

Date of Hearing: July 13, 2021
Counsel: Nikki Moore

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 504 (Becker) – As Amended July 8, 2021

SUMMARY: Requires the Secretary of State (SOS) and California Department of Corrections and Rehabilitation (CDCR) to share identifying information for persons imprisoned for the conviction of a felony and persons on parole or otherwise released from imprisonment for purposes of determining voter eligibility. Specifically, **this bill:**

- 1) Provides that if a person who is ineligible to vote receives a notice of eligibility and subsequently becomes registered or preregistered to vote, and votes or attempts to vote in an election held after the effective date of the person's registration or preregistration, that person shall be presumed to have acted with official authorization and shall not be guilty of fraudulently voting or attempting to vote, unless that person willfully votes or attempts to vote knowing that the person is not entitled to vote.
- 2) Defines the following terms for the purpose of this bill:
 - a) "Conviction" excludes a juvenile adjudication consistent with existing law.
 - b) "Imprisoned" to mean currently serving a state or federal prison sentence pursuant to existing law.
 - c) "Parole" to mean a term of supervision by CDCR consistent with existing law.
 - d) "Statewide voter database" to mean the statewide voter registration database developed in compliance with the requirements of the federal Help America Vote Act of 2002.
- 3) Repeals provisions of law that require the clerk of the superior court of each county to periodically furnish the SOS and county elections official with certain information regarding persons who have been committed to state prison for a felony conviction, as specified.
- 4) Requires CDCR to provide to the SOS, on a weekly basis and in a format prescribed by the SOS, certain identification information for all of the following persons:
 - a) Persons imprisoned for the conviction of a felony and under the jurisdiction of CDCR. Requires, to the extent available, identification information provided by CDCR regarding these persons to include the date on which each person's term of imprisonment began.
 - b) Persons on parole or persons released from imprisonment for the conviction of a felony and no longer under the jurisdiction of CDCR. Requires, to the extent available, identification information provided by CDCR regarding these persons to include the dates on which each person's parole began and on which the person was discharged from

the jurisdiction of CDCR.

- 5) Requires CDCR to provide the SOS with the personal identification information, including all of the following, for the persons listed above: all known first names; all known last names; all known middle names; all known name suffixes; last known address; date of birth; last four digits of the person's social security number, if available; driver's license or state-issued identification number, if available.
- 6) Requires the SOS, upon receipt of the information described above, to do all the following:
 - a) Identify any registration record in the statewide voter database that contains personal identifying information that, for each of the unique identifiers described above, as available, matches information pertaining to a person imprisoned for the conviction of a felony and under the jurisdiction of CDCR or on parole, as specified above.
 - b) For any matched records described in subdivision (a), provide to county elections officials within three days of receipt of the information from CDCR the information pertaining to a person imprisoned for the conviction of a felony and under the jurisdiction of CDCR or a person on parole or released from imprisonment for the conviction of a felony and no longer under the jurisdiction of CDCR, and the corresponding unique identifier or identifiers used in the statewide voter database.
- 7) Requires the 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 for the conviction of a felony and under the jurisdiction of CDCR whose registration information matches the unique identifier or identifiers used in the statewide voter database provided by the SOS to the county; and,
 - b) Using the form prepared by the SOS pursuant to the provisions of this bill, notify a person on parole or released from imprisonment for the conviction of a felony and no longer under the jurisdiction of CDCR, and whose last known address is within the county based on the unique identifier or identifiers used in the statewide voter database provided by the SOS to the 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 provide the person with information regarding the procedure for registering to vote.
- 8) Requires the SOS to prepare a form to be used by county elections officials to provide the notice that the person may register to vote.
- 9) Provides that a county or county elections official is not liable for taking or failing to take the actions to cancel an affidavit of registration or notify a person of their restored right to vote when the county or county elections official have received erroneous information from the SOS or CDCR.

- 10) Requires a county elections official to make conditional voter registration (CVR) available to military and overseas voters and voters with disabilities via a certified remote accessible vote by mail (RAVBM) system.
- 11) Specifies that military and overseas voters may complete a conditional voter registration and cast a provisional ballot, or nonprovisional ballot during the 14 days immediately preceding an election or on election day pursuant to this article.
- 12) Makes technical and conforming changes.

EXISTING LAW:

- 1) States that the 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. (Cal. Const., Article II, § 4.)
- 2) Requires that a person be a U.S. citizen, California resident, not in prison for conviction of a felony, and at least 18 years of age at the time of the next election to be entitled to register to vote in this state. (Elec. Code, § 2101, subd. (a).)
- 3) Requires CDCR and each county probation department to:
 - a) Establish and maintain on the department's Internet Web site a hyperlink to the Internet Web site at which information provided by the Secretary of State regarding voting rights for persons with a criminal history may be found; and (Elec. Code, §§ 2105.5, subd. (a)(1) & (b)(1).)
 - b) Post, in each parole office where parolees are seen, a notice that contains the Internet Web site address at which information provided by the Secretary of State regarding voting rights for persons with a criminal history may be found. (Elec. Code, §§ 2105.5, subd. (a)(2) & (b)(2).)
- 4) 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. (Cal. Code Regs., Title 15, § 1071.)
- 5) Requires CDCR to provide each person on parole under its jurisdiction, upon that person's request made at any time during the parole, information provided by the SOS regarding voting rights for persons with a criminal history. (Elec. Code, § 2105.6 subd. (a).)
- 6) 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 CDCR's supervision is available upon request, and requires they provide it if requested. (Elec. Code, § 2105.6, subs. (b) & (c).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "SB 504 improves two critical election processes by 1) ensuring justice involved folks are granted the right to register to vote after serving their time with more accurate voter rolls, and 2) grants both UOCAVA/military and disabled voters to 'Conditionally' or 'Same Day' register just as you and I currently can."
- 2) **Bolstering Voter Rights for Incarcerated and Formerly Incarcerated Persons:** In California, a person cannot vote if they are serving a state or federal prison term for a felony. This prohibition is located in the state Constitution and the Elections Code. (*See* Calif. Const. Art. II, Sec. 4, which states: "[the] Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned for the conviction of a felony." *See also*, Elec. Code, § 2101, which implements Art. II, Sec. 4: "[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.")

The Elections Code requires county and state elections officials to cancel a voter's registration if the person has lost the right to vote due to a felony conviction. Current practice is for the clerk of each superior court to provide information about a felony conviction to the Secretary of State and county election officials so that the election offices can properly remove persons from the voter roles as required by law.

This bill would change the process, removing the superior courts' role, and instead requiring CDCR to provide to the SOS the names and specified information about persons who are disallowed from voting on a weekly basis. The SOS is then responsible for notifying county elections officials that the voter's registration should be canceled.

This bill would also require CDCR to notify SOS of persons who are regaining their eligibility to vote because the person is on parole or probation for conviction of a felony. This bill specifies that CDCR, to the extent possible, should share the dates that a person's parole begins and ends. This notification is meant to better ensure that a person who has regained the right to vote is aware of that right. However, because person on parole has regained the right to vote, the date parole ends is not necessarily relevant to share.

- 3) **Justice-Involved Voters:** 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 serving a state or federal prison term for the conviction of a felony." Elections Code section 2101 implements Article II, Section 4 of the California Constitution and provides that "[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." In order to maintain an updated and current voter file, elections officials are required to cancel the voter registrations of individuals who are imprisoned for the conviction of a felony. However, a person who is on parole or probation is permitted to register to vote and vote.

Over the years, various bills have been signed into law to educate individuals with a criminal history about their voting rights. AB 149 (Weber), Chapter 580, Statutes of 2013, required a county probation department to either establish a hyperlink on its website to the SOS's voting

rights guide for persons with a criminal history or to post a notice that contains the SOS's website 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, required CDCR to establish and maintain on its website a link to the SOS voting rights guide for incarcerated individuals or post in each parole office a notice with the website address of the SOS voting rights guide for incarcerated individuals. SB 1063 (Block), Chapter 624, Statutes of 2014, required state and local juvenile detention facilities to identify individuals housed in those facilities who are eligible to register to vote and provide assistance in completing affidavits of registration and returning the completed voter registration cards.

AB 1344 (Weber), Chapter 796, Statutes of 2017, required CDCR and county probation departments to provide specified voting rights information to persons under their jurisdiction upon request. Finally, in 2020, ACA 6 (McCarty), Resolution Chapter 24, Statutes of 2020, proposed to amend the state Constitution to allow individuals who are on parole for the conviction of a felony to vote if they otherwise meet all other eligibility requirements. This measure appeared on the ballot for the November 2020 statewide election as Proposition 17 and was approved by the voters.

- 4) **History of California's Disenfranchisement Laws:** According to a recent KQED report on the history of California's voting rights: "With little controversy, California's constitutional delegates approved Article II, Section 5 of the state's constitution in 1849, which stated that "No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector." ... In California, application of the law varied. Most courts through the early 20th century equated an 'infamous crime' with a felony. But the legislature confused matters by specifying the loss of voting rights for embezzlement or misappropriation of public funds. As a result, interpretation was largely left to county clerks and election officials." (Guy Marzorati, *Proposition 17 and the History of Voting Rights for Formerly Incarcerated Californians*, KQED, Oct. 12, 2020, available at <https://www.kqed.org/news/11841345/proposition-17-and-the-history-of-voting-rights-for-formerly-incarcerated-californians>.)

The sweeping exclusion of all persons with a felonious history was reexamined in the 1960s and 70s. In 1966, the California Supreme Court ruled in *Otsuka v. Hite*, that the petitioner's crime was not "infamous" and that he should be restored his right to vote. Justice Stanley Mosk opened the case saying:

This case presents the difficult question whether bona fide conscientious objectors who pleaded guilty more than 20 years ago to a violation of the federal Selective Service Act can constitutionally be treated as persons convicted of an "infamous crime" and hence rendered ineligible to vote by article II, section 1, of the California Constitution. After reviewing the history and purpose of this ground of voter disqualification we have concluded that to preserve its constitutionality it must be limited to conviction of crimes involving moral corruption and dishonesty, thereby branding their perpetrator a threat to the integrity of the elective process.

The wake of the *Otsuka* case left the counties to determine locally which formerly incarcerated persons were entitled to restored voting rights. By 1973, the United States Supreme Court ruled in the case *Richardson v. Ramirez* that the constitution does not guarantee a right to vote, overturning the California Supreme Court's holding that it violated

the Equal Protection Clause to bar “ex-felons” whose sentences and paroles had expired from voting.

The Legislature responded by placing Proposition 10 on the ballot in 1974, establishing that a person is disqualified from voting until the completion of their parole term.

This recently changed again when the Legislature approved ACA 6 (McCarty), Chapter 24, Statutes of 2020, which eliminated the disenfranchisement of a person because they were on parole for the conviction of a felony. Proposition 17 was approved by the voters with over 58 percent of voters affirming. The Legislature also passed AB 646 (McCarty), Chapter 320, Statutes of 2020, to conform statutory law to ACA 6, and to authorize a person on parole for the conviction of a felony to register to vote and to vote.

California still prohibits a person incarcerated for a federal or state prison conviction from voting. In the District of Columbia, Maine, and Vermont, a person never loses their right to vote, even while incarcerated.

- 5) **Argument in Support:** According to the *American Civil Liberties Union California Action and League of Women Voters of California*, “[SB 504 would] improve the accuracy of conviction data that is reported to elections officials and increase access to democracy for people who have finished their prison sentences.

“Our organizations have a long history of working to protect and expand voting rights for people impacted by the criminal legal system, including by successfully restoring voting rights to Californians coming home from prison by passing Proposition 17 on the November 2020 ballot. Although in recent years states like California have rolled back the felony disenfranchisement laws on their books, voters impacted by the criminal legal system still often experience *de facto* disenfranchisement. This is because widespread confusion about the voting rights of people with convictions often leads eligible individuals to mistakenly believe that they are prohibited from participating in their own democracy and because outdated government systems sometimes incorrectly flag eligible voters with convictions for removal from voter rolls, further compounding confusion about who is actually eligible to vote. Since structural discrimination still leads to the overrepresentation of Black and Brown people in our criminal legal system, *de facto* disenfranchisement acts as another form of voter suppression that unfairly robs communities of color of their political power.

“In order to combat *de facto* disenfranchisement, it’s essential that we improve California’s systems for reporting and tracking of prison commitments for voter registration purposes and improve the information that elections officials provide to voters with convictions. Current state law requires the clerk of each superior court to report prison commitments to the local elections office monthly and requires elections officials to cancel the registrations of individuals who are currently imprisoned for the conviction of a felony. Unfortunately, our organizations and our partners have observed that county elections officials sometimes receive and rely on over-inclusive lists from superior courts and cancel the registrations of eligible voters who have not been sentenced to state prison. These erroneous cancellations have resulted in the disenfranchisement of thousands of eligible California voters and have spawned legal action in some counties.

“SB 504 would help resolve these problems by changing how conviction data is reported and used and by requiring county elections officials to provide notice to eligible individuals when their voting rights are restored after the completion of their prison term. By making the California Department of Corrections (CDCR), instead of the county courts, responsible for sending relevant conviction data to elections officials, SB 504 will reduce the possibility that these reports will contain the names of people who were not sentenced to prison and, therefore, are still eligible to vote. This is because CDCR only has data about people in prison or on parole, whereas county courts have data about anyone charged or convicted with any kind of crime in that court.”

6) **Prior Legislation:**

- a) ACA 6 (McCarty), Chapter 24, Statutes of 2020, proposed to the voters an amendment to 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. This measure appeared as Proposition 17 at the statewide general election held on November 3, 2020 where the measure was approved by voters. AB 646 (McCarty), Chapter 320, Statutes of 2020, contained the implementing legislation for ACA 6.
- b) AB 1344 (Weber), Chapter 796, Statutes of 2017, required CDCR and county probation departments to post in the office and online voting rights information. Additionally, this bill required CDCR and county probation departments to provide voting rights information and affidavits of registration to persons under their jurisdiction upon request.
- c) AB 301 (Wagner), of the 2013-14 Legislative Session, would have required court clerks to report the name, address and birth date of people disqualified from jury duty to county elections officials, and require automatic termination of the person’s voter registration. AB 301 failed passage in the Assembly Judiciary Committee.
- d) SB 1063 (Block), Chapter 624, Statutes of 2014, required specified state and local juvenile detention facilities to identify eligible individuals housed in those facilities to register to vote and provide assistance in completing affidavits of registration and returning the completed voter registration cards, as specified.
- e) AB 2243 (Weber), Chapter 899, Statutes of 2014, required the CDCR to make specified information relating to voting rights of incarcerated persons available to the public, and parolees under their jurisdiction.
- f) AB 149 (Weber), Chapter 580, Statutes of 2013, required 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.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union California Action

California Federation of Teachers AFL-CIO
California Public Defenders Association
California State Association of Counties
Disability Rights California
League of Women Voters of California
Microsoft Corporation

Opposition

None

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