

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Marc Berman, Chair
AB 787 (Gipson) – As Introduced February 20, 2019

SUBJECT: Elections: voter registration.

SUMMARY: Requires a county or city and county that operates a jail facility to allow organizations to conduct in-person voter registration activities, as specified. Specifically, **this bill:**

- 1) Requires a county or city and county that operates a jail facility to allow organizations to conduct in-person voter registration activities, including, but not limited to, providing vote by mail (VBM) ballot applications, in each jail facility.
- 2) Requires a county or city and county that operates a jail facility to develop public policies and criteria for organizations conducting the voter registration activities described above that, at a minimum, satisfies all of the following:
 - a) Prohibits a jail facility from denying admittance of an individual member from an organization unless the jail facility has a reasonable basis to determine that allowing the individual to have personal conduct with individuals in the jail facility would create an unreasonable risk to the security of the jail facility;
 - b) Requires a jail facility to provide an individual who is denied admittance to the jail facility with written notice of the denial. Requires the notice to include the factual basis and rationale for the denial and information regarding the opportunity to, and procedures for, appeal of the denial;
 - c) Requires a jail facility to provide an individual member of an organization who is denied admittance to the jail facility an opportunity to appeal that decision; and,
 - d) Requires a jail facility to provide an individual whose appeal described above is denied with written notice of the denial. Requires the notice to include the factual basis and rationale for the denial.
- 3) Requires a sheriff of the county or city and county in which a jail facility is located to publish a copy of the policies and criteria described above on the sheriff's internet website.
- 4) Requires a county or city and county that operates a jail facility to maintain a centralized, current list of individuals and organizations approved to conduct voter registration activities. Requires the list to be accessible to officers and personnel assigned to process and admit individuals or organizations into the jail facilities.
- 5) Requires a county or city and county that operates a jail facility to provide public notice of any proposed change to the policies and criteria described above at least 14 days before making the change. Requires the county or city and county to create a public comment process and allow for public comment on proposed changes to those policies during the

notice period. Requires the sheriff for the county a city and county in which the jail is located to publish all final policy changes on the sheriff's internet website.

- 6) Repeals provisions of law that require the clerk of the superior court clerk of each county to furnish the SOS and the county elections official, not less than the first day of every month, a statement showing the names, addresses, and dates of birth of all persons who have been committed to state prison as the result of a felony conviction, as specified.
- 7) Defines the following terms for the purposes of this bill:
 - a) "Conviction" does not include a juvenile adjudication pursuant to existing law.
 - b) "Department" to mean the California Department of Corrections and Rehabilitation (CDCR).
 - c) "Parole" to mean a term of supervision by CDCR pursuant to existing law.
 - d) "Imprisoned" to mean currently serving a state or federal prison sentence pursuant to existing law.
- 8) Requires the department to provide to the Secretary of State (SOS), on a weekly basis and in a format prescribed by the SOS, the identification information described below for all of the following persons:
 - a) Persons imprisoned, or on parole, for the conviction of a felony and under the jurisdiction of the department.
 - b) Persons released from imprisonment, or released from parole, for the conviction of a felony and no longer under the jurisdiction of the department.
- 9) Requires the personal identification information for the purposes of bill to include all of the following:
 - a) All known first and last names;
 - b) Last known address;
 - c) Date of birth;
 - d) Last four digits of the person's social security number, if available; and,
 - e) Driver's license or state-issued identification number, if available.
- 10) Requires the SOS to provide the information on the persons listed above to county elections officials within three days of receipt of the information from the department.
- 11) Requires a county elections official, upon receipt of information from the SOS, to do all of the following:

- a) Cancel the affidavit of registration of any person imprisoned, or on parole, for the conviction of a felony and under the jurisdiction of the department whose registration information matches at least three of the personal identifying data points described above.
- b) Notify a person released from imprisonment, or released from parole, for the conviction of a felony and no longer under the jurisdiction of the department, and whose last known address is within county, that the person's voting rights are restored and advise the person that if the person is otherwise entitled to register to vote the person may register to vote. Requires the county elections official to also provide the person with information regarding the procedure for registering to vote.

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:
 - a) "Imprisoned" to mean currently serving a state or federal prison sentence.
 - b) "Parole" to mean a term of supervision by CDCR.
 - c) Provides that "conviction" does not include a juvenile adjudication made pursuant existing law.
- 5) Requires the county elections official to cancel the affidavits of registration upon the proof that the person is presently imprisoned or on parole for the conviction of a felony.
- 6) Declares it is the intent of the Legislature that voter registration be maintained at the highest possible level. Requires the SOS to adopt regulations requiring each county elections official to design and implement programs intended to identify qualified electors who are not registered to vote, and to register those person to vote, as specified.
- 7) Requires the clerk of the superior court of each county to furnish the SOS and the county elections official, not less than the first day of every month, a statement showing the names, addresses, and dates of birth of all person who have been committed to state prison as the result of a felony conviction, as specified. Requires the SOS or county elections official to cancel the affidavits of registration of those person who are currently imprisoned or on parole for the conviction of a felony.
- 8) Requires CDCR to do both of the following:
 - a) Establish and maintain on the department's internet website a hyperlink to the internet website at which the SOS's voting rights guide for person with a criminal history may be

found; and,

- b) Post, in each parole office where parolees are seen, a notice that contains the internet website address at which the SOS's voting rights guide for persons with a criminal history may be found.
- 9) 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 the SOS's voting rights guide for persons with a criminal history may be found; and
 - b) Post, in each county probation department office where probationers are seen, a notice that contains the internet website address at which the SOS's voting rights guide for persons with a criminal history may be found.
- 10) Requires CDCR to provide to each parolee its jurisdiction, upon the completion of their parole, upon the parolee's request, information provided by the SOS regarding voting rights for persons with a criminal history.
- 11) Encourages each county probation department to notify persons that a printed version of information regarding voting rights for persons with a criminal history who are under the department's supervision is available upon request.
- 12) Requires each county probation department to provide each person under the department's supervision, upon the person's request, information provided by the SOS regarding voting rights for persons with a criminal history.
- 13) Requires the facility administrator of a local detention facility to develop written policies and procedures whereby the county registrar of voters allows qualified voters to vote in local, state, and federal elections, pursuant to election codes.

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

COMMENTS:

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

The U.S. is both a global leader, and an outlier, in felony disenfranchisement. In California, people currently incarcerated in state prisons or on parole for the conviction of a felony do not have the right to vote. Civic participation can be a critical aspect of re-entry and has been linked to reducing recidivism. A recent study surveying thousands of incarcerated people in California indicates that a majority of respondents want to have a positive impact in their communities and that voting would help prevent them from returning to prison.

Given California's felony disenfranchisement laws many people in California's criminal justice system are not accurately apprised of their voting rights. The

complexity of the laws and a lack of awareness about them have caused confusion and misinformation among formerly incarcerated communities, as well as probation officers and the general public. Many prospective voters have been confused about their eligibility to vote due to a criminal conviction or their changing status and are not given adequate information about their right to vote. Voting is a fundamental civil right and by ensuring that incarcerated people know how to do so, we can create an incentive for improved behavior while in jail and potentially reduce recidivism.

- 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, elections officials are required to cancel the voter registrations of individuals who are imprisoned or on parole for the conviction of a felony. 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) **Criminal Justice Realignment & Inmate Act (CJRA), Confusion over Voting Eligibility, and Previous Legislation:** While it would seem that the determination of whether an individual is eligible to vote is fairly straightforward, there has been a great deal of confusion about what constitutes being "imprisoned" for the conviction of a felony. For instance, it is not uncommon for a person who has been convicted of a felony to be ordered to serve time in county jail as a condition of probation. To the extent that a person is serving time in county jail as a condition of probation, that person is not considered to be "imprisoned" for the conviction of a felony under California law, and thus, that person remains eligible to vote, even while the person is in the county jail.

In 2011, the confusion became greater due to the enactment of a series of bills known as the CJRA. Prior to realignment, while some felony sentences were served in county or city jails, most felony sentences were served in state prison. Under realignment, however, certain lower-level felony offenders, who would have been sentenced to state prison, are now sentenced to serve their time in custody in county jail. Additionally, after release from custody and depending on the offense and sentence, realignment changed the state's parole system and created the option for an inmate to be released to a term of "post-release community supervision" (PRCS) (under the control of the local probation department) or mandatory supervision. Thus, the enactment of the CJRA has caused an even greater deal of confusion and raised questions about the eligibility to vote for convicted felons sentenced to these new programs. Specifically, the question arose as to whether individuals on PRCS and mandatory supervision were considered "on parole" and whether persons serving a felony sentence in county jail were "imprisoned" for the purposes of Article II, Section 4 of the California Constitution and Section 2101 of the Elections Code.

In an effort to clarify these questions, various lawsuits were filed and in 2016, the Legislature approved and the Governor signed AB 2466 (Weber), Chapter 787, Statutes of 2016, which

conformed state law to a Superior Court ruling in *Scott v. Bowen*, in which the court found that individuals on PRCS and mandatory supervision are eligible to vote under Article II, Section 2 of the California Constitution, as specified.

4) **Which Persons with a Criminal History are Eligible to Vote?** According to information on the SOS's internet website a person with a criminal history who *is eligible* to register and vote include the following:

- An individual who incarcerated in a county jail and one of the following:
 - Serving a misdemeanor sentence (a misdemeanor never affects an individual's right to vote)
 - Jailed as a condition of probation (misdemeanor or felony)
 - Serving a felony jail sentence
 - Awaiting trial
- An individual on probation
- An individual under mandatory supervision
- An individual on PRCS
- An individual on federal supervised release
- An individual with a juvenile wardship adjudication.

A person with a criminal history who is *not eligible* to register and vote include:

- An individual who is currently imprisoned in a state or federal prison
- An individual currently serving a state prison felony sentence in a county jail or other correctional facility
- An individual who is currently in county jail awaiting transfer to a state or federal prison for a felony conviction;
- An individual in county jail for a parole violation
- An individual who is currently on parole with the CDCR

5) **Facilitating Voter Registration and Previous Legislation:** Over the years various bills have been signed into law to help educate individuals with a criminal history about their voting rights. AB 149 (Weber), Chapter 580, Statutes of 2013, requires a county probation department to either establish a hyperlink on its internet website to the SOS's voting rights guide for persons with a criminal history or to post a notice that contains that the SOS's

internet website address where the voting rights guide can be found.

In 2014, two bills were enacted to further this effort. AB 2243 (Weber), Chapter 899, Statutes of 2014, requires the CDCR to make specified information relating to voting rights of incarcerated persons available to the public, and parolees under their jurisdiction and SB 1063 (Block), Chapter 624, Statutes of 2014, requires state and local juvenile detention facilities, as specified, to identify individuals housed in those facilities who are of age to register to vote and not in prison or on parole for the conviction of a felony, and to provide and assist in completing affidavits of registration and returning the completed voter registration cards, as specified.

Moreover, AB 1344 (Weber), Chapter 796, Statutes of 2017, requires the CDCR and county probation departments to provide specified voting rights information to persons under their jurisdiction upon request of such person, as specified.

- 6) **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. And 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, however, 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.

- 7) **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.
- 8) **Arguments in Support:** With a support if amended position, the California Association of Clerks and Election Officials writes:

AB 787 will ask the jail facilities to create policies and procedures to ensure that voter registration, vote by mail and other voting opportunities are available to those eligible. It also eliminates the requirement that the Superior Court furnish the Secretary of State and the county elections official a list of people who have been committed to a state facility for a felony conviction.

Your proposed amendment repeals the requirement that Superior Courts furnish county elections officials with a list of people who have received felony convictions, and instead places the burden of furnishing this information on the California Department of Corrections and Rehabilitation (CDCR). Currently the CDCR and the Superior Courts furnish information to the Secretary of State and counties, however this information can be incomplete and/or faulty. (Note: the CDCR data is disseminated to the counties through VoteCal, California's statewide voter registration database and the Superior Courts typically provide hard copies.)

Our committee would like to propose that your bill provide that the CDCR and Secretary of State collaborate so that voter record judgments are verified and final before being sent to counties and before they can affect a voter's record. The motivation for our proposal is that counties currently receive information through VoteCal and the Superior Court that could result in the cancellation of a voter's record and counties have no means to definitively validate the accuracy of the data before acting upon it. Having all data flow through VoteCal (Secretary of State) where the system looks for data comparisons to determine a match before sending the match to the county to cancel the registration removes all ambiguity

for the county.

Additionally, our committee would like to propose that the Secretary of State or CDCR perform the duties described in 2212 (e)(2) since the counties do not have access to information that would indicate that a person's voting rights have been restored. The Secretary of State and CDCR have access to such person's last known address through VoteCal.

- 9) **Related Legislation:** ACA 6 (McCarty), amends the California Constitution to allow individuals who are on parole for conviction of a felony to vote if they otherwise meet all other eligibility requirements. ACA 6 is pending referral from the Assembly Rules Committee.

AB 646 (McCarty), which is also being heard in this committee today, is the implementing legislation for ACA 6.

AB 1036 (Aguiar-Curry), among other provisions, requires the SOS to update the regulations that require a county elections official to design and implement programs intended to identify qualified electors who are not registered to vote, and to register those person to vote, as specified. AB 1036 passed out of this committee on a 5-1 vote, and is pending in the Assembly Appropriations Committee.

- 10) **Previous Legislation:** AB 3115 (Gipson) of 2018, would have required each county jail to allow at least one organization to provide a voter education program in the county jail, as specified. AB 3115 was later amended and used for another unrelated purpose.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Public Defender's Office
American Civil Liberties Union of California
Anti-Recidivism Coalition
Asian Americans Advancing Justice – California
California Association of Clerks and Election Officials (if amended)
California Public Defenders Association
Courage Campaign
Criminal Justice Clinic of UC Irvine School of Law
Drug Policy Alliance
Ella Baker Center for Human Rights
Further The Work
Initiate Justice
League of Women Voters of California
Los Angeles County Board of Supervisors
Mi Familia Vota
Resilience Orange County
White People 4 Black Lives

Opposition

None on file.

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