

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON ELECTIONS  
Isaac G. Bryan, Chair  
AB 1595 (Bryan) – As Amended April 12, 2023

**SUBJECT:** Elections: eligibility to vote.

**SUMMARY:** Permits a person who is in prison to register to vote and to vote, if voters approve a corresponding constitutional amendment. Specifically, **this bill:**

- 1) Repeals provisions of law that do the following:
  - a) Prohibit a person who is imprisoned for the conviction of a felony from voting, registering to vote, or pre-registering to vote.
  - b) Require a county elections official, and permit the Secretary of State (SOS), to cancel the registration of a voter upon proof that the person is imprisoned for the conviction of a felony.
  - c) Require the California Department of Corrections and Rehabilitation (CDCR) to provide information to the SOS on a weekly basis about persons imprisoned for the conviction of a felony and under the jurisdiction of CDCR, and about persons on parole or persons released from imprisonment for the conviction of a felony and no longer under the jurisdiction of CDCR.
- 2) Specifies that a person incarcerated in a state or federal prison shall retain the right to vote by mail during their incarceration in any election in which the person would be eligible to vote based on the person's last voluntary residence provided the person otherwise fulfills all voting requirements.
  - a) Provides, for these purposes, that the term "voluntary residence" means the incarcerated person's last legal residence in the state before their conviction of the crime for which the person is incarcerated.
  - b) Prohibits a person sentenced to the custody of the state or federal government from using the place of their incarceration as their place of residence for the purpose of qualifying to vote.
  - c) Requires the elections official charged with the duty of conducting an election at the incarcerated person's voluntary residence to provide all materials required to be provided to a vote by mail voter under state law, in the same time period required by state law, to the incarcerated person at their location of incarceration as provided by the incarcerated person to the elections official.
  - d) Provides that this provision does not apply to an individual whose last legal residence immediately before their conviction was outside of the state.

- 3) Makes conforming and technical changes.
- 4) Provides that its provisions shall become operative only if ACA 4 (Bryan) of the current legislative session is approved by voters and takes effect.

**EXISTING LAW:**

- 1) Authorizes a person to vote if the person is a United States (US) citizen, at least 18 years of age, and a resident of California. (California Constitution, Article II, §2(a))
- 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) Provides that an elector disqualified from voting while serving a state or federal prison term, as specified, shall have their right to vote restored upon the completion of their prison term. (California Constitution, Article II, §2(b))
- 4) Provides that a person entitled to register to vote shall be a US citizen, a resident of California, not imprisoned for the conviction of a felony, and at least 18 years of age at the time of the next election. (Elections Code §2101(a)) Provides that a person entitled to preregister to vote shall be a US citizen, a resident of California, not imprisoned for the conviction of a felony, and at least 16 years of age. (Elections Code §2101(b))
- 5) Requires a county elections official, and permits the SOS, to cancel the registration of a voter upon proof that the person is presently imprisoned for the conviction of a felony. (Elections Code §2201)
- 6) Requires CDCR to provide information to the SOS on a weekly basis about persons imprisoned for the conviction of a felony and under the jurisdiction of CDCR, and about persons on parole or persons released from imprisonment for the conviction of a felony and no longer under the jurisdiction of CDCR. (Elections Code §2212)
- 7) Provides that "residence" for voting purposes means a person's domicile. Describes the domicile of a person as that place in which the person's habitation is fixed, wherein the person has the intention of remaining, and to which, whenever the person is absent, the person has the intention of returning. Provides that a person may have only one domicile at a given time, but may have more than one residence. (Elections Code §349)
- 8) Provides that a person who leaves their home to go into another state or precinct in the state for temporary purposes merely, with the intention of returning, does not lose the person's domicile. (Elections Code §2021)
- 9) Provides that a person does not gain or lose a domicile for voting purposes solely by reason of the person's presence or absence from a place while in prison. (Elections Code §2025)

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

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

California voters should have the opportunity to decide if our Democracy is one that thrives with the participation of everyone. ACA 4 [and AB 1595] will give the people of California a choice – should we be an inclusive, democratic society, or should we turn back to our own dark history of racially motivated disenfranchisement, voter suppression, and restriction of civil rights and participation.

The rates of these legal barriers to civic participation and social engagement are shocking: Black men are disenfranchised at a rate 10 times that of white men; Black women at a rate 5 times greater; Latino and Native American men at a rate double that of white men.

This disenfranchisement also disproportionately impacts our veterans, many of whom return to civilian life with visible and invisible trauma, and face a likelihood of becoming unhoused and arrested that is significantly higher than the general public. California currently has nearly 7,000 veterans who are denied their voting rights because they are incarcerated.

There are States and U.S. territories that allow everyone to participate in the democratic process. Maine, Vermont, Washington D.C. and Puerto Rico all allow people in prison to vote. ACA 4 [and AB 1595] will allow Californians to decide whether they want California to join other states who have moved away from disenfranchising their community members and allow for an inclusive democratic society.

2) **California Disenfranchisement Laws:** Article II, Section 4 of the California Constitution provides “[t]he Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or serving a state or federal prison term 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 “[a] person entitled to register to vote shall be a United States citizen, a resident of California, not imprisoned for the conviction of a felony, and at least 18 years of age at the time of the next election.”

California law does not restrict the voting rights of people who are on probation or parole, or who are on other types of supervision as a result of a criminal proceeding (such as mandatory supervision, post-release community supervision, or federal supervised release). Similarly, state law does not restrict the voting rights of individuals who are in a local detention facility while doing any of the following: (1) serving a misdemeanor sentence, (2) serving jail time as a condition of probation, (3) serving a felony jail sentence, or (4) awaiting trial.

By contrast, a person who is in a local detention facility while serving a *state prison term* is not eligible to vote under existing law. Under certain circumstances, a person who is serving a state prison sentence may nonetheless be housed in a local detention facility.

- 3) **Voting Rights of People on Parole:** Until 2020, California law prohibited a person who was on parole for the conviction of a felony from registering to vote or voting. ACA 6 (McCarty, et al.), Res. Chapter 24, Statutes of 2020, proposed an amendment to the state constitution to allow a person who is on parole for the conviction of a felony to register to vote and to vote. ACA 6 was approved by the Assembly Elections & Redistricting Committee (the predecessor to this committee) by a 6-1 vote, and was approved on the Assembly Floor by a 54-19 vote. ACA 6 appeared on the ballot at the November 2020 statewide general election as Proposition 17. According to the final official election results prepared by the SOS, Proposition 17 was approved by the voters with 58.6% of ballots cast in favor of the amendment, and 41.4% cast in opposition.
- 4) **States and Felony Disenfranchisement:** According to information from the National Conference of State Legislatures (NCSL), state approaches to felon disenfranchisement vary tremendously. In two states (Maine and Vermont) and the District of Columbia, felons never lose their right to vote, even while incarcerated. California is one of 23 states in which felons lose their voting rights only while incarcerated, and receive automatic restoration of voting rights upon release. In 14 states, felons lose their voting rights during incarceration, and for a period of time after, typically while on parole or probation. In those states, a person may have to pay any outstanding fines, fees, or restitution before the person's voting rights are restored.

Finally, 11 states are more restrictive about reinstating a person's voting rights after a felony conviction. In some of those states, felons lose their voting rights indefinitely for some crimes, or may face an additional waiting period after completion of any sentence (including parole and probation) before voting rights can be restored. Other states require a person to receive a pardon, or to apply to a court or to the governor, to have their voting rights restored.

NCSL notes that over the last few decades, the general trend has been towards reinstating the right to vote at some point. NCSL identified the following actions that states have taken in just the last four years related to the restoration of voting rights:

## 2019

- Kentucky Gov. Andy Beshear signed an executive order to automatically restore the right to vote (and to hold public office) to certain offenders, excluding those convicted of violent crimes, sex crimes, bribery, or treason.
- Nevada enacted AB 431, restoring the right to vote to anyone convicted of a felony upon release from prison.
- Colorado enacted HB 1266, giving voting rights to individuals on parole.
- Washington enacted SB 5207, requiring that inmates be notified of the process for restoration of voting rights before leaving the authority of the department of corrections.

- Oklahoma HB 2253 clarified that persons convicted of a felony shall be "eligible to register to vote when they have fully served their sentence of court-mandated calendar days, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by the court."
- Florida Gov. Ron DeSantis signed SB 7066, which defined "completion of sentence" to include release from imprisonment, termination of any ordered probation, fulfillment of any terms ordered by the courts, termination of any ordered supervision, full payment of any ordered restitution and the full payment of any ordered fines, fees or costs.

## 2020

- California voters passed Proposition 17 restoring voting rights to citizens on parole (more details are provided above).
- Washington, D.C., passed B 825, allowing convicted felons to vote while incarcerated.
- Iowa Gov. Kim Reynolds issued an executive order restoring the voting rights of felons who have served their sentences, excluding certain categories of homicide and sexual abuse crimes.
- New Jersey enacted AB 5823, restoring the right to vote to people with a felony conviction upon release from prison and allowing people on parole or probation to vote.

## 2021

- Connecticut passed SB 1202 restoring voting rights to citizens on parole.
- New York passed SB 830 restoring voting rights to citizens on parole.
- Washington passed HB 1078 restoring voting rights to citizens on parole.
- Virginia Gov. Ralph Northam announced an executive action that will allow any person released from incarceration to qualify to have their voting rights restored.

## 2023

- New Mexico passed H 4 restoring voting rights to citizens on parole.
- Virginia Gov. Glenn Youngkin reversed the practice put in place by Gov. Ralph Northam in 2021, and began requiring individuals to apply for rights restoration once again.
- Minnesota passed HF 28 restoring voting rights to citizens on parole.

- 5) **Prior Initiative Effort:** In 2017, Initiate Justice proposed an initiative constitutional amendment, entitled "The Voting Restoration and Democracy Act of 2018," which would have eliminated restrictions on preregistering 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.
- 6) **Residence for Voting Purposes:** As detailed above, a person's legal residence for voting purposes is defined as the person's domicile, and a domicile is described as the place in

which a person's habitation is fixed, wherein the person has the intention of remaining, and to which, whenever the person is absent, the person has the intention of returning. For many Californians, the determination of the person's domicile for voting purposes is relatively straightforward; for any person who has only one residence as defined by state law, that person's residence is also the person's domicile.

State law also recognizes that there may be circumstances that result in a person's absence from a residence for an extended period of time, which nonetheless do not mean that the residence is no longer the person's domicile. State law, for example, provides that a person does not gain or lose a domicile solely by reason of the person's presence or absence from a place while employed in the service of the US or the State of California. Similarly, state law provides that a person does not gain or lose a domicile for voting purposes solely because of the person's presence or absence from a place while in prison.

If the state constitution were amended to end the disqualification of electors while serving a state or federal prison term for conviction of a felony (as is proposed by ACA 4 (Bryan) of the current legislative session), this provision of state law appears to provide a legal basis for a person who is in prison to register to vote and vote using the person's last residential address prior to the person's incarceration. This bill goes a step further, and provides that an incarcerated person retains the right to vote at the person's "last voluntary residence," while expressly prohibiting an incarcerated person from using the place of their incarceration as their place of residence for the purpose of qualifying to vote.

The provisions of this bill appear to override the otherwise generally-applicable provisions of law that are used to determine a person's residence for voting purposes, in the case of a person who is incarcerated in a state or federal prison. While many incarcerated individuals may consider their last voluntary residence to be their domicile, and to be the place where they have "the intention of remaining," and where they have "the intention of returning" when absent from that location, this will not necessarily be the case for all incarcerated individuals. For individuals who have been incarcerated for a long period of time, the person's last voluntary residence may be an address to which the person no longer has any connection. The individuals living at that address may have no relation to or connection with the person. In some circumstances, the address may no longer be a residential address at all (or may no longer exist). Furthermore, if a person no longer has a connection to the address that would be considered the person's domicile for voting purposes under this bill, that person may have little interest in the candidates and ballot measures for which the person is eligible to vote based on the domicile that is established by this bill.

As detailed above, Maine, Vermont, and the District of Columbia all permit persons who are incarcerated for felony convictions to vote while they are incarcerated. Those jurisdictions each take a slightly different approach for determining the residence for voting purposes of individuals who are incarcerated. In Maine, state law (Title 21-A, §112(14) of the Maine Revised Statutes) does not permit a person to register to vote in the municipality where the person is incarcerated (unless the person resided in the municipality prior to incarceration), and instead permits a person incarcerated in a correctional facility to apply to register to vote in any municipality where that person has previously established a fixed and principal home to which the person intends to return. Vermont state law (28 V.S.A. §807) permits an

incarcerated person to vote at the person's last voluntary residence and prohibits the person from using the place of the person's involuntary confinement as the person's place of residence for the purpose of qualifying to vote, similar to the approach proposed by this bill. Finally, the Code of the District of Columbia does not appear to expressly address the residence for voting purposes of individuals who are incarcerated. A Frequently Asked Questions document prepared by the District of Columbia Board of Elections, however, states that a person who is a resident of the District of Columbia jail may register to vote at the person's home address in the District or at the address of the District of Columbia jail if the person has been a resident of the jail for at least 30 days. The document also advises that an individual who is serving time in a federal facility should register to vote using the person's DC home address.

- 7) **California Prison Population:** According to information from CDCR, as of April 5, 2023, there are about 93,000 people in institutions and camps operated by CDCR. Additionally, data from the Federal Bureau of Prisons shows that approximately 14,000 individuals were incarcerated in federal prisons in California as of March 23, 2023. Not all of those individuals would become eligible to vote if the state constitution were amended to end the disqualification of electors while serving a state or federal prison term for conviction of a felony, as some of those individuals likely do not meet other requirements to register to vote and to vote (for instance, individuals who are not citizens or are not residents of California).
- 8) **Arguments in Support:** One of the co-sponsors of this bill, the League of Women Voters of California, wrote in support of a prior version of this bill:

Voting is a fundamental right of citizenship and people in prison maintain their citizenship throughout incarceration. Mass incarceration disproportionately impacts Black, Latino, and Indigenous Californians. Therefore, refusing people in prison voting rights results in a less representative electorate. Extending suffrage to California citizens serving a prison term is a moral imperative, sound public policy, and essential to achieving an inclusive democracy...

There are states and U.S. territories that allow everyone to participate in the democratic process. Maine, Vermont, Washington D.C., and Puerto Rico all allow people in prison to vote. In fact, the United States as a whole is a dramatic outlier in the community of developed global democracies. Nearly all Western European countries allow incarcerated people to vote, as do others around the world, including 28 European nations, Israel, Canada, Zimbabwe, Japan, Kenya, Peru, and others.

Additionally, here in California, we already facilitate elections in carceral settings. People in jails have the right to vote, and some jails already serve as polling places for the people who are inside each election – including in Los Angeles County.

- 9) **Related Legislation:** ACA 4 (Bryan), which is also being heard in this committee today, repeals a constitutional provision that provides for the disqualification of electors while serving a state or federal prison term, subject to the approval of the voters.

AB 544 (Bryan), which is also being heard in this committee today, requires a county jail facility to provide a polling location that permits any eligible incarcerated person to perform specified activities, including voting, for elections held on or after November 1, 2024.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Initiate Justice (Co-Sponsor) (prior version)  
League of Women Voters of California (Co-Sponsor) (prior version)  
A New Way of Life Reentry Project (prior version)  
ACLU California Action (prior version)  
Advancing Justice - Asian Law Caucus (prior version)  
Alliance for Boys and Men of Color (prior version)  
Alliance San Diego (prior version)  
Anti-Recidivism Coalition (prior version)  
Bay Rising (prior version)  
Black Los Angeles Young Democrats (prior version)  
Black Women Organized for Political Action (BWOPA) (prior version)  
California Black Power Network (prior version)  
California Federation of Teachers AFL-CIO (prior version)  
California Immigrant Policy Center (prior version)  
Californians United for A Responsible Budget (prior version)  
Change Begins With Me Indivisible Group (prior version)  
Chinese for Affirmative Action (prior version)  
Clergy and Laity United for Economic Justice  
Communities United for Restorative Youth Justice (CURYJ) (prior version)  
Community Health Councils (prior version)  
Courage California (prior version)  
Disability Rights California (prior version)  
East Bay Community Law Center (prior version)  
East Valley Indivisibles (prior version)  
Ella Baker Center for Human Rights (prior version)  
Empowering Pacific Islander Communities (EPIC) Fiscally Sponsored by Community Partners  
Esperanza Community Housing Corporation (prior version)  
Fair Chance Project (prior version)  
Friends Committee on Legislation of California  
Human Rights Watch (prior version)  
Immigrant Defense Advocates (prior version)  
Indivisible CA Statestrong (prior version)  
Indivisible Marin (prior version)  
Indivisible Yolo (prior version)  
Initiate Justice Action (prior version)  
Inland Empire United (prior version)  
Insight Prison Project, a Division of Five Keys Schools and Programs (prior version)  
Jewish Center for Justice (prior version)



Law Enforcement Action Partnership (prior version)  
Lawyers' Committee for Civil Rights of The San Francisco Bay Area (prior version)  
Legal Services for Prisoners with Children (prior version)  
Los Angeles LGBT Center (prior version)  
Los Angeles Urban League (prior version)  
MILPA (Motivating Individual Leadership for Public Advancement) (prior version)  
NARAL Pro-Choice California (prior version)  
National Association of Social Workers, California Chapter (prior version)  
NorCal Resist (prior version)  
Pillars of The Community (prior version)  
RYSE Center (prior version)  
Safe Return Project (prior version)  
Secure Justice (prior version)  
Showing Up for Racial Justice (SURJ) Bay Area (prior version)  
Showing Up for Racial Justice North County San Diego (prior version)  
Sister Warriors Freedom Coalition (prior version)  
South Asian Network (prior version)  
Starting Over, Inc. (prior version)  
Stonewall Democratic Club (prior version)  
Team Justice (prior version)  
The Black Alliance for Just Immigration (prior version)  
The Collective Healing and Transformation Project (prior version)  
The Resistance Northridge-Indivisible (prior version)  
The San Diego LGBT Community Center (prior version)  
The San Fernando Valley Young Democrats (prior version)  
The Santa Monica Democratic Club (prior version)  
The Transformative In-Prison Workgroup (prior version)  
The W. Haywood Burns Institute (prior version)  
Wellstone Democratic Renewal Club (prior version)  
1 individual

**Opposition**

None on file.

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