



# VOTING BEHIND BARS

**ENSURING MEANINGFUL BALLOT ACCESS  
IN COLORADO'S JAILS**

## Acknowledgments

Established in 2000, the Common Cause Education Fund is the research and public education affiliate of Common Cause, founded by John Gardner in 1970, and one of the country's most effective organizations working to reduce the influence of special-interest money in politics, breaking down barriers to participation, ensuring transparency in government, and protecting the free flow of information. We work to create an open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process.

This report was produced with the support of small dollar contributions from Americans who believe in transparent, open, and accountable government and a democracy that works for all of us.

The report was written by Patrick Potyondy, Colorado Common Cause Policy Manager, and Jai Rajagopal, Colorado Common Cause Organizer with editing and other assistance from Amanda Gonzalez, Colorado Common Cause Executive Director and Dana Paikowsky, Campaign Legal Center Legal Fellow.

Research assistance was provided by Colorado Common Cause intern Lila Crank.

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## Introduction

Back in 2018, Colorado Common Cause worked with other advocates and then Secretary of State Wayne Williams to encourage county clerks to coordinate with county sheriffs to provide people in jail with a meaningful opportunity to register and to vote. Although people who are incarcerated while awaiting trial or who are serving time for a misdemeanor conviction are eligible to vote in Colorado, few people know that and voting rights are rarely a top priority for county sheriffs. William's deputy secretary of state, Suzanne Staiert said the 2018 rule was about clarifying who was eligible to vote. "Generations of Americans fought and died for our right to vote. That right is only fully realized when people have meaningful access to their ballots," said Colorado Common Cause executive director Amanda Gonzalez. "It's simply not enough that many people who are incarcerated are eligible to register and vote in our state if they are unaware of those rights or patently unable to access their ballots."

No one should be denied their right to vote—especially those who are incarcerated when they have never been convicted of any crime. In the United States, any person is presumed innocent until proven guilty. And, any U.S. citizen who is 18 years of age or older and has not been convicted of a felony can vote—or should be able to.

While states vary on allowing those with a felony conviction to vote, in Colorado it is only upon the conviction of a felony and during the time period when serving the term of imprisonment that an individual loses access to their voting rights. That is, once a prison term for a felony conviction is completed, the right to vote is automatically restored. If someone then serves a term of probation or parole, they can vote, they need only to register, and they'll be sent a mail ballot like any other voter, or they can walk into a vote center to cast their ballot in person.

Unless someone has been convicted and is serving a term of imprisonment for a felony, they maintain their right to vote. By default, this includes every citizen aged 18 or older in Colorado's county jails. Under state law, no one loses their right to vote merely because they have been arrested under suspicion of having committed a crime. Everyone is innocent until proven guilty, and even if proven guilty of a crime, voting rights are only temporarily lost for a felony conviction. Misdemeanor convictions cannot take away voting rights, and these types of charges make up a quarter of jail incarcerations, which further belies the point that less than half of people incarcerated in jails are even convicted of a crime at all.

Although there is no law removing the right to vote, people incarcerated in a jail during an election period—in Colorado, from the 22 days when mail voting ballots are sent out domestically through Election Day proper—might be denied the access they need to exercise their voting rights.

Lax enforcement of voting rights for incarcerated persons systemically disenfranchises people of color through the use of our criminal justice system. While it is difficult to collect demographic information on the jail population for the same reasons it is often difficult to safeguard their ability to vote—a shifting population, low county resources, etc.--there is little reason to suspect that Colorado's jails are an exception to the statewide trend of incarcerating black persons at seven times the rate of white people. It should also be noted that Latino/Latinx/Hispanic people are incarcerated in Colorado at over twice the rate of white people, and rates for Native American/indigenous people are roughly six times that of whites. Failing to reform such a blatantly inequitable system will continue to entrench systemically racist policies within both our carceral and electoral systems.

According to the administrative rule created in 2018 through partnership with the Colorado Secretary of State, every clerk and recorder's office must create and facilitate plans to coordinate with the county sheriff's office so that jailed individuals are provided the opportunity to vote. Of Colorado's 64 counties, 58 completed these plans (seven counties don't house inmates, while one of these seven still completed the jail-voting portion of their overall plan).



To determine the current status of inmate voting in county jails, we examined two parts of the system in place: first, if each inmate in all Colorado county jails had meaningful access to registration and ballots, and second, if the communication between sheriffs and county clerks was productive.

We drew upon voter files to estimate voting rates generally for jailed individuals and find this group much less likely to cast a ballot showing the need for continued and improved outreach. Of course, the low voting frequency among this jailed population cannot be attributed only to the success or failure of following the rule. But increased targeted outreach is necessary wherever any population votes less frequently than the state's average turnout.

This report has sought to determine how well the 2018 rule has been followed and implemented with the goal of highlighting best practices and deficiencies in current practice. A final aim included considering if additional rule or policy changes would help improve the opportunity for jail voting.

To be clear, our goal has not been to call out specific counties for any real or perceived shortcomings but instead to identify and raise up best practices.

Finally, appendices at the back of this report provide a detailed table and maps tabulating the contents of each county's jail-voting plan as well as the responses provided by each county clerk and sheriff. You will also find which counties failed to respond to our numerous approaches, which included both electronic email and phone calls.

## Key Findings Summary

While there are many examples of counties that have created or adapted their infrastructure to facilitate voting in their jails, our findings show that the authority of sheriffs to deny voting rights to their inmates necessitates policy action to enforce voting rights. In addition, our survey of county clerks and county sheriffs concluded that nonbinding election rules, while useful, have a limited effect, and that Colorado should adopt into the CRS binding requirements to facilitate jail voting and collect data on its implementation.



# PART I: Evaluating Colorado’s Jail Voting Plans, Local Successes, and Work Still to Be Done

## Background

As noted above, beginning in 2018, “Proposed Election Rule 7.5” (officially adopted as Election Rule 7 in 2019) required county clerks to make new plans as to how they would serve eligible voters who are jailed in their county during the 2018 November election. The rule stipulated that clerks make an effort to coordinate with the county sheriff to provide the opportunity to vote. Part 14 of the mail voting plans (now referred to as “election plans” in state statute and throughout this report) comprised the jail voting portion. The following section describes the election rules as implemented in 2018 and 2019, the legitimacy of election rules in compelling sheriff participation and the election plans created to comply with these rules.

### The new rules for the 2018 general election

*Rule 2.19: Registration of electors who are confined in a county jail or detention facility.*

*2.19.1: Before each election, beginning with the 2018 general election, the county clerk must make efforts to coordinate with the sheriff or his or her designee at each county jail or detention center in the county to provide confined eligible individuals an opportunity to register to vote.*

*7.4 Beginning in the 2018 general election, the county clerk must make efforts to coordinate with the sheriff or his or her designee at each county jail or detention center to facilitate voting for all confined eligible electors.*

*7.4.1 The county clerk must describe the following in its mail ballot plan:*

*(a) How the county clerk will provide each county jail or detention center voter information materials consistent with materials provided to non-confined eligible electors, including at a minimum a list of acceptable forms of identification under section 1-1-104(19.5), C.R.S., and the information required by sections 1-40-124.5 and 1-40-125, C.R.S.*

*(b) The process by which the county clerk and the sheriff or his or her designee will facilitate voter registration, and delivery and retrieval of mail ballots for confined eligible electors.*

Since Election Rule 7 was promulgated in 2019, county clerk offices are required to create election plans like the one you see (right) from Broomfield county.

As a nonbinding rule from the secretary of state’s office, this language does not carry the legal weight of an actual law. Because this rule was promulgated by the secretary of state, it is only binding on election officials. Although sheriffs should participate in building these ballot access plans—and in many ways are necessary collaborators—they have no corresponding legal obligation to do so .

#### 14. Coordination with Sheriff [Proposed Election Rule 7.5]

Please describe how the County will provide the following materials to eligible electors located in each jail or detention center within the County.

A list of acceptable identification under 1-1-104(19.5), C.R.S.

Staff will email a list of acceptable identification to our designated liaison at the Broomfield Detention Center.

A ballot information booklet (bluebook) under Section 1-40-124.5, C.R.S.

Staff will deliver an adequate number of bluebooks to our designated liaison via interoffice mail. The liaison will distribute to detainees in a manner consistent with Detention Center policies and practices.

TABOR notice under 1-40-125, C.R.S.

If there are any local TABOR notices, staff will deliver an adequate number of TABOR notices to our designated liaison via interoffice mail. The liaison will distribute to detainees in a manner consistent with Detention Center policies and practices.

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Please describe the process by which the County and the Sheriff will facilitate voter registration of eligible electors located in each jail or detention center within the county.

A signup sheet is provided to detainees who are eligible to register and vote. Elections Division staff will provide standard voter registration forms to the liaison. Detention Center staff will meet with interested detainees to register them to vote.

Please describe the process by which the County and the Sheriff will facilitate the delivery and retrieval of mail ballots of registered voters located in each county jail or detention center within the county.

Detention Center staff will deliver completed registration forms to the Elections Division for processing and to prepare a mail ballot packet. The designated liaison will pickup ballot packets for delivery to the inmates. The designated liaison will return all voted ballots in person to the mail ballot processing center. Ballots will be distributed to the liaison during the initial mailing of ballots and then upon demand up to and including election day.



The question of this collaboration explored in more depth in the following section discussing the surveys of both election officials and sheriffs who have implemented the plans articulated here.

Of the 64 counties in Colorado, 57 have jails, and these counties that comprised the focus of our analysis. One county—Archuleta—admirably completed a plan even though it holds no jail facility. This exception does draw attention to the important lack of guidance by the Secretary of State’s office as to whether counties without jails should still complete the jail voting portion of the plan. It would be unfair to expect counties to recognize an obligation to participate in this program without further guidance, although we hope all such counties would follow Archuleta’s example. Specifically, Archuleta’s voting plan accounts for the possibility of voters who are imprisoned outside their home county due to the lack of a jail facility in their home county, a circumstance referenced multiple times in talking with elections officials and sheriffs during our survey. The six counties which neither have an in-county jail facility nor filed a jail voting plan were not given a rating in this analysis.

## Methodology

The election plans submitted by the county clerks varied greatly. Upon examining the text of every county’s plan that submitted one, we gave one of four ratings to each: “poor,” “passable,” “good,” or “exemplary.” We judged the plans based on how well the counties followed the spirit of the rule’s requirements and how much effort the clerks planned on putting into inmate communication and outreach.

To arrive at applying one of the four ratings to an election plan, we checked the presence and quality of nine characteristics of each county’s plan intended to address the ease of voting, access to voter registration, access to informational resources, etc. These characteristics are further detailed in Appendix A.

In order to have an exemplary plan, the county must not only meet all eight categories of the requirements, but also encourage direct contact with the inmates to provide voter education and resources on how to register to vote and cast a ballot while incarcerated. Examples of these educational resources are flyers, posters, or—best of all—individuals tasked with answering any questions from inmates pertaining to voting. Additionally, exemplary counties demonstrated an awareness of and respect for the privacy of each inmate’s vote, and addressed possible partisan biases. Exemplary counties maintained typical functions of voting outside jails, such as the involvement of two bipartisan election judges in the collection and oversight of ballots. Exemplary plans also solicited feedback and check-ins with the inmates to ensure the processes were followed correctly and that everyone who wanted to vote could. These various requirements are crucial when coordinating with an office—the sheriff’s—whose primary duty does not involve voting and elections.

A good plan met at least six of the eight requirements, a passable plan met five requirements, and a poor plan met four at most. These denote a county’s overall rating. There were often a range of ways a county fulfilled each requirement within our parameters and inevitably, as with any rating system, our analysis cannot be entirely objective. Nonetheless, we worked diligently to be consistent in providing analysis of these voting plans and of the responses to our survey. Finally, even if a county earned an overall rating of poor or passable or good, that does not mean there were not exemplary or subpar aspects to specific elements of its jail-voting plan, and while we have attempted to account for and explain variances in these elements, the true variety of commitment to voting rights can only be captured by the individual election plans of each county.

Overall, 56 counties out of 57 counties with jail facilities provided a jail election plan. One county was unable to make sufficient contact with the sheriff’s office to create a jail election plan. Copies of every clerks’ jail election plan can be made available upon request.



## Summary of Key Findings

Exemplary plans are rare within the 56 jail-county plans. A total of seven counties earned our exemplary rating by meeting and/or surpassing all nine of our accessibility indicators, including Arapahoe, Baca, Crowley, Douglas, El Paso, Kit Carson, and Lincoln. While Arapahoe and El Paso encompass major urban centers, rural counties in Colorado's eastern plains are also well represented among those with exemplary plans. These plans checked off all eight characteristics and more of an exemplary plan. While they should become the norm, the bar is high to meet this standard.

Twenty-two counties, or nearly 40 percent of the 56 counties that contain jail facilities and created a jail-voting plan, produced good plans, our second-best rating. This is encouraging and indicates that several counties could achieve an exemplary rating with changes and additions to their jail-voting plans, or the implementation of said plans.

Altogether, just over 50 percent of Colorado's counties earned a good or exemplary rating. This is, arguably, a good performance given that this was the first year that these plans were created and instituted, that they do not mandate participation from sheriff's offices, and that these rules had little practical guidance. This 50 percent also sets a standard and has yielded multiple successful models for the other half of Colorado's counties to follow in creating similarly good or exemplary plans.

What follows are some examples of the best and most-questionable practices found in the 57 jail-voting election plans.

## Best Practice Highlights

The counties that best demonstrated their commitment to upholding voting rights were those that were communicative, detailed, and committed in their jail voting policies. Although this was achieved in a variety of ways among the counties that performed well, it is important to highlight some examples of creative and proactive jail voting plans that implemented two sided cooperation and accountability, detailed planning, creative use of resources, and user friendly systems to assist inmates.

### ***Park County: Two Sided Accountability***

At least one county, Park, coordinated so well that the local sheriff's office produced its own policy spelling out that staff will facilitate jail voting. This undetailed policy establishes that the sheriff's office will assist incarcerated individuals with voting. It specifies that the jail captain designates a liaison to coordinate with the local election office. Incoming inmates are to be advised on voting methods during orientation, and the policy admirably notes that postage for mail-ballots will be provided to inmates who cannot afford it. Sheriff's offices across Colorado should be required to produce similar plans as Park County's.

### ***Washington and Douglas County: Considering Out of County Residents***

Washington and Douglas counties provide great examples of contingency voting plans for an inmate residing in another county. Washington's plan spells out that an inmate can still register with Washington County and the clerk will ensure that a ballot from the inmate's home county is sent to them at the jail. This is sort of plan detail that can help make sure every incarcerated individuals can gain access to their ballot.



### ***El Paso County: Creative Use of Existing Jail Infrastructure***

El Paso County illustrates that how to utilize existing infrastructure in the jail. Inmates are able to request a voter registration form, for instance, through the digital jail kiosk system (as well as providing hardcopy paper versions). The clerk also coordinated with the sheriff to make use of the jail TV system to inform inmates about voting.

### ***Freemont County: Building a Reliable, User Friendly System***

Fremont County established procedures to make sure that ballots were collected in a timely manner, with bipartisan teams collecting voted ballots everyday at a set time. This level of detail is likely to reduce confusion among staff of both offices as well as ensuring the timely counting of ballots.

## **Questionable & Concerning Practices**

Other counties included plan details that are unlikely to produce desired results. One county, for example, provided only a single bluebook or TABOR notice for each jail and another county provided one for every ten inmates. Another county only provides list of IDs, the notice, and the bluebook upon request. Given the potential for conflict and other limitations of incarceration, limiting basic resources is not likely to encourage voter participation.

Other counties created quizzical policies without clear reasons why. In one such instance, a sheriff “registration deputy” would “review” and initial a voter registration form before forwarding it onto the clerk.

At worst, one county appeared to say that sheriffs could choose to allow detained eligible voters to register. In fact, that is not something a sheriff has the authority to decide. Voting is a legal right under the Constitution and cannot be denied to someone until they are convicted of certain crimes.

Another county described choosing a single day and time to visit, offer, and collect voter registration forms even though this does not follow voter registration law in Colorado (where voters can register up to and on Election Day as long as they have been a resident for 22 days). County officials should be very careful about setting any new approach to voting just because the individuals are jailed.

In one instance, a county clerk’s experience illustrates the need for a requirement in policy or rule for sheriffs to provide voting opportunities. Montrose County was unable to achieve contact or cooperation from its jail system for the 2018 election and thus could not complete a plan.

The final part of this report details best practices that counties should follow and which are largely based on these exemplary level plans. A table detailing the eight characteristics by county and which counties do not have a jail is listed in Appendix A.



## PART II: Surveying County Clerks and Sheriffs to Learn How Rollout Is Working in Practice

### Background

Part two of our report was a short survey of the county clerks and sheriffs. The goal of the survey was to gauge the communication between the sheriffs and clerks. We also wanted to learn from the public officials by collecting best practices for future elections after they had gone the first election under the new rule requiring these jail-voting plans.

### Methodology

We asked essentially identical questions of each clerk's and each sheriff's office. We contacted every office numerous times over email and by phone to provide multiple chances to take part. The survey was designed to take roughly five minutes.

Ultimately, we received responses back from 40 clerk offices and 31 sheriff offices. Put together, 49 counties (77% of all counties) responded from either a clerk or a sheriff. But most importantly, 21 counties (33% of all counties) had responses from both the clerk and the sheriff, providing a robust data set to compare responses. Fifteen counties (23% of all counties) did not respond at all. A complete list of which offices responded, and which did not is laid out in Appendix B.

#### **The survey questions for the survey of the county sheriffs. Questions of the clerks were nearly identical:**

1. What is your full name and title? \*
2. What county do you serve in? \*
3. What is the best phone number and email to contact you at? \*
4. How long have you worked in the Sheriff's office? \*
5. How would you describe the availability of resources you have been given to carry out an election plan that ensures ballot access for incarcerated eligible voters? \*
6. How helpful would you say your county's Clerk & Recorder office has been in carrying out election plans that work for your jails? \*
7. What level of prioritization are jail-voting election plans given, considering the competing duties of the Sheriff's office as a whole? \*
8. Who in your office was responsible for carrying out the election plan? \*
9. How do you deliver ballots to detainees? \*
10. What are some of the best ways you have found for communicating with incarcerated eligible voters? \*
11. How much time did you or staff spend helping incarcerated eligible voters carry out their registration and the act of voting in the 2018 election cycle? \*
12. What are the biggest barriers to carrying out voting plans in jails? \*
13. Are there ways nonprofit and nonpartisan advocacy groups (such as Colorado Common Cause or the NAACP) can be helpful to you? \*
14. Are there any best practices that you would like to share for other counties carrying out voting plans? \*



## Evaluating Survey Responses: Variation in Cooperation and Outreach

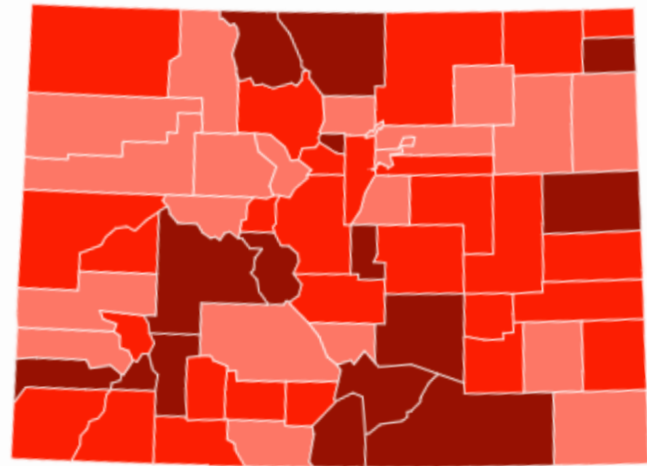
Clerks and sheriffs generally reported a high level of respect for each inmate's right to while also rating their ability to cooperate with the other office as excellent. While these answers are expected given that offices which are likely to respond to a volunteer good-government survey in good faith are more likely to already be engaged in this sort of pro-democracy work, these are nonetheless positive signs for the policy generally. The subsections below correspond to the question topics asked of the clerks and sheriffs.

### ***Prioritization: While Providing Ballot Access Is Important, It Is Not Always a Priority for Jails***

When we spoke to Sheriff offices, those who oversaw inmate voting expressed a great respect for each inmate's right to vote. While only one office said this was a low priority (1), a little over a third of the sheriffs report this being a middle of the road priority (3). The remaining Sheriff's Offices rated this as a 4 or 5 priority for them. While this is encouraging, because it shows sheriffs are thinking about or interested in this topic, the self-reported prioritization did not necessarily translate into more time or resources devoted to ballot access. For example, several offices who said this was a high priority did little more than post notices and reported spending "minimal time" or less than an hour on this work. On the other side, some offices that ranked this as a middle of the road priority spent a few hours per voter and initiated in person contacts with potential voters.

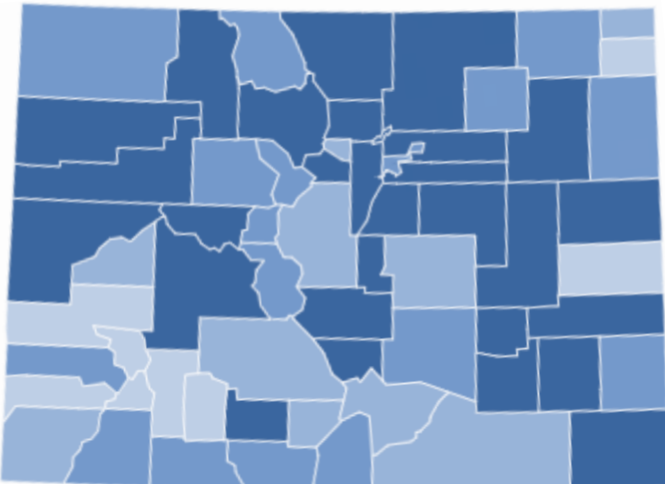
With regard to clerks, there are more 4-5s but also a few 2s, so the average expressed commitment is generally high. Those figures are encouraging to be sure, but there is little quantitative data at this point to verify the impact on incarcerated voters, so follow-up studies could be beneficial. Again, the expressed commitment similarly does not necessarily translate into any particular action. Some clerks who rated their commitment to jail-enfranchisement a 5 run no voter registration programming and spent little or no time reaching out incarcerated voters around elections, while one official who rated themselves a 3 had one of the more robust processes in place.

Figure 1: Colorado Counties by Response to Common Cause's Jail Voting Survey



Light red = Survey completed by clerk and sheriff  
Bright red = Survey completed by clerk or sheriff  
Dark red = Survey completed by neither clerk nor sheriff

Figure 2: Colorado Counties by Jail Voting Score



Dark blue = good or exemplary  
Light blue = passable or poor  
Light grey = no jail/no jail voting score



### ***Cooperation Between Offices: Most County Clerks and Sheriffs Are Able to Foster Cooperative Relationships***

Many sheriffs and clerks identified communication between their offices as key to the success of the program and most worked together quite well. In the words of Fremont County Clerk and Recorder Justin Grantham, “Whatever we can do to help, we do the best we can with what we got.” On a scale from 1 to 5 with 1 being “very uncooperative” and 5 being “very cooperative,” only a single county clerk’s office reported a 1 on how cooperative the sheriff’s office was. Similarly, only a single sheriff’s office reported a 1 on how “helpful” the clerk’s office was in carrying out in-jail voting. Neither of these counties produced responses from both offices for comparison.

On average, the clerks rated the sheriff’s as over 4.5 on being cooperative, and the sheriffs gave the clerk’s just over 4 on average on helpfulness. Put another way, over 70 percent of county clerks and 65 percent of county sheriffs said their counterparts were very helpful or cooperative in carrying out election plans for jails, indicating a high level of cooperation which should theoretically facilitate jail voting.

### ***Registration Opportunities: County Clerks Often Lack the Resources or Knowledge to Provide Jailed Voters with Sufficient Voter Registration Support***

Some counties, however, actively worked to register voters. A few counties such as La Plata, San Miguel and Summit admirably reported conducting VRDs. The Boulder County clerk, meanwhile, reported having a jail registrar do this work. Denver County has an entire program that began in 2016. Staff make in-person visits, spending about 10-20 minutes in each.

In terms of voter registration, a majority of clerks do not conduct voter registration drives (VRDs). Several offices reported being too small an office to conduct this type of outreach. Others noted somewhat confused takes on registration, claiming they would have to change an individual’s registration all of the time if they offered it more than just once right before Election Day. In fact, a jailed eligible voter could register using their home residence if they were only set to be incarcerated for a short time. Another county clerk reported none was conducted because “my Sheriff and myself do not feel it is safe for us, the judges or their staff to have us in the facility. It causes a security issue for all parties involved.” Finally, several placed all of the impetus on the inmates to ask to get registered when it is highly unlikely that individuals realize they could do so in a jail facility. Instead, the onus should be on the clerk’s office to conduct voter registration outreach.

Several counties make a point, however, to offer at least the chance to register to jail inmates. A common practice, especially in smaller counties with a small number of inmates, is to have the sheriff hand out forms to inmates. While this method is very effective in some jurisdictions, particularly those that had robust relationships with community organizations and nonprofits, it can be problematic in places where jail staff do not have training or trusting relationships with incarcerated people.

### ***Communication to Inmates: Methods of Outreach to Jailed Voters Varies Greatly Across Jurisdictions***

Research has repeatedly shown the importance of affirmative voter contact. Reaching out to voters directly can increase turnout and make eligible voters feel more engaged in their communities. In this survey we found that methods of communication varied greatly as well from county to county. Several county clerk office reported only communicating through or with a staff member of the sheriff’s office, denoting that no communication contact is made by clerk staff with incarcerated individuals. This is potentially a large problem given that one sheriff responded that they “have not discussed the issue with inmates” when asked about how they communicate with inmates.

The frequency of attempts varied as well, from simply posting a poster to weekly messages from jail staff to in-person visits by clerk staff. One clerk from relatively small county reported, “We haven’t ever communicated with an incarcerated eligible voter.”



Alternatively, a majority of sheriff's offices reported conducting face-to-face communication about the ability to register and vote. Many also put up posters or handed out literature. Mesa and Denver counties reported having volunteers from nonprofits enter and conduct communications.

Increasing the frequency of contacts with jailed individuals, especially considering turnover, can only improve voter access and the likelihood that they cast ballots during or after their confinement.

### ***Barriers: What Are the Challenges of Implementation?***

The most common response from clerks to the question asking what the biggest barriers were in carrying out voting in jails was that there were no barriers. This seems highly unlikely given the complexities of the process involved, the low turnout of jailed eligible voters (see part 3 below), and the complexities of coordinating with a separate county office. Thirteen clerks of the 40 total offices that responded reported that there were no barriers. It's particularly worrying that many elected officials don't perceive any issues when many incarcerated and formerly incarcerated voters are very unlikely to cast their ballots.

While the high rate of both clerks and sheriffs reporting no barriers to voter participation may be superficially reassuring, it should be taken into account that self-reported survey data may not be the most accurate indicator of jail voting performance. Other factors, such as jail voting turnout, could better represent successes here. Additionally, the scale and complexity of facilitating jail voting would seem to indicate that in the absence of dedicated planning and resources to solve ballot access issues implicit in jail voting, those counties reporting no barriers may in fact simply have unacknowledged—and thus unresolved—barriers in their jail voting plans.

Some clerks did report a range of barriers to the carrying out jail-voting plans. These ranged across several issues, listed below in descending order of frequency:

- Inmates are gone too quickly (6 offices reporting this barrier).
- Not enough staff time (4 offices reporting).
- Inmates do not care or want to vote (4).
- Dealing with out-of-county eligible voters (2).
- Providing enough education about the issues (2).

Other barriers reported once by various county clerks included: confusion about eligibility, recruiting election judges, that some inmates are not US citizens, and contacting every inmate up to 7pm on Election Day.

Sheriffs also reported a range of barriers. The most common response, however, and like the clerks, was that there were no barriers.

Several other sheriff's offered insightful responses, including:

- Not enough staff time and/or competition of jail voting with other duties (6 offices).
- Inmates do not care or want to vote (4).
- Inmates are gone too quickly (2).

Other barriers reported once by various county sheriffs included: trouble getting materials, lack of knowledge of voting rights, difficulty in turning in ballots, and dealing with eligible voters from other counties.

One county reported that blue books arrived late which delayed the process for an already temporary population and one that can seem uninterested in voting. Another sheriff desired a better way for inmates to return ballots. The clerk in this particular county had a secured box they carried directly up to inmates in-person. The sheriff suggested placing a secure box in the jail facility to make voting more convenient.



Mesa County noted that the temporary nature of a jail stay could be a barrier. But then the sheriff noted that this was easily overcome by educating the inmate that if they were discharged prior to the mail ballot arriving at the jail, they could go to a vote center and cast a ballot there.

### ***Avenues for Nonprofit Engagement***

For many counties tasked with implementing jail voting, low capacity may be a limiting factor. To the extent that this is true, third party organizations—for example, nonprofits focused on voter education—may be able to help bridge resource gaps. Unfortunately, most clerks and sheriffs were not open to the idea of partnering with or gaining support from nonpartisan nonprofits. This is all the more disappointing given that many of these same counties reported voter apathy or lack of education as a barrier to carrying out voting plans in jail. One sheriff even commented that “we can’t force people to vote.”

Denver County has partnered with the Colorado Criminal Justice Reform Coalition to conduct voter outreach, and Mesa County has partnered with CCJRC, too, as well as the League of Women Voters. CCJRC’s 2018 report “Voting with Conviction” found that four out of ten Coloradans do not know that individuals in jail for misdemeanors or in jail awaiting trial are eligible to vote, and their ongoing Voting with Conviction campaign provides incarcerated voters with voter education regarding their rights. This and similar programs provide an opportunity to ensure that incarcerated voters are aware that they retain their right to vote, and hopefully help to increase voter participation in jails accordingly. “People who are confined are also interested in civically engaging in our election process,” said Juston Cooper, the Deputy Director of Colorado Criminal Justice Reform Coalition. Part of Denver’s approach is to keep their teams limited to about four to six members for safety and mobility reasons. Given these examples of nonprofit organizations integrating with county governments, future efforts could focus on modeling these relationships with third parties for implementation in other counties, particularly those in more rural parts of Colorado that may otherwise have difficulty meeting their obligations to facilitate voting access.

Several counties were open to help, especially in areas of providing voter materials or education to sheriff staff and directly to eligible voters, both of whom are likely—and understandably—unfamiliar with every voting regulation and practice. One sheriff noted that some of this education could be as foundational as making sure inmates know they are eligible to vote.

One county highlighted that they could use a Spanish translator. Providing translators could be hugely beneficial for numerous Colorado counties with significant populations of Spanish-speakers, and allow them to practice their right to vote without the additional barrier of language access issues.

### ***Best Practices: What Has Been the Biggest Help to Local Officials Seeking to Create Ballot Access Programming?***

The intention of Colorado Common Cause in conducting this analysis was twofold: to survey the current status of jail voting in Colorado, and to synthesize best practices that have emerged across Colorado’s 64 counties that all county clerks and county sheriffs in the state are able to adopt to facilitate jail voting.

The most common best practice related by the 40 clerk offices is that having a strong relationship and clear communication with the sheriff’s office. As noted above, the compliance of Sheriffs is not legally required. Next, the prompt processing of registration forms is key to fast turnaround of ballot delivery given that jailed individuals are often released quickly. Early planning also can help for both offices.

Asked about best practices, one sheriff’s department advised to “bring in people with lived experience to do the education, people who were previously incarcerated.” It “has to be a constant effort!!” they wrote that continues “year-round.”



One county, while working with a nonprofit, breaks staff and volunteers into two teams, one that does education and hands out forms and a second that collect forms and follows up. In another instance, the Adams County clerk's office had designated a dedicated staff member who visited every single day of the voting period to make sure they made contact with inmates and to make sure enough materials were available.

And with a recommendation that making use of mail-ballots removes any issues of requiring secured boxes carried around by clerk staff or election judges, one county revealed the easiest fix for one of the barriers raised by several clerks and sheriffs.

Other best practices seem more likely to succeed when they follow two general recommendations from county clerks: plan a clear schedule out months before to address jail voting, and find a dedicated staff member in the sheriff's office to coordinate with. Sheriffs meanwhile stressed understanding the process and rights as well as having all the necessary resources on hand before they are needed.

Finally, several counties reported being open to hearing what other counties do to improve their approach. Future work on this policy topic could focus on facilitating conversations between county officials conducting this work to enable sharing of best practices across the governmental agencies responsible for implementing Election Rule 7.



## PART III: Policy Recommendations and Best Practices

Given the findings from this report, Colorado Common Cause recommends several additions and changes to the current policy embodied solely in administrative rule.

### Recommended Policy Changes:

- Translate current secretary of state administrative rule 2.19 and 7.4 in the code of Colorado regulations into the Colorado Revised Statutes as a state law.
- Include in the new statute language that requires the county sheriffs to cooperate and coordinate with the county clerk to provide confined eligible voters an opportunity to register and vote.
- Include in the new statute specific parts addressing educating confined individuals about their eligibility to vote, how to vote their ballot if they are released prior to receiving a mail ballot at the jail location, and more.
- Counties that do not contain a jail facility should be included in the policy so that they must complete their own jail-voting portion of the election plan, and requiring any adjacent county housing inmates from another county to establish processes to allow eligible voters to cast the correct ballot.
- Counties should supply translation services to incarcerated individuals who would benefit from them.
- Counties should supply assistance to incarcerated individuals with disabilities.
- Specify that jails are Voter Registration Agencies under the NVRA.

### Best Practice to Establish Under Current Requirements or Future Rule-to-Statute Changes:

- Establish clear communication lines months ahead of schedule between both offices.
- Make plans several months ahead with external and internal offices. Be explicit about times and dates for registration, ballot delivery, non-mail ballot delivery, and the placement and delivery of any other resources (whether posters or teams of volunteers).
- Coordinate with and provide support for nonprofit organizations to help alleviate staff time. Experts from nonpartisan organizations can provide education and materials to inmates at times specified by clerks and sheriffs.
- Clerks and sheriffs should post registration information and conduct culturally competent education year-round using posters, pamphlets, messages through the kiosk system, and more.
- The secretary of state's office should check that every county has completed the full jail voting plan (which should be required of every county, even counties without its own jail facility) and follow up with counties that have not. The office should also encourage every county to include specific plans for all of the eight requirements detailed in our table located in the appendices.
- County clerks, perhaps in conjunction with the secretary of state's office, should conduct educational outreach to sheriff staff so that everyone understands the rights of confined individuals and are better placed to communicate those to inmates.
- Partner with nonpartisan nonprofits which have experience and expertise in voting or the criminal justice system which can alleviate pressures on staff time.
- Create a model plan which is informed by issue area experts, community organization and formerly incarcerated people.



## Future Research

Research should be conducted to interview incarcerated individuals to learn more about their experience with voting. More could learn why they did or did not vote, and what they experienced while jailed.

Next, Colorado Common Cause, along with America Votes and New Era Colorado, was able to establish a new administrative rule that requires clerks to track and report voting from jails and detention facilities.

*Rule 7.5.14 County clerks who deliver or receive ballots from electors who are confined in a county jail or detention facility must log the number of ballots delivered and received from each facility and provide the log to the Secretary of State's office following the election.*

This new tracking will help determine actual rates of voting and engagement in our detention facilities more broadly and accurately so that Colorado's clerks and sheriffs can establish more effective policies and election plans.



## APPENDIX A: Jail-Voting Plan Categories and Ratings

County & Sheriff Collab.? (Y/N)	Ballots	Booklet	List	Private, nonpartisan	Registration & a new address	TABOR notice	Times & Dates	Working with inmates	Rating
Adams - Y	X	X (kiosk)	X	-	X	X (kiosk)	X	-	Good
Alamosa - N	X	-	X	-	-	X	-	-	Poor
Arapahoe - Y	X	X	X	X	X	X	X	X	Exemplary
Archuleta - N	X	X	X	-	X	X	-	-	Passable (and no active jail)
Baca - Y	X	X	X	X	X	X	X	X	Exemplary
Bent - Y	X	X	X	X	X	X	X	-	Good
Boulder - N	X	X	X	-	X	X	X	-	Good
Broomfield - N	X	X	X	-	X	X	-	X	Good
Chaffee - Y	X	X	X	-	X	X	-	-	Passable
Cheyenne	-	-	-	-	-	-	-	-	No Jail
Clear Creek - Y	X	X	X	-	X	X	X	X	Good
Conejos - Y	X	X	X	-	X	X	-	-	Passable
Costilla - Y	X	X	X	-	X	X	-	-	Passable
Crowley - Y	X	X	X	X	X	X	X	X	Exemplary
Custer - Y	X	X	X	-	X	X	-	X	Good
Delta - Y	-	X	X	-	X	X	-	-	Poor
Denver - Y	X	X	X	-	X	X	-	-	Passable
Dolores	-	-	-	-	-	-	-	-	No Jail
Douglas - N	X	X	X	X	X	X	X	X	Exemplary



County & Sheriff Collab.? (Y/N)	Ballots	Booklet	List	Private, nonpartisan	Registration & a new address	TABOR notice	Times & Dates	Working with inmates	Rating
Eagle - N	X	X	X	X	-	X	-	-	Passable
El Paso - Y	X	X	X	X	X	X	X	X	Exemplary
Elbert - Y	X	X	X	-	-	X	-	-	Poor
Fremont - Y	X	X	X	X	X	X	X	-	Good
Garfield - N	X	X	X	X	X	X	-	X	Good
Gilpin - N	-	X	X	-	-	X	-	-	Poor
Grand - Y	X	X	X	X	X	X	-	-	Good
Gunnison - N	X	X	X	-	X	X	-	X	Good
Hinsdale	-	-	-	-	-	-	-	-	No Jail
Huerfano - Y	X	X	X	-	X	X	-	X	Poor
Jackson - Y	-	X	X	-	X	X	-	X	Passable
Jefferson - N	X	X	X	X	X	X	X	-	Good
Kiowa - Y	X	X	X	X	X	X	-	X	Good
Kit Carson - Y	X	X	X	X	X	X	X	X	Exemplary
Lake - Y	X	X	X	-	X	X	-	-	Passable
La Plata - Y	X	X	X	-	X	X	-	-	Passable
Larimer - N	X	X	X	X	X	X	-	X	Good
Las Animas - Y	-	X	X	-	X	X	-	-	Poor
Lincoln - Y	X	X	X	X	X	X	X	X	Exemplary



County & Sheriff Collab.? (Y/N)	Ballots	Booklet	List	Private, nonpartisan	Registration & a new address	TABOR notice	Times & Dates	Working with inmates	Rating
Logan - Y	X	X	X	-	X	X	-	-	Passable
Mesa - Y	X	X	X	X	X	X	-	X	Good
Mineral	-	-	-	-	-	-	-	-	No Jail
Moffat - Y	X	X	X	-	X	X	-	-	Passable
Montezuma - Y	X	X	X	-	-	X	-	-	Poor
Montrose - N	NA	NA	NA	NA	NA	NA	NA	NA	No Plan*
Morgan - Y	X	X	X	-	X	X	-	-	Passable
Otero - Y	X	X	X	-	X	X	X	X	Good
Ouray	-	-	-	-	-	-	-	-	No Jail
Park - Y	-	X	X	-	-	X	-	X	Poor
Phillips	-	-	-	-	-	-	-	-	No Jail
Pitkin - N	X	X	X	-	X	X	X	-	Good
Prowers - Y	X	X	X	-	X	X	-	-	Passable
Pueblo - Y	X	X	X	-	X	X	-	-	Passable
Rio Blanco - Y	X	X	X	-	X	X	-	X	Good
Rio Grande - N	X	X	X	-	X	X	-	X	Good
Routt - N	X	X	X	X	X	X	X	-	Good
Saguache - N	X	X	X	-	-	X	-	-	Poor
San Juan	-	-	-	-	-	-	-	-	No Jail
San Miguel - Y	X	X	X	X	X	X	-	-	Passable



County & Sheriff Collab.? (Y/N)	Ballots	Booklet	List	Private, nonpartisan	Registration & a new address	TABOR notice	Times & Dates	Working with inmates	Rating
Sedgewick - Y	X	X	X	-	-	X	-	-	Poor
Summit - N	X	X	X	No privacy	X	X	-	-	Passable
Teller - Y	X	X	X	-	X	X	X	-	Good
Washington - Y	X	X	X	-	X	X	X	-	Good
Weld - Y	X	X	X	-	X	X	X	X	Good
Yuma- N	X	X	X	-	X	X	-	-	Passable

\* In email correspondence with the staff at the secretary of state's office, we learned that this clerk was unable to establish cooperation with the sheriff. The reason for this is unknown but has apparently been remedied for the 2019 election cycle.



## Evaluation Criteria Defined

**County + Sheriff Collab:** This is a column to identify the name of the county in question and whether there is collaboration with the sheriff in the process of inmate voting. A “Y” indicates there is collaboration with the sheriff and an “N” indicates there is no apparent collaboration with the sheriff.

**Ballots:** Are there clear and organized plans in place to ensure all ballots (both ballots mailed-in and hand-delivered) are being delivered to inmates and picked up from inmates in a timely manner (before or on Election Day)? An “X” indicates there is a plan and a “-” indicates there is no plan, or the plan is underdeveloped.

**Booklet:** Is there is a plan to provide the informational bluebook required under C.R.S. 1-40-124.5 to the jails and inmates? An “X” indicates there is a plan and a “-” indicates there is no plan, or the plan is underdeveloped.

**List:** Is there is a plan to provide the list of appropriate ID’s to register to vote to the jails and inmates? An “X” indicates there is a plan and a “-” indicates there is no plan, or the plan is underdeveloped.

**Privacy, nonpartisan:** Does the ballot collection and delivery process involve privacy for the voter and nonpartisan election judges to oversee the process? An “X” indicates there is a plan and a “-” indicates there is no plan, or the plan is underdeveloped.

**Registration and New Address:** Is there is a clear and organized plan to provide the jails and inmates with voter registration forms? Some counties explicitly mention allowing inmates who are already registered to update their address. An “X” indicates there is a plan and a “-” indicates there is no plan, or the plan is underdeveloped.

**TABOR:** Is there is a plan to provide TABOR notices to jails and inmates. An “X” indicates there is a plan and a “-” indicates there is no plan, or the plan is underdeveloped.

**Times and Dates:** Does the plan mentions dates and times for inmate voter registration and ballot delivery and collection? An “X” indicates there is a mention of dates and times and a “-” indicates there are no times or dates specified or the times and dates are only available for one of the two sections of planning.

**Working with Inmates:** Are there specific plans in place where inmates are getting direct information and have direct access to help during the registration and voting process? An “X” indicates there is a plan and a “-” indicates there is no plan, or the plan is underdeveloped.

**Rating:** This is a column used to identify the classification of each county’s planning process to ensure each inmate who wants to vote can, according to Colorado’s Election Rules. The classes are as follows and are contingent upon all the columns of assessment: poor, passable, good, and exemplary.



## APPENDIX B: County Offices that Responded to the Survey

All 64 Counties	Sheriff Response	Clerk Responses
Adams County	Adams County	Adams County
Alamosa County		Alamosa County
Arapahoe County	Arapahoe	
Archuleta County		Archuleta
Baca County	Baca	Baca
Bent County	Bent County	Bent
Boulder County	Boulder County	Boulder County
City & County of Broomfield	Broomfield	Broomfield
Chaffee County		
Cheyenne County		Cheyenne
Clear Creek County		Clear Creek
Conejos County	Conejos	Conejos
Costilla County		
Crowley County		Crowley
Custer County	Custer	Custer
Delta County		Delta County
City & County of Denver	Denver	Denver



All 64 Counties	Sheriff Response	Clerk Responses
Dolores County		
Douglas County	Douglas	Douglas
Eagle County	Eagle	Eagle
El Paso County	El Paso	
Elbert County	Elbert	
Fremont County	Fremont	
Garfield County	Garfield	Garfield
Gilpin County		
Grand County	Grand	
Gunnison County		
Hinsdale County		
Huerfano County		
Jackson County		
Jefferson County		Jefferson County
Kiowa County		Kiowa
Kit Carson County		
Lake County		Lake
La Plata County		La Plata
Larimer County		
Las Animas County		



All 64 Counties	Sheriff Response	Clerk Responses
Lincoln County		Lincoln
Logan County		Logan
Mesa County	Mesa	
Mineral County		Mineral
Moffat County		Moffat
Montezuma County	Montezuma	
Montrose County	Montrose	Montrose
Morgan County	Morgan	Morgan
Otero County		Otero
Ouray County		Ouray
Park County	Park	
Phillips County		
Pitkin County	Pitkin	Pitkin
Prowers County		Prowers
Pueblo County		
Rio Blanco County	Rio Blanco	Rio Blanco
Rio Grande County		Rio Grande
Routt County	Routt	Routt
Saguache County	Saguache	Saguache



All 64 Counties	Sheriff Response	Clerk Responses
San Juan County		
San Miguel County	San Miguel	San Miguel
Sedgwick County	Sedgwick	
Summit County	Summit	Summit
Teller County		
Washington County	Washington	Washington
Weld County		Weld
Yuma County	Yuma	Yuma



Good afternoon Mr. Chair, members of the committee. My name is Trina Griego. I am with The Interfaith Alliance of Colorado. Thank you for allowing me to share some perspective in favor of SB24-072 Voting for Confined Eligible Electors.

The Interfaith Alliance of Colorado is an interfaith public policy and advocacy organization with over 400 congregations in our statewide network, representing over two-dozen faith traditions. It is with this focus that I request your support of SB24-072.

In 1990 my father was convicted of a felony drug offense. He was told he had lost the right to vote for life. For almost 30 years, my father didn't vote because he thought it was illegal. He became aware that he was eligible when Colorado was expanding access a few years ago through this governing body and I happened to come across this information. If it weren't for me, my father would have no idea how to register, how to vote, when to vote, when you get the information to make these decisions or that he was even eligible. He spent his adult life hearing that his voice didn't matter, he didn't need to know these things because he was defined by the worst thing he had done. Coloradans have been clear that this is not the value that we hold.

The right to vote is sacred, it is a solemn promise of our democracy that we are all in this together. But of course, that right must be accessible. It has no power for the individual if it is not within their grasp. It must be accessible to our most marginalized and in every way we are able.

Now, after having the knowledge and practice of voting, my dad sees the importance of every election and it makes him a more conscientious citizen. He participates in his community more. He votes in every election now, and calls me when he needs to discuss the blue book.

SB24-072 allows this kind of citizen engagement and empowerment to happen on a larger scale. Providing information, resources and access to voting to those most disenfranchised is the compassionate, empowering and necessary thing to do. In Colorado, we have made our voice heard that you are not the worst thing you have done, your voice matters, and your vote will count. This bill simply ensures we are holding up to our values. It is with this that I urge a yes vote. Thank you.

**House State, Civic, Military, & Veterans Affairs**

**04/29/2024 01:30 PM**

**SB24-072 Voting for Confined Eligible Electors**

**Typed Text of Testimony Submitted**

<b>Name, Position, Representing</b>	<b>Typed Text of Testimony</b>
Eric Bergman Amend Colorado Counties, Inc.	Good afternoon, Mr. Chair and members of the committee. My name is Eric Bergman and I am the policy director for Colorado Counties, Inc. We are here today in an AMEND position on SB 72. My members believe very strongly that every eligible Coloradan should be able to cast a ballot - this is the bedrock of our democracy. Some of our smaller jails are historic structures that are so small that staging a VSPC may be impractical, if not impossible. We are seeking an amendment that might exempt out the very smallest counties and instead require them to guarantee access to a mail ballot if they have any confined electors. We are also concerned that the bill does not directly address the cost share between the SOS and the counties. There is a current rulemaking in progress at the SOS on this cost share phenomenon but it is not completed yet. We would ask for clarifying language in the bill that guarantees the SOS will pay 45% of the cost of setting up these VSPCs in our county jails. I thank you for your time today and look forward to more conversation as the bill goes to the House floor. Thank you!
Beth DeHaven For themselves	I urge your yes vote on SB24-072. I have visited the Larimer County Jail twice so far this year to assist the League of Women Voters of Larimer County with registering eligible voters. We have been trained in how to interview, determine eligibility, and inform them of how to vote after they are registered. Many are surprised to learn that they have the right to vote. Many assume that having a past felony on their record (for which they have already served their time) prevents them from ever voting. In other words, the education and the opportunity are most appreciated! This bill would certainly expand the opportunity for education and encouragement so that the few confined electors that we have reached through our volunteer efforts could be expanded throughout the state to every county jail.