



# The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth  
Elections Division

## Election Advisory #20-06

Regarding Voting While Incarcerated

October 6, 2020

---

Under the state constitution and General Laws of the Commonwealth, persons who are incarcerated may still be eligible to register and/or vote in elections in Massachusetts. Only those persons who are currently incarcerated for a felony conviction are prohibited from registering and/or voting.

The purpose of this Advisory is to provide information regarding qualifications in addition to instructions for local election officials for processing applications.

### QUALIFICATIONS

Under the General Laws, to register to vote in Massachusetts, you must be:

- A U.S. citizen, and
- A Massachusetts resident, and
- At least 16 years old, and
- Not under guardianship that prohibits registering to vote, and
- Not temporarily or permanently disqualified by law from voting, and
- Not currently incarcerated for a felony conviction.

Accordingly, a person who is incarcerated for a reason other than a felony conviction can register and vote in Massachusetts. Further, upon release from incarceration from a felony conviction, no further actions are necessary for a person to register and vote.

The prohibition on being registered and voting applies only while a person is currently incarcerated and only if for a felony conviction. Once a person is released, they are eligible to register as a voter—there is no waiting period. It is necessary for the person to complete a new voter registration form upon becoming eligible.

## **RESIDENCE FOR VOTING PURPOSES**

Persons at state correctional institutions are presumed **not** to have their residence in the city or town in which the institution is located, but rather, to have retained the residence each had before incarceration.

Those currently incarcerated, however, may overcome this presumption by clear evidence that they have established a new home in the prison community. Activities such as work release spent in the vicinity of the correctional facility or bank account there could provide such evidence.

Most persons incarcerated will not be residents of the community where the correctional facility or jail is located.

## **APPLICATION PROCESS**

A person who is otherwise qualified to register as a voter but who is incarcerated can complete a voter registration application or simply request an absentee ballot as a specially qualified voter.

The Massachusetts mail-in voter registration form should be provided to any person registering to vote from a correctional facility or jail. The affirmation attested to by the applicant will indicate they are qualified to register including that they are not currently incarcerated for a felony conviction.

In the alternative, a person otherwise qualified to register but who is incarcerated can apply for an absentee ballot as a “specially qualified voter.” Under section 1 of chapter 51 of the General Laws, a “specially qualified voter” is defined as a person (a) who is otherwise eligible to register as a voter, and (b) (1) whose present domicile is outside the United States and whose last domicile in the United States was Massachusetts; or (2) whose present domicile is Massachusetts and who is:

- (i) absent from the city or town of residence and in the active service of the armed forces or in the merchant marine of the United States, or a spouse or dependent of such person;
- (ii) absent from the commonwealth; or
- (iii) confined in a correctional facility or a jail, except if by reason of a felony conviction.

The absentee ballot application provides a check box for a person applying for an absentee ballot to indicate they are incarcerated but not for a felony conviction. On that application, the applicant must include the address at which they are either registered to vote or qualified to vote from and the address where they want the ballot mailed to.

Please note that the deadline for registering to vote for the November 3<sup>rd</sup> election is October 24, 2020 and in order to qualify for an absentee ballot, the application must be received by the appropriate local election official no later than 5:00 p.m. on October 28, 2020. In any event, voters are encouraged to submit applications much earlier to allow sufficient time for mailing.

## **PROCESSING IN VRIS**

Upon receipt of an absentee ballot application, local election officials will first need to determine whether the applicant is already registered to vote. The process of entering data is different whether the applicant is already registered or only applying for an absentee ballot as a specially qualified voter.

If an applicant is a registered voter in the city/town where they are qualified to vote, they should be entered as a regular absentee voter in VRIS. Absentee ballot applications should be entered by going to Res/Vot: Abs Vot and selecting the Abs Vot module. Search for the voter, then select “create AV” to enter the information from their application. Be sure to include the mailing address. When the ballot is being mailed or returned, select “ballots” from the AV Maintenance screen to update the ballot information.

If an applicant is not a registered voter in the city/town where they are qualified to vote and are voting as a specially qualified voter, they must be entered as a specially qualified absentee voter in VRIS. Absentee ballot applications for specially qualified absentees are entered by going to Res/Vot: Abs Vot and selecting the SQ AV module. Search for the voter, then select “create AV” to enter the information from their application. When entering the “type” in this window, “specially qualified” must be selected. Make sure to include the mailing address. When the ballot is being mailed or returned, select “ballots” from the AV Maintenance screen to update the ballot information.

## **QUESTIONS?**

Contact the Elections Division at 617-727-2828 or [elections@sec.state.ma.us](mailto:elections@sec.state.ma.us).