

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON ELECTIONS

Isaac G. Bryan, Chair

AB 544 (Bryan) – As Amended April 10, 2023

SUBJECT: Voting: county jails.

SUMMARY: Requires a county jail facility to establish an in-person polling location that allows eligible incarcerated individuals to register to vote and vote, as specified. Specifically, **this bill:**

- 1) Requires a county jail facility, for an election held on or after November 1, 2024, to provide a polling location. Defines a “polling location” for the purposes of this bill to mean a polling place, vote center, or other means at the county jail facility that permits an eligible incarcerated person to register to vote and vote, as specified.
- 2) Requires a county elections official to coordinate with the county sheriff or county jail facility administrator to establish a polling location at each county jail facility that permits an eligible incarcerated person to do any of the following at the polling location:
 - a) Return, or vote and return, the voter’s vote by mail (VBM) ballot.
 - b) Register to vote, conditionally register to vote, update the person’s voter registration, and vote pursuant to existing law.
 - c) Receive and vote a provisional ballot pursuant to existing law.
 - d) Receive a replacement ballot upon verification that the county elections official has not received a ballot for the same election from the voter. Permits an elections official, if they are unable to determine if the individual has received a ballot for the same election from the voter, to issue a provisional ballot.
 - e) Vote a regular, provisional, or replacement ballot using accessible voting equipment that provides for a private and independent voting experience.
- 3) Requires a county elections official to coordinate with the county sheriff or county jail facility administrator to design and implement a program to establish a polling location at each county jail facility at which an eligible incarcerated person may perform the election activities specified above in (2). Requires a plan describing the program to be posted on the county elections official’s internet website. Requires the Secretary of State (SOS), after consulting with county elections officials and county sheriffs, to adopt regulations prescribing best practices and minimum requirements for these programs.
- 4) Requires the county sheriff or county jail facility administrator to designate an employee as a voting coordinator at each county jail facility who shall be responsible for the facility’s compliance with the requirements of this bill. Requires the responsibilities of the voting coordinator to include, but not be limited to, all of the following:

- a) Ensuring voter registration forms are continuously available to incarcerated persons and providing them with information regarding how to complete the forms and relevant deadlines for completing them.
 - b) Ensuring the county jail facility maintains in its library updated nonpartisan voter education materials and information regarding the voting rights and eligibility of an incarcerated or formerly incarcerated persons, including information and materials published by the SOS and the county elections official.
 - c) At least 60 days prior to an election and continuing through election day, posting in a conspicuous location in housing and common areas to which incarcerated persons have access, informational flyers regarding the voting rights and eligibility of an incarcerated person or a person with a criminal history, including informational flyers published by the SOS and the county elections official. Requires the informational flyers to be translated in all languages required of the jurisdiction pursuant to state and federal law.
- 5) Requires the voting coordinator to make reasonable efforts to coordinate with the county elections official to implement the provisions in this bill.
 - 6) Require the voting coordinator to complete a training prepared by the SOS and made available on the SOS's internet website that includes, but is not limited to, information regarding voter rights, voter eligibility, polling place requirements, and other related elections laws as determined by the SOS.
 - 7) Permits the county sheriff or county jail facility administrator, at least 60 days prior to an election, in coordination with other government groups or non-profit organizations, to hold an informational session in a county jail facility that includes conducting in-person nonpartisan voter education efforts and providing nonpartisan voter education information and materials regarding voter eligibility requirements, deadlines, and steps to register to vote and vote.
 - 8) Requires the county sheriff or county jail facility administrator, at a minimum, to develop policies and procedures that do both of the following with respect to incarcerated persons:
 - a) Ensure all registration forms and completed vote by mail ballots are timely submitted to the appropriate elections official.
 - b) Ensure the secrecy of the ballot is protected pursuant to existing law.
 - 9) Requires the county sheriff to provide voter eligibility information for incarcerated or formerly incarcerated persons, as applicable, upon intake to, and discharge from, the county jail.
 - 10) Makes various findings and declarations.

EXISTING LAW:

- 1) Provides that a person entitled to register to vote shall be a United States citizen, a resident of California, not in prison for the conviction of a felony, and at least 18 years of age at the time of the next election. (California Constitution Article II, §§2, 4)
- 2) Requires the Legislature to provide for the disqualification of electors while mentally incompetent or serving a state or federal prison term for the conviction of a felony. (California Constitution Article II, §4)
- 3) Defines a “polling place” to mean a location where a voter casts a ballot and includes the following terms, as applicable: poll, polling location, and vote center. (Elections Code §338.5)
- 4) Requires a county elections official to mail a ballot to every active registered voter for every election in which the voter is eligible to participate, and provides that the distribution of VBM ballots to registered voters does not prevent a voter from voting in person at a polling place, vote center, or other authorized location. (Elections Code §3000.5)
- 5) Defines the term “conditional voter registration” to mean a properly executed affidavit of registration that is delivered by the registrant to the county elections official during the 14 days immediately preceding an election or on election day and which may be deemed effective after the elections official processes the affidavit, determines the registrant’s eligibility to register, and validates the registrant’s information, as specified. (Elections Code §2170 et seq.)
- 6) Requires a county elections official to offer conditional voter registration and voting at all permanent and satellite offices of the county elections official and all polling places in the county. (Elections Code §2170(d))
- 7) Authorizes any county, pursuant to the CVCA, to conduct elections in which every registered voter is mailed a ballot and vote centers and ballot drop-off locations are available prior to and on election day, in lieu of operating polling places for the election, subject to certain conditions. (Elections Code §4005)
- 8) Requires each county probation department to do both of the following:
 - a) Establish and maintain on the county probation department’s Internet Web site a hyperlink to the Internet Web site at which information provided by the SOS regarding voting rights for persons with a criminal history may be found.
 - b) Post, in each probation office where probationers are seen, a notice that contains the Internet Web site address at which information provided by the SOS regarding voting rights for persons with a criminal history may be found. (Elections Code §2105.5(b))

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

1) **Purpose of the Bill:** According to the author:

California law already allows eligible voters held in jails, including those held pre-trial for lack of bail, held post-sentence, or held due to a probation or parole violation, to register and vote. In practice, many counties have vote by mail programs to facilitate voting in county jails. However, statistics indicate that incarcerated persons—a group that is overwhelmingly comprised of people from low-income communities of color—still experience significant barriers to voting and to accessing voter educational materials which results in very low voter turnout among this population of eligible voters. Fostering the right to vote and making voting materials and information accessible for eligible incarcerated persons is essential.

There are models of voter engagement in California and in other states that have increased voter participation among those held in local jails, providing safe, secure elections and improved access for incarcerated persons. AB 544 improves access for people detained at a county jail to exercise their rights to register to vote and vote by requiring a county jail facility to establish an in person polling location that allows an incarcerated person to return their completed vote by mail ballot, update their voter registration, conditionally register to vote, and vote.

Additionally, AB 544 requires county elections officials to coordinate with county sheriffs or jail facility coordinators to design and implement a program to establish a polling location; requires voting coordinators at each county jail and training for those coordinators; allows in-person, nonpartisan voter educational and information sessions at the facilities; and requires the development of policies and procedures that ensure voter registration forms are timely submitted and the secrecy of the ballot is protected.

2) **Previous Legislation to Expand and Restore Voting Rights to Individuals with Criminal Histories:** The Legislature has taken steps to increase accessibility to the electoral process for incarcerated individuals. In 2016, AB 2466 (Weber), Chapter 757, Statutes of 2016 was signed into law and conformed state law to a 2014 Superior Court ruling in *Scott et al. v. Bowen* (2014) No. RG14-712570), in which the court found that individuals on post-release community supervision and mandatory supervision are eligible to vote under California Constitution Article II, Section 2, as specified, and clarified that the third category of the Criminal Justice Realignment Act sentencing – a term in county jail – likewise does not strip people of their constitutional right to vote.

Last session the Legislature approved ACA 6 (McCarty), Resolution Chapter 24, Statutes of 2020, which deletes provisions of the California Constitution that provide for the disqualification of electors while on parole for the conviction of a felony. ACA 6, was submitted to voters as Proposition 17 on the November 2020 statewide general election ballot and California voters approved Proposition 17 by over 58% of the vote. Additionally, AB 646 (McCarty), Chapter 320, Statutes of 2020 was signed into law and provided the implementing language for ACA 6.

- 3) **In-Person Voting for Incarcerated Individuals:** There are models of voter engagement in California and in other states that have increased voter participation among those held in local jails, providing safe, secure elections and improved access for incarcerated persons. In 2020, the Los Angeles (LA) County Registrar-Recorder/County Clerk, in collaboration with the LA County Sheriff's Department and organizations in the community, launched the "We All Count" campaign to educate and assist eligible voters detained in LA County jails with the registration and voting process. The campaign resulted in 1,700 incarcerated voters registered at two jail facilities in LA County. Additionally, during the March 2020 presidential primary election, an in-person voting opportunity was established at the Century Regional Detention Facility and over 90 individuals cast their ballot inside the jail facility. During the November 2022 statewide general election, LA County expanded their program to a second detention facility and over 40 individuals cast their ballots inside the two jail facilities.

Also during the 2020 election cycle, Cook County jail in Chicago, Illinois successfully established its first jail-based in-person polling location. In 2019, the Illinois Governor signed legislation that required election authorities in a county with a population over three million to collaborate with the primary county jail to provide in-person voting to eligible individuals. During the November 2020 statewide general election, more than 2,000 of the 5,400 incarcerated in Cook County jail (about 37% of the jail's population) cast a ballot. Before polling stations were established in jail, voter turnout via mail-in ballots was less than 7% of the incarcerated population. By contrast, the first year that polling stations were introduced inside, voter turnout increased to 37% – a higher rate than registered voters in the City of Chicago.

Subsequently, in 2021, legislation was signed into law that expanded in-person voting in jails, and permitted a county with a population of less than three million to establish a temporary polling location at the county jail, as specified. Subsequently, in June 2022, Will County became the second Illinois county to establish a polling location at its jail. Approximately 600 people were detained in Will County jail, and according to county election officials, during the June 2022 primary statewide election, 48 people in the jail (approximately 8%) voted.

Other jurisdictions that have made in-person voting available in their local jail facilities include: Washington, D.C., Denver, Colorado, and Harris County, Texas.

- 4) **Unique Barriers and Recent Research:** A 2020 Prison Policy Initiative report, "Eligible but Excluded: A guide to removing the barriers to jail voting," discusses that while most individuals in local jails are legally eligible to vote, in practice many are unable to exercise those rights. According to the report, the main reasons for this include: most people in jail have not been convicted of the charges on which they are being held (also known as being detained "pretrial") and pretrial detention does not disqualify someone from voting; people in jail who are serving post-conviction sentences have typically been convicted of misdemeanors and few states disenfranchise people serving time for misdemeanor convictions; and, not all states disenfranchise individuals on probation or parole.

The report further discusses several barriers that prevent those in jail from voting. Voter registration and ballot-casting related barriers include confusion about voter eligibility requirements for justice involved individuals and deadlines for registering to vote and casting

a ballot. For instance, some states require personal identification (e.g., a social security number or driver's license number) in order to register or cast a ballot, which can be problematic because when an individual is arrested and detained in jail their personal effects, such as identifications, are typically confiscated. Moreover, incarcerated people have limited or no access the internet or various paper resources, making it significantly challenging to access voting forms, election resources, or confirm a ballot has been received and/or accepted by election officials. Additionally, delays in jail mail may also impede the timely casting of ballots or voter registration forms.

The report further discusses barriers to obtaining and submitting a ballot. Some states limit who may vote by mail and typically do not recognize detention in jail as a valid justification to obtain a mail ballot. Additionally, the report discusses high population turnover rates in jails, also known as jail churn. According to the report, the average jail stay is between three to four weeks, however, many people are incarcerated for much shorter periods of time. Consequently, an individual may register to vote, but end up in jail on election day (or for the duration of the voting period). Conversely, an individual may register to vote while in jail, but be released prior to casting a ballot. In either scenario, a person's registration information will not match their status on election day, and thus the person may be unable to vote.

- 5) **Arguments in Support:** In support of this bill, the Law Enforcement Action Partnership writes:

The right to vote is a fundamental right of citizenship. It is an all-American opportunity to participate in society and contribute to one's community. Preventing incarcerated people from voting isolates them and separates them as second-class citizens. It does absolutely nothing to prevent crime.

We applaud California legislators for taking a first step in 2020, allowing released incarcerated persons completing their parole to exercise their right to vote. Although the state is making strides in restoring voting rights, most people in jail do not get the opportunity to exercise these rights. Most jail-based voter programs rely on absentee voting or voting by mail. Voting by mail in jails has resulted in low participation rates. This is in part because jail administrators generally lack training about voting laws or lack support from county elections officials. In addition, voters must be pre-registered to vote from jail months before the election for their ballots to arrive on time.

- 6) **Related Legislation:** ACA 4 (Bryan) repeals provisions of the California Constitution that prohibit an individual from registering to vote if they are imprisoned in a state or federal prison for a conviction of a felony. ACA 4 is also being heard in this committee today.

AB 1595 (Bryan) makes conforming changes to state law if ACA 4 is approved by the Legislature and subsequently approved by the voters. AB 1595 is also being heard in this committee today.

REGISTERED SUPPORT / OPPOSITION:**Support**

Ella Baker Center for Human Rights (Co-Sponsor)
Initiate Justice (Co-Sponsor)
A New Path
ACLU California Action
Alameda County Sheriff-Coroner Yesenia Sanchez
Asian Americans Advancing Justice - Asian Law Caucus
Asian Pacific Environmental Network (APEN)
Asian Prisoner Support Committee
Bay Rising
Bend the Arc: Jewish Action
California Alliance for Youth and Community Justice
California Catholic Conference
California Environmental Voters (formerly CLCV)
California for Safety and Justice
California Innocence Coalition
California Nurses Association
Californians United for a Responsible Budget
City of Oakland Mayor Sheng Thao
Communities United for Restorative Youth Justice (CURYJ)
Courage California
Death Penalty Focus
Dignity and Power Now
Disability Rights California
Empowering Pacific Islander Communities (EPIC)
Essie Justice Group
Human Impact Partners
Immigrant Legal Resource Center
Indivisible Yolo
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Law Enforcement Action Partnership
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
League of Women Voters of California
MILPA (Motivating Individual Leadership for Public Advancement)
Mujeres Unidas Y Activas
National Association of Social Workers, California Chapter
National Center for Lesbian Rights
North Bay Jobs with Justice
Oakland Privacy
Oakland Rising
Orange County Rapid Response Network
People's Budget Orange County
Pillars of the Community

Pursue Justice
San Francisco Public Defender
Santa Cruz Barrios Unidos INC.
Secure Justice
SEIU California
Showing Up for Racial Justice (SURJ) Bay Area
Showing Up for Racial Justice North County San Diego
Smart Justice California
Starting Over, INC.
Stop the Musick Coalition
SURJ Marin - Showing Up for Racial Justice
Team Justice
The Resistance Northridge - Indivisible
The Restaurant Opportunities Center of Los Angeles
The San Diego LGBT Community Center
The Sentencing Project
The Transformative In-prison Workgroup
Together We Will/indivisible - Los Gatos
Transforming Justice OC
Transitions Clinic Network
Urban Peace Institute
White People 4 Black Lives
Women's Foundation California
Young Women's Freedom Center

Opposition

None on file.

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