

2023-2024 Legislative Memorandum

Subject: Jury of Our Peers Act - A.1432-A (Aubry) / S.206-A (Cleare)

Position: SUPPORT

The New York County Lawyers Association Voting Rights Task Force and the Criminal Justice Committee (collectively, the “Committees”) urge the legislature to pass, and the governor to sign, the Jury of Our Peers Act, A.1432-A (Aubry)/S.206-A (Cleare), and end New York’s permanent bar on jury service for people with a past felony conviction.

Together with voting, jury service represents Americans’ “most significant opportunity to participate in the democratic process.”¹ It is a core right of citizenship and of civic participation, the deprivation of which impacts a person’s ability to engage with their community and have a voice in government decisions.

As far back as 1787, the Federal Farmer—one of the antifederalists whose advocacy in support of juries led to the adoption of the Fifth, Sixth, and Seventh Amendments—equated the role of jurors to the role of voters: “It is essential in every free country, that common people should have a part and share of influence, in the judicial as well as in the legislative department.”² This principle was reiterated by the U.S. Supreme Court, which recognized: “Just as suffrage ensures the people’s ultimate control in the legislative and executive branches, jury trial is meant to ensure their control in the judiciary.”³

The majority of U.S. states permanently strip people of both their right to serve on a jury and their right to vote upon conviction of a crime. However, more than twenty states automatically restore these rights upon release from incarceration or after certain conditions are met. New York’s permanent ban on jury service for people with a past felony conviction places it behind more than half of U.S. states—behind states like Florida, Louisiana, North Dakota, South Dakota, Indiana, Iowa, and Kansas.

I. New Yorkers with Felonies Should Be Able to Participate in Jury Service Upon Release from Incarceration, The Same Point in Time When they Are Able to Vote.

In 2021, New York passed legislation to restore the right to vote to people with felony convictions automatically upon release from prison. However, despite the right to vote being restored upon release from incarceration, people with a felony conviction are forever barred from jury service. States like Florida moved to end lifetime jury

¹ *Powers v. Ohio*, 499 U.S. 400, 407 (1991).

² Letters from the Federal Farmer (IV), reprinted in 2 *The Complete Anti-Federalist* 245 (Herbert Storing ed., 1981).

³ *Blakely v. Washington*, 542 U.S. 296, 306 (2004) (collecting founding era sources).

disenfranchisement after the state passed Amendment 4 and ended the permanent bar on voting for people with past felony convictions.⁴ Florida changed the state’s clemency rules to align the time when jury service rights are restored with the time that voting rights are restored. The decision to align the restoration of the right to serve on a jury with the right to vote has also been taken in a number of other states.⁵

II. Civic Participation Facilitates Reintegration into Society.

When passing voting rights restoration in 2021, the New York State Legislature recognized that facilitating re-entrance in the voting process “prevent[s] individuals from straying from the confines of our laws and society’s norms” and “should be an essential component of rehabilitation and reintegration”⁶ The same is true of jury service.

For many people convicted of felonies, civic engagement—including through political participation such as voting and jury service—is a critical means to facilitate sustainable reintegration back into society. The restoration of civil rights also enhances public safety and community stability, as research shows that people whose civil rights have been restored are substantially less likely to reoffend.⁷

III. Increasing Jury Diversity Would Improve Public Confidence in the Process and the Quality of Jury Deliberations.

Just as ensuring access to the ballot strengthens our democracy, increasing access to the jury strengthens our judicial decision-making processes. However, in New York, many people are excluded from jury service because of past felony conviction. Judiciary

⁴ It is important to note that the Florida clemency process that restores voting rights requires a completion of all terms of the sentence, which includes completion of any outstanding legal financial obligations-fines, restitution, costs, and fees-ordered by the sentencing court. *See* Art. VI § 4(a), Fla. Const. (2020).

⁵ *See, e.g.,* James M. Binnall, *Felon Jurors in Vacationland*, 71 Me. L. Rev. 71, 81 (2019) (Maine’s juror ban “underwent its first substantive revision in 1971, when it tied a convicted felon’s right to sit on a jury to his right to vote. The provision read, “[a] prospective juror is disqualified to serve on a jury if he . . . has lost the right to vote.”). Washington state links the restoration of voting rights to the right to serve on a jury. *See* RCW 2.36.070(5) and RCW 2.36.010(1); *see also* Snohomish County, Washington, *FAQs: Can I serve on jury duty if I am a convicted felon?*, <https://snohomishcountywa.gov/Faq.aspx?QID=101#:~:text=Can%20I%20serve%20on%20jury.of%20the%20department%20of%20corrections>. Compare Ginger Jackson-Gleich, *Rigging the jury: How each state reduces jury diversity by excluding people with criminal records*, Prison Policy Initiative (Feb. 18, 2021), https://www.prisonpolicy.org/reports/jury_exclusion.html, with Brennan Center for Justice, *Can People Convicted of a Felony Vote? Felony Voting Laws by State*, <https://www.brennancenter.org/our-work/research-reports/can-people-convicted-felony-vote-felony-voting-laws-state> (showing that a number of additional states, like Indiana, North Dakota, Colorado, Illinois, Alaska, Idaho, Minnesota, New Mexico, North Carolina, South Dakota, treat the restoration of voting and jury service rights similarly).

⁶ Sponsor Memo, N.Y. Senate Bill S.830B, <https://www.nysenate.gov/legislation/bills/2021/S830>.

⁷ Hanna Hoover, *Civil Rights Restoration and Recidivism* (January 26, 2021), available at SSRN: <https://ssrn.com/abstract=3773572> or <http://dx.doi.org/10.2139/ssrn.3773572>.

Law 501(3) creates a disparate impact in that it has the effect of disproportionately barring New Yorkers of color from jury service.

Data from the New York State Division of Criminal Justice Services indicates that from 2002 through 2019, Black people in Manhattan were arrested for a felony at a rate 16.6 times greater than white people and convicted of felonies at a rate 21.3 times greater than white people.⁸ In Manhattan and many other counties, New Yorkers of color are significantly underrepresented in jury pools and overrepresented among the population with felony convictions.

The reduction in jury diversity compromises the quality of deliberations and erodes public confidence in the fairness of the jury system.⁹ Studies have found that racially diverse juries tend to deliberate longer, consider a broader range of information, and examine their racial prejudices and stereotypes.¹⁰ Thus, by reducing jury diversity, New York's current law perpetuates the underrepresentation of people of color on juries and contributes to the overrepresentation of people of color among the population with felony convictions, which in turn drives their underrepresentation in the jury pool.

The Committees recognize that the Jury of our Peers Act is a progressive bill, and that other States have passed more restrictive laws allowing for jury service for individuals with prior felony convictions.¹¹ The New York State Justice Task Force, a permanent State task force whose members include current and past members of the judiciary, district attorneys offices, public interest legal providers, police departments and other members of the legal community, have collectively—without reservation—also come out in favor of such an amendment.¹²

Ensuring a more diverse and equitable jury pool in New York State is an imperative for strengthening our democracy, and building stronger, safer, and more prosperous communities.

⁸ Complaint, *Justin v. Tingling*, No. 1:22-cv-10370, ¶ 40 (SDNY filed Dec. 8, 2022); see also, e.g., New York State Division of Criminal Justice Services, NYS Adult Arrests and Prison Sentences by Race/Ethnicity in 2019 (Aug. 31, 2020), <https://www.criminaljustice.ny.gov/crimnet/ojsa/comparison-population-arrests-prison-demographics/2019%20Population%20Arrests%20Prison%20by%20Race.pdf> (2019 New York County arrest data).

⁹ Judge Milton A. Tingling, *Jury Duty Is a Right and a Privilege*, N.Y. Amsterdam News (Oct. 1, 2020), <https://amsterdamnews.com/news/2020/10/01/jury-duty-right-and-privilege/>.

¹⁰ Jackson-Gleich, *supra* note 5.

¹¹ Most states that have adopted similar jury service legislation have included a requirement that persons convicted of felonies serve out not only their incarceration, but also any post-release supervision such as probation or parole, before being allowed to serve as a juror again. Only Maine allows felons to serve as jurors immediately following their release from prison, as the New York bill would also do.

¹² “Recommendations Regarding Reforms to Jury Selection in New York”, New York State Justice Task Force, (August 2022) <http://www.nyjusticetaskforce.com/pdfs/Report-on-Recommendations-Regarding-Reforms-to-Jury-Selection-in-New-York.pdf>

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The New York County Lawyers Association Voting Rights Task Force and Criminal Justice Committee strongly support passage of S.206-A/A.1432-A and urges the legislature to pass the Jury of Our Peers Act immediately.