



## Testimony for the House Ways and Means Committee

### HB 710 Election Law – Incarcerated Individuals – Voting Eligibility and Access (Voting Rights for All Act)

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**FAVORABLE**

YANET AMANUEL  
PUBLIC POLICY  
DIRECTOR

AMERICAN CIVIL  
LIBERTIES UNION  
OF MARYLAND  
  
3600 CLIPPER MILL  
ROAD  
SUITE 350  
BALTIMORE, MD 21211  
T/410-889-8555  
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND  
DIRECTORS  
Corey Stottlemyer  
PRESIDENT

DANA VICKERS  
SHELLEY  
EXECUTIVE DIRECTOR

ANDREW FREEMAN  
GENERAL COUNSEL

The ACLU of Maryland supports HB 710, the Voting Rights for All Act, which seeks to repeal the prohibition on voting by incarcerated individuals serving a felony court-ordered sentence. The bill also mandates the State Board of Elections to establish a toll-free voter hotline, ensuring that incarcerated individuals can access voter information, request election materials, and report voting rights violations.

#### **Shameful History of Voter Disenfranchisement in the United States**

Voter disenfranchisement laws were intentionally designed, under our historical white supremacist system, to block the political power of Black and Brown people through imprisonment, racist policing, and the then-novel idea of linking the right to vote to incarceration. The notion of a “civil death” which included the penalty of disenfranchisement to certain offenses, is an idea that can be traced back to colonial laws but were widely adopted after the American Revolution.<sup>1</sup> The early disenfranchisement laws, much like voting laws that preceded them and denied the right to vote based on property, sex, race, etc., sought to limit the influence and power of marginalized groups. In the case of Alabama, the author of the state’s law identified offenses eligible for disenfranchisement with an eye toward disqualifying Black voters.<sup>2</sup>

The legacy of these laws cannot be overstated. As of 2016, 6.1 million Americans were stripped of the right to vote because of felony disenfranchisement laws.<sup>3</sup> One of every 13 Black adults is disenfranchised. Virginia, Kentucky, and Tennessee fare even worse—one in five Blacks have been disenfranchised. In total, 2.2 million Black citizens are banned from voting. Thirty-eight percent of the disenfranchised population in America is Black.<sup>4</sup>

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<sup>1</sup><https://www.sentencingproject.org/policy-brief/voting-rights-in-the-era-of-mass-incarceration-a-primer/>

<sup>2</sup><https://www.sentencingproject.org/policy-brief/voting-rights-in-the-era-of-mass-incarceration-a-primer/>

<sup>3</sup><https://www.sentencingproject.org/policy-brief/voting-rights-in-the-era-of-mass-incarceration-a-primer/>

<sup>4</sup><https://www.aclu.org/news/voting-rights/racist-roots-denying-incarcerated-people-their-right-vote>

The number of ineligible voters, however, is merely the tip of the iceberg. It does not begin to account for the generations of lost political power within Black communities. It is a frustrating exercise to speculate how many leaders accountable to Black communities could have been elected to office, the progressive policies that could have been enacted, the progress that could have been made.<sup>5</sup>

### **Maryland's Disenfranchisement Laws**

Here in Maryland, as is the case nationwide, the history of voter disenfranchisement laws is tortured and inconclusive. Maryland's first felon disenfranchisement law dates back to 1851.<sup>6</sup> Under that law, persons convicted of "infamous crimes"—any felony, treason, perjury, or any crime involving an element of deceit, fraud, or corruption—were permanently denied the right to vote. The felony disenfranchisement law bore the unfortunate company of laws that allowed only free white men could vote,<sup>7</sup> and Section 43 of the Constitution which held that the Legislature "shall not pass any law abolishing the relation of master or slave, as it now exists in the State."

In 1974, the General Assembly amended the law to allow persons convicted of infamous crimes to vote upon completion of their sentence and any period of supervision. Persons convicted of a subsequent infamous crime ("recidivists") remained permanently disenfranchised.

In 2001, the legislature created the "Task Force to Study Repealing the Disenfranchisement of Convicted Felons in Maryland."<sup>8</sup> The work of the Task Force unearthed several troubling facts—at that time, Maryland was one of only two states in the nation which permanently disenfranchised persons convicted of subsequent felonies. Only eight other states had harsher laws on the books. The state also had the tenth highest rate of disenfranchised persons in the Country. Worse, the compounding impact of the racist criminal justice system caused a significant diluting effect on the voting power of Black men—15.4% of Black men in Maryland at the time were disenfranchised.<sup>9</sup>

In 2002, the following legislative session, the General Assembly restored the voting rights of persons convicted of multiple charges of theft or infamous crimes after three years had lapsed since the completion of the person's sentence or supervision. The body left in place permanent disenfranchisement of persons convicted of a second or subsequent violent crime.<sup>10</sup>

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<sup>5</sup> Under the Election Law Article, persons who have been convicted of buying or selling votes are permanently stripped of the right to vote. This testimony does not address this small universe of persons.

<sup>6</sup> [https://felonvoting.procon.org/sourcefiles/1851\\_Maryland\\_Constitution.pdf](https://felonvoting.procon.org/sourcefiles/1851_Maryland_Constitution.pdf) (Art I, Sec. [http://users.cla.umn.edu/~uggen/Behrens\\_Uggen\\_Manza\\_ajs.pdf](http://users.cla.umn.edu/~uggen/Behrens_Uggen_Manza_ajs.pdf))

<sup>7</sup> <https://www.britannica.com/procon/felon-voting-debate> (Art I, Sec. 1)

<sup>8</sup>2001 [Task Force to Study Repealing the Disenfranchisement of Convicted Felons in Maryland](#) (2001 [HB 495](#) )

<sup>9</sup> Unquestionably, voter disenfranchisement laws also bear a negative impact on Latinx communities. This impact is more difficult to measure because Maryland fails to collect reliable data about the ethnicity of persons interacting with the justice system.

<sup>10</sup> [https://mgaleg.maryland.gov/2002rs/fnotes/bil\\_0004/sb0184.PDF](https://mgaleg.maryland.gov/2002rs/fnotes/bil_0004/sb0184.PDF)

2007 would see another revision to the law, stripping out any consideration for the number of convictions or the nature of the offense. Any person convicted of a felony would be re-enfranchised upon completion of their sentence or supervision.<sup>11</sup> The Fiscal and Policy Note accompanying the 2007 legislation noted that in 2006, about 8,678 persons were released from the Department of Corrections after serving a sentence for a felony.

In 2015, with the passage of HB 980, which further limited the disenfranchisement laws to the period during which a person convicted of a felony is incarcerated. In other words, persons under supervision would no longer be disenfranchised.<sup>12</sup> Governor Hogan vetoed the bill, but his veto was overridden in 2016. The legislation re-enfranchised over 40,000 Marylanders.<sup>13</sup> This effort was proudly and effectively led by formerly incarcerated people who were most directly impacted by disenfranchisement laws.

Finally, the most recent changes to the law came in 2021, with the passage of the Value My Vote Act, which requires the State Board of Elections establish a program to disseminate voting information, voter registration applications, and absentee ballot applications to eligible voters in correctional facilities. Passage of HB 710 builds on the important work the Value My Vote Act started by returning the sacred right of enfranchisement back to the most underrepresented population of people in the State of Maryland.

### **The Ramifications for Baltimore City and Black Voting Power in Maryland**

Disenfranchisement laws have a clear disparate impact of the Black vote across the country, here in Maryland and most starkly for Baltimore City. The compounding impact of disenfranchisement laws together with the racial disparities that plague Maryland's prisons create the insidious and undeniable result that Black Baltimoreans are denied full participation in our democracy. Black Marylanders make up roughly 30% of the state's population. Yet, over 70% of the state prison population is Black. In 2022, Maryland's disenfranchised population totaled 16, 587 with Black people making up 11, 678 of that figure.

To give this data some national context—Maryland is infamously the most racially disparate prison population in the Country. Only twelve other states have the tragic distinction of having a greater than 50% Black prison population.<sup>14</sup>

Compounded with the racial disparities is the further diluting effect of Baltimore City's overrepresentation in prisons and jails. As of January 2019, almost 30% of all Maryland's prison inmates were Baltimoreans.<sup>15</sup> Baltimoreans make up just 10% of the state's population.<sup>16</sup> To be clear, not all Baltimore's communities fared equally—voter disenfranchisement has a concentrated effect on certain communities. A 2015 report by the Justice Policy Institute found that 75% of imprisoned Baltimoreans hailed from 25 of the

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<sup>11</sup> <https://mgaleg.maryland.gov/mgawebsite/search/legislation?target=/2007rs/billfile/hb0273.htm>

<sup>12</sup> <https://mgaleg.maryland.gov/mgawebsite/legislation/details/hb0980?ys=2015rs>

<sup>13</sup> <https://www.theatlantic.com/politics/archive/2016/02/maryland-felon-voting/462000/>

<sup>14</sup> <https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>

<sup>15</sup> <https://www.baltimoresun.com/2019/04/24/marylands-prison-population-drops-to-1980s-levels-continuing-a-multiyear-decline/>

<sup>16</sup> [http://www.justicepolicy.org/uploads/justicepolicy/documents/rightinvestment\\_design\\_2.23.15\\_final.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/rightinvestment_design_2.23.15_final.pdf)

City's 55 communities.<sup>17</sup> Without a doubt, over-policing and unconstitutional policing of poor, Black neighborhoods contribute to this dynamic.

Consider the implications this holds for local and statewide elections in terms of actual numbers of voters. In 2010, 7,795 Baltimoreans were imprisoned. Democratic primaries for a seat in the House of Delegates are often decided within margins of 100 or fewer votes. It's therefore not a far-flung notion that incarcerated Marylanders could have a decisive impact in elections.

Lastly, voting is a fundamental right and the cornerstone of our democracy. Denying the right to vote to an entire class of citizens undermines our democracy and makes our society less inclusive. We also know that voting plays an important role in helping individuals with felony convictions return to society. Studies have shown that when individuals with a felony conviction participate in the democratic process, they have a lower rate of subsequent arrest. By denying people even the basic right to vote, we are only preventing them from having a stronger stake in their community and making it harder for them to successfully return to society.

For these reasons we urge a favorable report on HB 710.

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<sup>17</sup>[http://www.justicepolicy.org/uploads/justicepolicy/documents/rightinvestment\\_design\\_2.23.15\\_final.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/rightinvestment_design_2.23.15_final.pdf)

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