

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 646 (McCarty) – As Amended March 13, 2019

**SUBJECT:** Elections: voter eligibility.

**SUMMARY:** Permits a person who is on parole for the conviction of a felony to register to vote and to vote, if voters approve a corresponding constitutional amendment. Specifically, **this bill:**

- 1) Deletes provisions of law that prohibit a person who is on parole for the conviction of a felony from voting, registering to vote, or pre-registering to vote and instead, allows a parolee to pre-register, register, and vote.
- 2) Provides that the provisions of this bill are operative only if ACA 6 (McCarty) is approved by the voters.
- 3) Makes other technical and conforming changes.

**EXISTING LAW:**

- 1) Permits a person who is a United States citizen, a resident of California, not imprisoned or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election, to register to vote.
- 2) Requires the Legislature to provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony.
- 3) Permits a person who is a United States citizen, a resident of California, not imprisoned or on parole for the conviction of a felony, and at least 16 years of age, to pre-register to vote.
- 4) Defines the following terms described above:
  - a) "Imprisoned" to mean currently serving a state or federal prison sentence.
  - b) "Parole" to mean a term of supervision by the Department of Corrections and Rehabilitation.
  - c) Provides that "conviction" does not include a juvenile adjudication made pursuant existing law.
- 5) Requires the county elections official to cancel a person's affidavit of registration upon proof that the person is presently imprisoned or on parole for the conviction of a felony.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

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

AB 646 is the companion bill for the Assembly Constitutional Amendment (ACA) 6 Free the Vote Act. This legislation will serve to update any elections code that upon passage of the ACA will correctly indicate that people on parole are able to vote. By returning the vote to otherwise-eligible adults on California parole, AB 646 (with ACA 6) would also serve the state's goal of supporting the successful reintegration of people coming home from prison. States that allow people on parole to vote have lower rates of recidivism; giving people on parole the right to vote gives them a stake in their communities and a voice in the issues that impact their daily lives.

- 2) **California Disenfranchisement Laws:** Article II, Section 4 of the California Constitution states that "[the] Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony." Elections Code Section 2101 is the statute that implements Article II, Section 4 of the California Constitution. Section 2101 states that "[a] person entitled to register to vote shall be a United States citizen, a resident of California, not imprisoned or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election." Moreover, under California law, any person who is imprisoned or on parole for the conviction of a felony is prohibited from voting and elections officials are required to cancel the voter registrations of such individuals. However, a person who is on probation for conviction of a felony is permitted to vote. Once an individual completes parole, then the right to vote is restored and they can re-register to vote.
- 3) **Citizen Initiative Effort:** In 2017, Initiate Justice proposed an initiative constitutional amendment, entitled "Eliminates Restrictions on Voting by Felons in Prison or on Parole Initiative Constitutional Amendment and Statute," to change the California Constitution and eliminate existing restrictions on pre-registering to vote, registering to vote, and voting by persons while they are in prison or on parole for the conviction of a felony. Under the California Constitution, in order to qualify for the ballot, a constitutional amendment petition must contain signatures equal to 8 percent of the most recent gubernatorial vote (585,407 signatures were required at the time). The ballot measure did not obtain the necessary signatures and failed to qualify for the ballot.
- 4) **States and Felony Disenfranchisement:** According to a 2018 report by the National Conference of State Legislatures (NCSL), understanding felony disenfranchisement laws can be challenging as the laws vary tremendously across states. The NCSL report points out that in two states - Maine and Vermont - felons never lose their right to vote, even while they are incarcerated. In 14 states and the District of Columbia, felons lose their voting rights only while incarcerated. In 22 states, felons lose their voting rights during incarceration, and for a period of time after, typically while on parole and/or probation. In 12 states, felons lose their voting rights indefinitely for some crimes, or require a governor's pardon in order for their voting rights to be restored, or face an additional waiting period after completion of sentence (including parole and probation) before voting rights can be restored.

According to NCSL, states that provide for "automatic restoration" of voting rights does not mean that voter registration is automatic. Typically, prison officials inform election officials that an individual's rights have been restored and the person is responsible for re-registering through normal processes. Some states, like California, require that voter registration information be provided to formerly incarcerated people.

The report also points out that the general trend has been toward reinstating the right to vote at some point. Between 1996 and 2008, 28 states passed new laws on felon voting rights:

- Seven repealed lifetime disenfranchisement laws, at least for some ex-offenders.
- Two gave probationers the right to vote.
- Seven improved data-sharing procedures among state agencies.
- Nine passed requirements that ex-offenders be given information and/or assistance in regaining their voting rights at the time they complete their sentence.
- Twelve simplified the process for regaining voting rights, for instance, by eliminating a waiting period or streamlining the paperwork process.

More recently, last year in Florida a citizen initiated constitutional amendment restored the right to vote for those with prior felony convictions, with certain exceptions. Additionally, the New York Governor issued an executive order removing the restrictions on parolees' right to vote and Louisiana passed a bill allowing any person who has not been incarcerated in the last 5 years (those on probation or parole) to be able to vote.

- 5) **Initiate Justice Survey:** According to a March 2019 report by Initiate Justice, there are approximately 162,000 citizens in the state (110,000 in state prison, 12,000 in federal prison, and 40,000 on parole) that are currently incarcerated in state prisons or on parole for the conviction of a felony that do not have the right to vote. In 2017, Initiate Justice launched a campaign to restore voting rights to California citizens who are currently incarcerated in state prison or on parole. As part of their campaign, Initiate Justice conducted a survey of its 4,000+ incarcerated members in 35 California state prisons and members on parole to better understand whether those who are incarcerated and on parole want to be able to vote, the political issues they care about most, ways in which they are currently civically engaged despite being denied the right to vote, and their insights on the types of public investments that could prevent incarceration and promote public safety. The survey received 1,085 responses and found that only 37% voted before incarceration and 98% said they would vote if they could because they want to have a voice in society, feel more connected and contribute positively to their community, and have a say in our political system.
- 6) **Arguments in Support:** One of the sponsors of this measure, the American Civil Liberties Union of California, writes:

Felony disenfranchisement policies disproportionately impact people of color: three out of four men leaving California prisons today are either African American, Latino, or Asian American. Giving people who have finished their prison sentences access to civic participation is a deeply effective way to assure

their successful reintegration. A 2016 study found that formerly incarcerated people in Florida who had their voting rights restored were less likely to commit crimes in the future: 0.4%, compared to an overall recidivism rate of 30%. Finally, blocking people on parole – our neighbors who are working, paying taxes, and raising families in this state – from having a voice [in] the policies that shape their lives undermines our democratic system of government. By disenfranchising people on parole, California misses out not only on their civic contributions but also the participation of other community members with convictions who mistakenly believe that they too are prohibited from voting.

Last year, both Florida and Louisiana rolled back their bans on voting for formerly incarcerated people. During just this legislative session 20 states have introduced bills to improve voting rights for people with felony convictions.

- 7) **Related Legislation:** ACA 6 (McCarty), deletes provisions of the California Constitution that provides for the disqualification of electors while on parole for the conviction of a felony. ACA 6 is awaiting referral from the Assembly Rules Committee.

AB 787 (Gipson), also being heard in this committee today, requires a county or city and county that operates a jail facility to allow organizations to conduct in-person voter registration activities, as specified.

- 8) **Previous Legislation:** AB 2466 (Weber), Chapter 787, Statutes of 2016, conformed state law to the Superior Court ruling in *Scott v. Bowen*, in which the court found that individuals on post-release community supervision and mandatory supervision are eligible to vote under Article II, Section 2 of the California Constitution, as specified, and made other significant changes to voter eligibility provisions of law, as specified.

## REGISTERED SUPPORT / OPPOSITION:

### Support

American Civil Liberties Union of California (co-sponsor)  
 Californians United for a Responsible Budget (co-sponsor)  
 Initiate Justice (co-sponsor)  
 League of Women Voters of California (co-sponsor)  
 Asian Americans Advancing Justice – California  
 Bend the Arc: Jewish Action  
 California Calls  
 California Coalition for Women Prisoners  
 Californians for Safety and Justice  
 California League of Conservation Voters  
 Center for Employment Opportunities  
 Community Works  
 Council on American-Islamic Relations, California  
 Courage Campaign  
 Dēmos  
 East Bay Community Law Center  
 FairVote

Friends Committee on Legislation of California

Indivisible CA: StateStrong – a coalition of the following Indivisible groups:

All Rise Alameda  
Audaz – Indivisible District 40  
Building the Base Face to Face  
Cloverdale Indivisible  
Contra Costa MoveOn  
Defending Our Future: Indivisible CA 52  
El Cerrito Progressives  
Feminists in Action Los Angeles  
Indi Squared  
Indivisible 30/Keep Sherman Accountable  
Indivisible 36  
Indivisible 41  
Indivisible CA-3  
Indivisible CA29  
Indivisible CA-33  
Indivisible CA-37  
Indivisible CA-39  
Indivisible CA-43  
Indivisible East Bay  
Indivisible Marin  
Indivisible Media City Burbank  
Indivisible Normal Heights  
Indivisible North Oakland Resistance  
Indivisible North San Diego County  
Indivisible OC 46  
Indivisible OC 48  
Indivisible Sacramento  
Indivisible San Bernardino  
Indivisible San Jose  
Indivisible Sausalito  
Indivisible Sebastopol  
Indivisible SF  
Indivisible SF Peninsula and CA-14  
Indivisible Sonoma County  
Indivisible South Bay LA  
Indivisible Stanislaus  
Indivisible Suffragists  
Indivisible Ventura  
Indivisible Windsor  
Indivisible Yolo  
Indivisible: San Diego Central  
Indivisibles of Sherman Oaks  
Livermore Indivisible  
Mill Valley Community Action Network  
Nothing Rhymes with Orange  
Orchard City Indivisible  
Orinda Progressive Action Alliance

Our Revolution Long Beach  
RiseUp  
Santa Cruz Indivisible  
SFV Indivisible  
Tehama Indivisible  
The Resistance Northridge  
The Resistance Sacramento/Elk Grove  
TWW/Indivisible – Los Gatos  
Vallejo-Benicia Indivisible  
Venice Resistance  
Women’s Alliance Los Angeles  
Indivisible East Bay  
Indivisible Ventura  
Institute for Democratic Education and Culture dba SpeakOut  
Interfaith Council of Contra Costa  
Lawyers’ Committee for Civil Rights of the San Francisco Bay Area  
LitLab  
National Center for Youth Law  
RYSE  
Showing Up for Racial Justice Bay Area  
SURJ Contra Costa County  
Tides Advocacy  
University of California Student Association  
Voice of the Experienced  
Women’s Building of San Francisco  
Zeta Phi Beta Sorority, California membership

**Opposition**

None on file.

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