community, or counting as a resident of that community? Is it in the interest of the individual to vote from their home district to ensure that their home district counts them as a resident for state budgetary purposes? If an individual is incarcerated but has not voted in their home district will they be counted as a resident in that community? What is most politically advantageous for a poor community concerning voting by individuals who will end up returning to live in that community if they are incarcerated in another community? How can individuals in custody be most assured that they are enfranchised?

4. Is it clear to those who received their absentee ballots that this does not mean they are registered to vote, but will have to register in their new place of residence once they are released? Do the Jails, Houses of Corrections and Prisons assist released individuals with registering to vote?
5. Why did 5 individuals who received their ballot, not send it in? We did not follow up to find out. I did notice while we were assisting with filling out absentee ballot forms that certain individuals either had difficulty reading, writing or with vision so perhaps that was a factor? As individuals would have to pay for postage that may be another consideration.
6. Why did only 24 out of possibly 900 eligible voters attempt to get an absentee ballot?
7. Would it be possible and most effective to both register and ask for an absentee ballot at the same time?

Questions of Procedure

Various individuals and groups have indicated an interest in following up to make voting more accessible for individuals in custody including The League of Women Voters (Colleen Kirby and others), ACLU (Gavi Wolfe), Rep. Mary Keefe, Marc Jacobson, Elly Kalfus, Rachel Corey, and others.

Appendix: How to Vote in Massachusetts while in Custody (is this correct?)

According to information from the Secretary of State about absentee ballots, https://www.sec.state.ma.us/ele/elepdf/absentee_ballot.pdf a citizen over the age of 18 in custody, who is not serving a felony, does not have to be a registered voter to get a ballot. It helps to highlight "Specially Qualified" at the top of the form. Use the address of the Jail/HOC or their home address. It is unclear if their home address will satisfy their home community town clerk if they have not voted before, or are not a 'known' resident. Include the contact information of the person assisting the applicant, on part 6 or 7, as the person in custody will not have phone access, if there is a question from the Town Clerk. Use this link to find out the zip code for town / city hall mailing addresses: <https://www.sec.state.ma.us/ele/eleclk/clkidx.htm>

As this is a "specially qualified" ballot it will only be good for a limited time (for one election or for one year) and the individual will need to register to vote when they are released from custody. There appears to be some difficulties for some Town Clerks to return ballots to some individuals.