

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
ACA 4 (Bryan) – As Introduced February 6, 2023

SUBJECT: Elections: eligibility to vote.

SUMMARY: 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. Specifically, **this measure:**

- 1) Repeals a constitutional requirement for the Legislature to provide for the disqualification of electors while serving a state or federal prison term for the conviction of a felony.
- 2) Makes conforming and technical changes.

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) Prohibits a person who is imprisoned for the conviction of a felony from registering to vote. (Elections Code §2101)
- 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))

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of the Measure:** 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 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 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 Secretary of State, 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) **California Prison Population:** According to information from the California Department of Corrections and Rehabilitation (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 this measure becomes law, 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).
- 7) **Arguments in Support:** One of the co-sponsors of this measure, Initiate Justice, writes in support:

In 2020, over 5.1 million citizens in the United States were prohibited from voting because of their contact with the criminal legal system. This included over 50,000 Black people and over 77,000 Latinx people in California alone. 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.

Preserving the right to vote for all people, including those who are currently incarcerated, will have significant and positive impacts on community safety. The vast majority of people incarcerated in state prison – upward of 95% – will eventually return home. Data shows that people who vote while incarcerated and shortly thereafter are 50% less likely to ever be arrested.

California voters should have the opportunity to decide if our Democracy is one that thrives with the participation of everyone. ACA 4 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.

- 8) **Related Legislation:** AB 1595 (Bryan), which is also being heard in this committee today, is the implementing legislation for this constitutional amendment. In addition to making conforming changes to state law to implement this constitutional amendment, if approved by voters, AB 1595 additionally specifies that the residence for voting purposes of a person who is serving time in a state or federal prison is based on the person's last voluntary residence in the state.

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.

- 9) **Approval by Voters:** As a constitutional amendment, this measure requires the approval of the voters to take effect.

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-Recidivism Coalition (Co-Sponsor)
Initiate Justice (Co-Sponsor)
League of Women Voters of California (Co-Sponsor)
A New Way of Life Reentry Project
AAPI Equity Alliance
ACLU California Action
Advancing Justice - Asian Law Caucus
Alliance for Boys and Men of Color
Alliance San Diego
Bay Rising

Black Los Angeles Young Democrats
Black Women Organized for Political Action (BWOPA)
California Black Power Network
California Federation of Teachers AFL-CIO
California Immigrant Policy Center
California-Hawaii State Conference of The NAACP
Californians United for A Responsible Budget
Change Begins With Me Indivisible Group
Chinese for Affirmative Action
Clergy and Laity United for Economic Justice
Communities United for Restorative Youth Justice (CURYJ)
Community Health Councils
Courage California
Democratic Party of The San Fernando Valley
Disability Rights California
East Bay Community Law Center
East Bay for Everyone
East Valley Indivisibles
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities (EPIC) Fiscally Sponsored by Community Partners
Esperanza Community Housing Corporation
Fair Chance Project
Families United to End Life Without Parole
Friends Committee on Legislation of California
Grip Training Institute
Human Rights Watch
Immigrant Defense Advocates
Indivisible CA Statestrong
Indivisible Marin
Indivisible Yolo
Initiate Justice Action
Inland Empire United
Insight Prison Project, a Division of Five Keys Schools and Programs
Jewish Center for Justice
Law Enforcement Action Partnership
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Los Angeles LGBT Center
Los Angeles Urban League
NARAL Pro-Choice California
National Association of Social Workers, California Chapter
NorCal Resist
Pillars of The Community
RYSE Center
Secure Justice
Showing Up for Racial Justice (SURJ) Bay Area
Showing Up for Racial Justice North County San Diego
Sister Warriors Freedom Coalition

Smart Justice California
South Asian Network
Starting Over, Inc.
Stonewall Democratic Club
Team Justice
Thai Community Development Center
The Black Alliance for Just Immigration
The Collective Healing and Transformation Project
The San Diego Lgbt Community Center
The San Fernando Valley Young Democrats
The Santa Monica Democratic Club
The Sentencing Project
The Transformative In-Prison Workgroup
The W. Haywood Burns Institute
Wellstone Democratic Renewal Club
White People 4 Black Lives
1 individual

Opposition

None on file.

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