



2022 VOTING IN NC JAILS

WITH SUPPORT FROM



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R E P O R T

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INTRODUCTION

"One of the most rewarding parts of working with incarcerated people is seeing their faces when they learn their right to vote is not lost, and that they can take this major step to rebuild their lives and re-engage with society."

- Kate Fellman, Founder, and Executive Director of You Can Vote

Of North Carolina's 100 counties, 97 have a jail. Supervised by the county sheriff, these jails hold approximately 20,000 people per day. Contrary to popular belief, many of these people do not lose their right to vote while they are in jail. Unlike people who are currently incarcerated for a felony conviction, who are unable to vote in North Carolina, many jail registrants are indeed eligible:

- **85% of residents are being held awaiting trial;**
- Most are **detained because they cannot come up with the cash bail;**
- And **many are low-income people of color.** A disproportionate number of these people are **young men of color.**

Almost all these young men and women will return home after completing their sentence. While they are incarcerated and after they are released, they are entitled to exercise our most fundamental right, the right to vote.

In recent years, groups like You Can Vote have been allowed to provide voter services in a number of North Carolina jails. From those conversations with voters while incarcerated, we have learned that the voters whose right to vote is threatened frequently feel fear, cynicism, and a sense of futility about the voting process. We hear them say, "Voting? That has nothing to do with me." This sense of disengagement is amplified when they face additional barriers on top of misconceptions about their eligibility, including:

- **Limited or no access to information on voting,** like requirements to register, instructions to vote by mail, and details for early voting;
- **Limited or no identification** (driver's license, passport, etc.);
- **No access to paper registration forms** and absentee ballot request forms;
- **No information on where to vote** early and on election day;
- **No access to stamps** to request an absentee ballot or to return the absentee ballot;
- **Low literacy or illiteracy,** low/no English literacy; and
- **No access to information about candidates** for the offices on the ballot, or how those roles impact their daily lives.

Many citizens detained in North Carolina's jails have not yet been convicted of a felony or have been convicted of a misdemeanor, remaining largely unregistered and unaware that their voting rights are not revoked. We have found that they will engage with us and cast their ballot from jail when supported by knowledge, tools, and the recognition that civic engagement can improve their lives. While in its early stages, preliminary research has shown that people who have the ability to vote are less likely to re-offend than those who were unable to vote*. For these reasons, it is vital that North Carolina legislators and judges, county sheriffs, and the state and county boards of elections ensure the right to vote is not interrupted due to a temporary detention in a jail facility.

You Can Vote would like to thank the Southern Coalition for Social Justice for providing legal guidance in the preparation of this report. Our organizations and other voting rights advocates remain prepared to assist in this effort to ensure eligible voters in jails have easy access to the ballot.



*Serwer, A. (2011, August 19). Voting and recidivism. The American Prospect.
<https://prospect.org/article/voting-recidivism/> [Retrieved April 5, 2022]

NORTH CAROLINA'S JAIL POPULATION



INCARCERATION RATES HAVE GROWN DRAMATICALLY IN THE LAST 40 YEARS.

According to a 2021 study by the Prison Policy Initiative, for every 100,000 North Carolinians, 617 are located in prisons, jails, and other detention facilities. North Carolina's rate of incarceration is currently higher than countries such as El Salvador, Turkmenistan and Rwanda.

THE NC JAIL POPULATION IN 2019 WAS 20,960, ACCORDING TO THE NATIONAL INSTITUTE OF CORRECTIONS.

Underscoring the racism in our criminal legal system, while North Carolina's population is 65% white and 22% Black, 55% of people being held in jail are Black. The average stay is currently only 17 days. YCV staff and volunteers working with voters in jail report that most people say they have never voted. Of those who tell us they have voted in the past, many are under the misconception that they could never vote again due to past incarceration, or convictions, putting many voters of color at risk of disenfranchisement.



YCV BACKGROUND

You Can Vote (“YCV”) launched in 2014 and has since trained more than 4,500 volunteers to help register over 50,000 people to vote and educate nearly 1 million North Carolinians on their right to vote in 50 of the state’s 100 counties. Because YCV staff and volunteers are knowledgeable non-partisan community partners, we are often invited to register and educate voters inside public, non-profit, and religious institutions. Those institutions include hospitals, community health centers, departments of social services, public schools, colleges and universities, county courthouses, religious institutions of every denomination, assisted living facilities, and low-income housing communities.

There is a pervasive and widespread misconception in NC that incarcerated and formerly incarcerated citizens have forever lost their right to vote. YCV works to combat this misperception by visiting jail facilities and educating incarcerated individuals and jail staff about voting eligibility. Over the past six years, YCV has been granted permission to provide these voter services in a growing number of jails.

YCV empowers North Carolinians to vote by not treating voters and elections as one-off transactions. We have found that central to this process of moving people from eligible to active voters is helping them understand what's on the ballot and how those offices are relevant to their lives.

Empowered voters advocate for their families' and their communities' interests. Voters whose right to vote is suppressed or risk for suppression frequently share their cynicism, fear and sense of futility about civic engagement. That sense of futility about civic engagement only adds to the difficulties of those who are incarcerated and have additional challenges to overcome. Despite the barriers, YCV has found that people who have been disconnected from civic life will engage when supported by knowledge, tools, and the recognition that civic engagement can improve their lives.



YCV'S VOTER SERVICES IN NC JAILS

Since 2016, YCV has provided voter services in detention centers in a growing number of North Carolina counties in order to:

1. Educate voters about voting, election rules, and deadlines;
2. Assist voters to register or update their registrations, and
3. Help citizens complete their absentee-by-mail ballot request form and teach the rules for voting by mail, should they be detained at the time of an election.

Under current North Carolina law, after registration and absentee ballot request forms are completed, responsibility for actual voting support falls of county sheriffs and detention center staff. Sheriffs can provide notaries to witness the voting of an absentee ballot and make sure the ballot envelope contains the current signature requirement before sending back the ballot via mail.

YCV is one of few organizations of any kind that has been afforded access to this population.

YCV HAS ESTABLISHED COUNTY PARTNERSHIPS WITH THE SHERIFFS OF:

- Mecklenburg County (Charlotte),
- Guilford County (High Point and Greensboro),
- New Hanover County (Wilmington),
- Orange County,
- Durham County,
- Wake County (Raleigh),
- Harnett County and
- Chatham County



YCV also has provided materials and training documents to the facilities in Forsyth, Cabarrus, Chowan and Hertford Counties, where an internal or external point person was identified to assist voters.

Between 2016 and April 22, 2022, YCV helped over 1,500 incarcerated people register to vote and helped more than 1,350 of these voters to complete absentee ballot requests. While North Carolina has improved its online services for voter registration and requesting a mail-in ballot, people in jail often have no or limited internet access. Instead, incarcerated voters must complete and submit paper forms that change frequently and require postage, its own form of poll tax. Recent changes to absentee voting has further complicated the process. Lawmakers now require that only the voter or near relative may turn in an absentee ballot request form to the county board of elections. Prior to this change, YCV was able to submit the request forms for voters, along with their voter registration applications. This change means the process for detained voters takes much longer in a time when all voters are experiencing mail delays.



**SOUTHERN
COALITION**
for SOCIAL JUSTICE

BACKGROUND

The **Southern Coalition for Social Justice (“SCSJ”)** was founded in 2007 to fight for the voting rights of all voters, with a focus on historically-marginalized **Black, Latiné, Asian American and Pacific Islander, and Indigenous voters**. This mandate transformed into SCSJ's mission to “partner with Southern communities including people of color and economically disadvantaged groups to defend and advance their political, social, and economic rights through the combination of legal advocacy, research, organizing, and communications.” SCSJ believes that “our democracy depends upon the free and fair exercise of the right to vote,” and advocates for electoral structures which encourage meaningful civic engagement, and for governmental systems holding elected officials accountable.

SCSJ HAS THE GOALS OF:

Providing high-quality legal support to Southern communities engaged in social change

Bringing the best social science research, communications, and organizing skills to serve community needs

Identifying substantive priorities that are community-centered

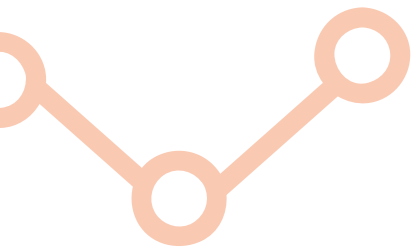
Connecting national entities with local community groups in the South

Developing connections between community groups across the South

In 2018, SCSJ represented five individuals prosecuted for voting while they were ineligible due to **felony convictions**. Known as the “Alamance 12,” these individuals demanded more be done to protect the rights of formerly incarcerated voters. Shortly thereafter, SCSJ created the “Criminalization of the Ballot Box” initiative in 2019, an important addition to the organization's ongoing work to expunge records and facilitate successful reentry alongside formerly incarcerated people. The program challenges voter prosecution laws across the South, educating voters about their eligibility, and training attorneys to represent voters across the region who may be charged with voting while they are ineligible due to a felony conviction, especially if voters are confused about their eligibility. A crucial effort to dismantle the Criminalization of the Ballot Box is SCSJ's current challenge of North Carolina's voter prosecution statute, in the United States District Court for the Middle District of North Carolina. The strict liability statute criminalizes voting by ineligible individuals, with no regard for a person's intent, creating a situation where even a simple mistake could lead to a felony conviction.

SCSJ defines the criminalization of the ballot box as “the abuse of public and private power to intimidate minority community members from voting for fear of criminal prosecution and to otherwise deter political activity by voters of color.” This fear and deterrence are exacerbated when an eligible voter is incarcerated. Incarcerated voters should be afforded an opportunity to register to vote and cast their ballot. Reducing institutional barriers or other chilling effects is a key aim of SCSJ's Criminalization of the Ballot Box Initiative.

“We must help all voters cast a ballot, including people who have yet to be convicted of felonies or those who are serving time for misdemeanors. Too often North Carolinians in detention centers or jails are forgotten and their desire to vote is dismissed. This report makes clear that incarcerated individuals remain invested in voting, and we must continue to do all we can to let their voices be heard.” --Mitchell Brown, Voting Rights Counsel at SCSJ



ANALYSIS

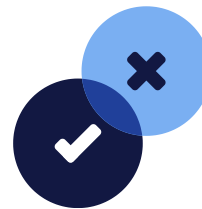
INTRODUCTION

Under North Carolina law, detainees who have only been convicted of misdemeanors, or have not been convicted of a felony are still eligible to vote.[1] However, without clear guidance from the North Carolina State Board of Elections regarding policies and procedures governing voting in jail, counties have disparate civic engagement policies and procedures, ultimately offering the right to vote unequally and without uniformity. Among YCV and SCSJ's recommendations listed in this Report is guidance from the State Board of Elections regarding how counties should make voting accessible for eligible individuals who are detained and want to vote in an upcoming election. But, the guidance must include more than just registering people to vote, it must also contemplate methods to actually help voters request and cast their absentee ballots.

The analysis below extrapolates from survey data collected from county sheriffs offices over a period of three months. As noted in the research methods section of this Report, You Can Vote reached out to the sheriff's office in NC's 100 counties. Of the 100 counties, 23 sheriffs responded to our survey. The below analysis provides insights into the state of voting while incarcerated in North Carolina.

SURVEY RESULTS

The survey questions were aimed at determining whether sheriffs' offices had written policies to help incarcerated individuals vote, and whether there were procedures in place to ensure that eligible voters were able to vote. Some of the main themes of the survey were:



Whether the sheriff's office has a written policy that calls for them to help eligible voters to vote

Whether there are procedures within the jail that guide access to voting within the jail

Whether there is contact with the County Board of Elections or other community groups to assist with helping people exercise their right to vote

The overarching finding from the survey results is that the majority of sheriff's offices that responded to the survey do not have a written policy about voting in county jails which makes it a difficult environment to facilitate voting.

74%

of the Sheriff's offices who responded to the survey reported that they do not have a written policy to assist eligible individuals to register or vote while incarcerated.

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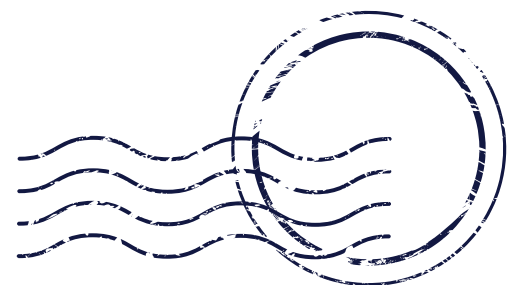
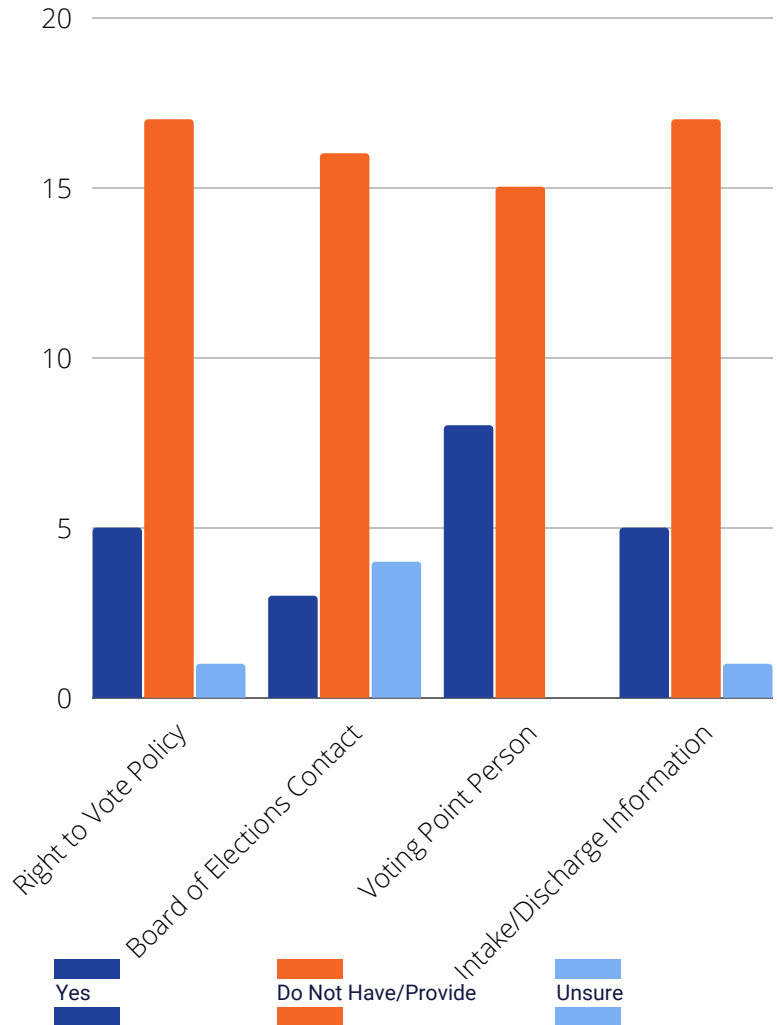
of the 74% of the Sheriff's offices that do not have a written voting policy provide information about voting either at intake or at discharge. The other offices do not provide any voting information at intake or discharge.

65%

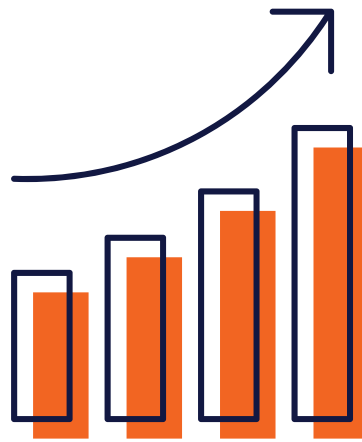
of the Sheriff's offices that responded to the survey do not have a point person that is responsible for helping incarcerated individuals register to vote and to cast their ballots.

The lack of voting policies and procedures in many county jails is problematic because many incarcerated eligible voters are unaware of their eligibility and they are not provided with information that will inform them of their eligibility. Six offices specifically responded that even though they do not have a policy, voting within the facility has never been an issue because no one has ever asked to vote while they are incarcerated. One sheriff's office responded that they "don't do anything [for people who would like to exercise their right to vote] because no one wants to vote." Other offices answered similarly that they "haven't had any interest whatsoever from the [incarcerated individuals]" or that they generally rely on the initiative of the individual to request to vote before they do anything. However, after reviewing absentee ballot data from the jails, the data shows that there is some interest in voting from jails. In the 2020 General Election:

- Facilities in Charlotte, Greensboro, and Raleigh had over 100 people request absentee ballots, this may be in part due to the fact that YCV visited these facilities and educated incarcerated individuals there about their ability to vote.
- The Durham facility had 93 absentee ballot requests and Fayetteville had 67 absentee ballot requests. YCV also helped Durham but not Fayetteville.



If sheriff's offices were proactive in providing information about eligibility, we believe more people would express their interest in voting and will be able to lawfully exercise their right to vote.[2] For example, in the counties where YCV has worked and educated individuals, there is a marked difference in the number of individuals requesting and casting absentee ballots than in those counties where YCV has not worked.



Another key finding is a lack of communication between county boards of elections and county sheriff's offices around incarcerated citizens right to vote.



Percentage of respondents stated they have not received correspondence from their county board of elections regarding eligibility.

This is an area for improvement because under North Carolina law, county boards of election have the power “[t]o make and issue such rules, regulations, and instructions, not inconsistent with law[.]”[3] County boards can establish regulations that stipulate how information and assistance (i.e. via multi-partisan assistance teams) can be given to incarcerated voters to ensure that eligible voters are not only able to register to vote, but are also able to actually vote. Multi-partisan assistance teams are teams of two people from different parties (typically one Republican and one Democrat) who statutorily are permitted to go into “covered facilities” which include nursing homes, hospitals, clinics, etc. Currently, jails are not covered facilities.

The North Carolina State Board of Elections has created a webpage on registering to vote within the criminal justice system. However, given that many incarcerated voters do not have access to the internet, this information does not reach them. Providing print resources to jails about the steps to vote while incarcerated is a more proven way to educate and empower incarcerated voters about their voting rights and in so doing, also educating the staff within jails and sheriff's offices about these procedures. The North Carolina State Board of Elections should create a set of policies and procedures around voting while incarcerated that could be widely disseminated to county boards of elections and county jails, and lead the way for all counties to bridge the information gap.

County facilities must also be proactive in their efforts to ensure that all eligible voters are able to exercise their right to vote.



Part of being proactive entails providing current information about voting rights both when individuals are booked into the facility and again when they are released. Only five of the counties surveyed said they provide some form of information about voting at either intake or discharge, for all but one it was limited to only when a voter asked for the information. **74% of the counties surveyed stated that they did not provide information to people at either intake or discharge.**

Giving people the latest voting information should be common practice and would go a long way towards helping incarcerated individuals realize their voting rights and understanding how to exercise their right to vote.

On a positive note, almost half the facilities that responded stated that they had worked with community organizations such as You Can Vote in order to assist incarcerated citizens with registering to vote and/or requesting an absentee ballot. Community organizations such as You Can Vote can alleviate the time and logistical pressure on sheriff's offices to help people exercise their right to vote. For example, Durham, Guilford, and Wake Counties have worked with You Can Vote in the past in order to help incarcerated individuals exercise their right to vote. As a result of You Can Vote's efforts in 2020:

- In Durham County, 93 incarcerated people requested absentee ballots. Just over 50% of the people requesting a ballot cast a vote;
- In the Greensboro jail, 112 people requested absentee ballots. 58% cast a ballot.
- In Wake County, 141 people requested absentee ballots, and 45% cast a ballot

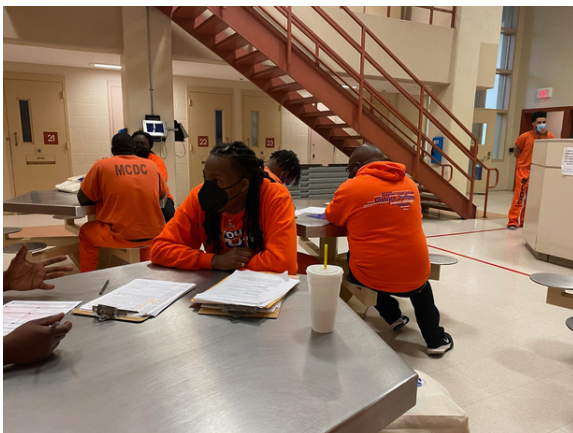


However, the state must not rely solely on the goodwill of community organizations to help eligible voters exercise their right to vote, but must take steps to ensure that all eligible voters have the opportunity to vote in an effective manner, including incarcerated citizens.



MORE MUST BE DONE.

Without procedures and protocols to facilitate the right to vote for eligible voters who are incarcerated, there is no guarantee the right to vote is realized for eligible citizens.



[1] N.C.G.S. § 163-55(a)(2); see also Registering as a Person in the Criminal Justice System, <https://www.ncsbe.gov/registering/who-can-register/registering-person-criminal-justice-system#i-am-currently-incarcerated>.

[2] We realize that there may be a general hesitancy for eligible voters to vote while they are incarcerated given the confusing list of requirements that they would have to understand in order to not be prosecuted for voting while they are ineligible. That is why we urge changing the voting laws for individuals with felony records, to make it simpler to understand whether they are eligible.

[3] N.C.G.S. § 163-33(1).

TESTIMONIALS

It is absolutely exhilarating to encounter those who thought they could not vote-but **COULD!** The sense of empowerment and validation of self they experience is real! -**Bob Stewart**

One of the most rewarding parts of facilitating registration in the jail setting is seeing individuals light up when they realize they are eligible. Most individuals that I spoke with were unsure about their rights as we began the conversation. Watching them have a sense of agency and empowerment while completing the forms is such an honor. -**Heather Lilly**

[About a voter who was excited to vote by mail from jail] He was very proud and wanted his family to know his voice will be heard -**Sheriff Gary L McFadden, Mecklenburg County Sheriff**

I can only guess that he felt great being treated like a full citizen, that his voice mattered and his past did not have the power to disenfranchise him. -**Susan Day Moore**

His response was "How many years did I lose?" I said, "What matters is what you do next." -**Stacy Staggs**





RECOMMENDATIONS FOR DETENTION FACILITIES:

DRAFT A WRITTEN POLICY for voting within the facility, including specific instructions for how voting will occur each election. Share the policy with staff members and with voters in their care.

CREATE AN ANNUAL SCHEDULE of ongoing opportunities for jail residents to register to vote, and ensure the County Board of Elections, jail point of contact and/or YCV local staff maintain close communications with jail contacts and are updated if/when staff changes. Establish calendar of events with known dates quarterly, considering voter registration deadlines, absentee ballot request deadlines, absentee ballot return dates, and any new procedure(s) needed that has changed in the last year (i.e., 1 witness or 2, changes to eligibility).

DETERMINE IF COUNTY MULTI-PARTISAN ASSISTANCE TEAM IS AVAILABLE and willing to provide voter services within the detention center.

CREATE OR ESTABLISH A POINT-OF-CONTACT from each detention facility to ensure citizens can register to vote and request an absentee ballot if they are detained during an election cycle. Depending on the facility staff structure, this point of contact could be someone from the administration office, the lieutenant or deputy in charge of community programs, a faith leader or education program leader. Ensure voters know who the point-of-contact is and the process for communicating their need for voting assistance.

BUILD AN INFORMATION PACKET to share with individuals when they are released from a jail facility, which includes the latest voting information card (YCV Fridge Card) and Voters Bill of Rights with You Can Vote contact information. Ensure counties have the current information to share when we communicate quarterly for updates.

ESTABLISH PARTNERSHIPS with local re-entry councils and courthouses to offer the latest YCV education materials for citizens to know their rights and share with friends and family.

UTILIZE TECHNOLOGY WITHIN THE JAIL FACILITY so YCV can offer virtual trainings for all jail staff. YCV can provide updated training annually to ensure jail staff understand the current rules and laws around voting, specifically regarding the unique situations faced by incarcerated voters.

UTILIZE TECHNOLOGY TO OFFER BACKGROUND

INFORMATION and candidate questionnaires to research the candidates on the ballot so that all voters can make informed choices when ballots arrive. Alternatively, YCV can help identify non-partisan voter information handouts for residents with the support of other nonprofits or local print media. Timing for candidate information must coincide with when voters receive their absentee ballot.



CONSIDER HOSTING A CANDIDATE FORUM along with distributing printed candidate questionnaires before every election.

WORK WITH COMMUNITY ORGANIZATIONS such as YCV to facilitate voting in each detention facility.



RECOMMENDATIONS FOR NORTH CAROLINA STATE BOARD OF ELECTIONS:

CREATE A WRITTEN POLICY for voting in detention facilities that can be disseminated to the various county boards of election (i.e. a numbered memo). This memo should include:

- creation of a policy of how to support incarcerated voters
- description of how SBOE and CBOEs are to assist detention facilities with every election date
- creation of requirements for allowing eligible citizens to vote while incarcerated

INCLUDE CONTENT AT THE ANNUAL TRAINING EVENTS to highlight how voting from jail works and remind all county board staff of opportunities to work with Multipartisan Assistance Teams and/or You Can Vote.

AMEND 08 NCAC 16.0101(b) to include jails in the definition of covered facilities.

ESTABLISH AN ANNUAL CHECK-IN between State Board Counsel and State Board Communications to ensure all materials on the website are available to be printed easily and mailed to each jail. Making an online press release is not sufficient.

RECOMMENDATIONS FOR NCGA:

PASS NEW LEGISLATION ELIMINATING THE RULE that no community groups can return completed absentee ballot request forms, lessening the burden on voters who are incarcerated and less likely to have access to printers and envelopes.

PASS NEW LEGISLATION TO EQUALIZE all voting schedules and pick one municipal schedule for statewide certainty of when and what we are voting for.

PROVIDE ANNUAL FUNDING to recruit and retain nonpartisan or Multi-Partisan Assistance Team (MAT) members and remove the rule that people can only serve on a MAT in their home county.

FULLY FUND STATE AND COUNTY BOARDS to offer sufficient printing of materials (especially when a change happens mid-cycle and must be redone).

ENCOURAGE PROACTIVE REVIEW of any new voting law and address the impact of voters who are in jail and other residential facilities.

AMEND N.C.G.S. 163-226.3(a)(4) to allow nonpartisan or MAT's to be utilized in the jail setting.

RECOMMENDATIONS FOR COUNTY BOARDS OF ELECTIONS:

PROVIDE PRINTED MATERIALS annually to detention facilities so both facility staff and incarcerated citizens know their eligibility to vote. Examples of printed materials are: voter guides, voter registration forms, absentee ballot request forms. With each material delivery, ensure that all outdated materials are removed and not in circulation.

RECRUIT MEMBERS for nonpartisan or Multi-Partisan Assistance Teams (MAT), so they can be sent to detention facilities to help eligible individuals register to vote or to request absentee ballots while incarcerated.

PRIORITIZE THE CREATION of multiple nonpartisan or Multi-Partisan Assistance Teams.

STAY IN CONTACT with detention facilities regarding changes in voting deadlines and any changes in voting laws, districts, precincts, etc.

SURVEY METHODOLOGY

YOU CAN VOTE sent a survey to each county's sheriff office between September 29 and October 14, 2021. The survey was hosted on Survey Monkey and had nine questions. We received nine responses from this initial outreach.

To encourage more responses, we called the sheriff's office or detention center for each county that had not filled out the initial survey and asked them the questions directly. These calls occurred between November 17, 2021 and January 7, 2022. We received fourteen complete responses and two partial responses from these calls. Partial responses have not been included in the survey analysis. Between calls and initial survey responses, we received 23 additional responses.

We received full responses from the following counties:

- | | |
|------------|----------------|
| ✓ Anson | ✓ Harnett |
| ✓ Avery | ✓ Haywood |
| ✓ Buncombe | ✓ Hertford |
| ✓ Cabarrus | ✓ Montgomery |
| ✓ Caswell | ✓ Moore |
| ✓ Cherokee | ✓ New Hanover |
| ✓ Chowan | ✓ Orange |
| ✓ Clay | ✓ Rockingham |
| ✓ Davidson | ✓ Transylvania |
| ✓ Durham | ✓ Wake |
| ✓ Franklin | ✓ Washington |
| ✓ Guilford | |

