

JAN 24 2019

A BILL FOR AN ACT

RELATING TO VOTING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that disenfranchisement
2 of persons following criminal convictions undermines democratic
3 ideals by depriving otherwise-qualified citizens of their right
4 to vote.

5 Eighteen countries grant voting rights to the incarcerated
6 regardless of the offense. The European Court of Human Rights
7 has forcefully defended the voter franchise. In South Africa,
8 incarcerated individuals have participated in the democratic
9 process since 1999.

10 The state laws that bar nearly six million people with
11 felony convictions nationwide from voting date from the late
12 19th and early 20th centuries when southern lawmakers were
13 working feverishly to neutralize the black electorate.

14 According to the National Association for the Advancement
15 of Colored People, disenfranchisement based on criminal
16 conviction has a disproportionate effect on communities of



1 color, which often experience a higher incarceration rate than
2 white communities.

3 According to the American Correctional Association, the
4 loss of the right to vote impedes "the successful reentry of
5 full human beings who are prepared as responsible and productive
6 citizens before release to ensure successful reintegration into
7 the community."

8 Voting can be an opportunity for incarcerated persons to
9 learn about candidates and issues, engage in civic education,
10 and prepare for reintegration into society. Allowing
11 incarcerated persons to retain their right to vote via absentee
12 ballot will benefit the State by helping inmates remain aware of
13 the issues that are important to society so that they may
14 participate more fully in their communities upon release.

15 The purpose of this Act is to allow incarcerated
16 individuals who were Hawaii residents immediately prior to
17 incarceration to vote in Hawaii elections via absentee ballot.

18 SECTION 2. Section 11-13, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§11-13 Rules for determining residency.** For the purpose
21 of this title, there can be only one residence for an



1 individual, but in determining residency, a person may treat
2 oneself separate from the person's spouse. The following rules
3 shall determine residency for election purposes only:

4 (1) The residence of a person is that place in which the
5 person's habitation is fixed, and to which, whenever
6 the person is absent, the person has the intention to
7 return;

8 (2) A person does not gain residence in any precinct into
9 which the person comes without the present intention
10 of establishing the person's permanent dwelling place
11 within [~~such~~] the precinct;

12 (3) If a person resides with the person's family in one
13 place, and does business in another, the former is the
14 person's place of residence; but any person having a
15 family, who establishes the person's dwelling place
16 other than with the person's family, with the
17 intention of remaining there shall be considered a
18 resident where the person has established [~~such~~] the
19 dwelling place;

20 (4) The mere intention to acquire a new residence without
21 physical presence at [~~such~~] the place, does not



1 establish residency, neither does mere physical
2 presence without the concurrent present intention to
3 establish [~~such~~] the place as the person's residence;
4 (5) A person does not gain or lose a residence solely by
5 reason of the person's presence or absence while
6 employed in the service of the United States or of
7 this State, or while a student of an institution of
8 learning, or while kept in an institution or asylum,
9 or while confined in a prison[+], jail, correctional
10 facility, or community correctional facility within or
11 outside of the State of Hawaii;
12 (6) No member of the armed forces of the United States,
13 the member's spouse or the member's dependent is a
14 resident of this State solely by reason of being
15 stationed in the State; and
16 (7) A person loses the person's residence in this State if
17 the person votes in an election held in another state
18 by absentee ballot or in person.
19 In case of question, final determination of residence shall be
20 made by the clerk, subject to appeal to the board of
21 registration under part III of this chapter."



1 SECTION 3. Section 11-15, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Any person qualified to and desiring to register as a
4 voter in any county shall make and subscribe to an application
5 in the form of an affidavit.

6 The affidavit shall contain the following information:

7 (1) Name;

8 (2) The applicant's Hawaii driver's license number or
9 Hawaii state identification card number; provided
10 that:

11 (A) If no driver's license or identification card has
12 been issued to the applicant, the last four
13 digits of the applicant's social security number;
14 and

15 (B) If no social security number has been issued to
16 the applicant, an election official or county
17 clerk shall assign the applicant a unique
18 identification number for voter registration
19 purposes and enroll the applicant in the State's
20 computerized voter registration list, if any;

21 (3) Date of birth;



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- 1 (4) Residence, including mailing address;
- 2 (5) That the residence stated in the affidavit is not
- 3 simply because of the person's presence in the State,
- 4 but that the residence was acquired with the intent to
- 5 make Hawaii the person's legal residence with all the
- 6 accompanying obligations therein; ~~and~~
- 7 (6) That the person is a citizen[-]; and
- 8 (7) Address or location of last voluntary residence for
- 9 persons held or incarcerated in a prison, jail,
- 10 correctional center, or community correctional
- 11 center."

12 An application to register to vote shall include a space to
 13 request a permanent absentee ballot."

14 SECTION 4. Section 11-23, Hawaii Revised Statutes, is
 15 amended to read as follows:

16 "**§11-23 Changing register; striking names of disqualified**
 17 **voters.** (a) Whenever the clerk receives from the department of
 18 health or any informing agency, information of the death, [~~loss~~
 19 ~~of voting rights of a person sentenced for a felony as provided~~
 20 ~~in section 831-2,~~] adjudication as an incapacitated person under
 21 the provisions of chapter 560, loss of citizenship, or any other



1 disqualification to vote, of any person registered to vote in
2 that county, or who the clerk has reason to believe may be
3 registered to vote therein, the clerk shall thereupon make
4 [~~such~~] an investigation as may be necessary to prove or disprove
5 the information, giving the person concerned, if available,
6 notice and an opportunity to be heard. If after the
7 investigation the clerk finds that the person is dead, or
8 incapacitated to the extent that the person lacks sufficient
9 understanding or capacity to make or communicate responsible
10 decisions concerning voting, [~~or has lost voting rights pursuant~~
11 ~~to section 831-2,~~] or has lost citizenship, or is disqualified
12 for any other reason to vote, the clerk shall remove the name of
13 the person from the register.

14 (b) The clerk shall make and keep an index of all
15 information furnished to the clerk under any requirements of law
16 concerning any of the matters in this section. Whenever any
17 person applies to register as a voter, the clerk shall, before
18 registering the person, consult the index for the purpose of
19 ascertaining whether or not the person is in any manner
20 disqualified to vote. Any person whose name is removed from the
21 register of voters under this section may appeal in the manner



1 provided by sections 11-26 and 11-51, and [~~such~~] the proceedings
2 shall be had upon the appeal as in other appeals under these
3 sections."

4 SECTION 5. Section 15-2, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§15-2 Who may vote by absentee ballot'. (a) Any person
7 registered to vote may cast an absentee ballot in the manner
8 provided in this chapter and rules adopted by the chief election
9 officer.

10 (b) Absentee ballot shall be the method of voting for all
11 persons registered to vote as residents of the State of Hawaii
12 who are confined in a prison, jail, correctional center, or
13 community correctional center within or outside of the State."

14 SECTION 6. Section 15-5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§15-5 Delivery of ballots. (a) Immediately upon receipt
17 of a request for absentee ballot within the time limit specified
18 in section 15-4, the clerk shall examine the records to
19 ascertain whether the voter is lawfully entitled to vote as
20 requested. If the clerk ascertains that the voter is lawfully
21 entitled to vote as requested, no earlier than thirty days



1 before the election, the clerk shall mail in a forwarding
2 envelope, or deliver in person if the voter appears at the
3 office of the clerk, an official ballot and other materials
4 prescribed in section 15-6, except that an incapacitated voter
5 may send a representative to obtain the voter's ballots pursuant
6 to the rules adopted by the chief election officer; provided
7 that official ballots and other materials prescribed in section
8 15-6 shall be mailed or delivered:

9 (1) To uniform military and overseas voters pursuant to
10 section 15D-9; and

11 (2) No later than twenty-four hours after receipt of the
12 request for absentee ballot for requests received on
13 the last day specified in section 15-4.

14 (b) The chief election officer may adopt rules for the
15 preparation of special ballots of such different weight of
16 paper, overall size and shape, or other physical criteria as
17 shall be prescribed by an applicable federal or state officer to
18 conform with minimum postal, military, correctional, or other
19 federal or state statutes and requirements regarding the
20 transportation and delivery of ballots; provided that the ballot



1 text shall be identical in substance, except as to type size,
2 with that appearing on the official ballots.

3 ~~[(b)]~~ (c) If absentee ballots requested under section 15-4
4 are not received by a voter within five days of an election, if
5 a voter requires a replacement ballot within five days of an
6 election, or if a voter would otherwise not be able to return a
7 properly issued ballot by the close of polls, then a voter may
8 request that absentee ballots be forwarded by electronic
9 transmission. Upon receipt of ~~[such]~~ a request and confirmation
10 that proper application was made, the clerk may transmit
11 appropriate ballots, together with a form requiring the
12 affirmations and information required by section 15-6, and a
13 form containing a waiver of the right to secrecy, as provided by
14 section 11-137. The voter may return the voted ballots and
15 executed forms by electronic transmission or mail; provided that
16 they are received by the issuing clerk no later than the close
17 of polls on election day. Upon receipt, the clerk shall verify
18 compliance with the requirements of section 15-9(c) and prepare
19 the ballots for counting pursuant to section 15-10; provided
20 that if the voter returns multiple voted absentee ballots for
21 the same election, the clerk shall, for purposes of counting



1 ballots, prepare only the first absentee ballot returned that is
2 not spoiled."

3 SECTION 7. Section 831-2, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) A person sentenced for a felony, from the time of the
6 person's sentence until the person's final discharge, may not [+

7 ~~(1) Vote in an election, but if the defendant is placed on
8 probation or the defendant is paroled after commitment
9 to imprisonment, the defendant may vote during the
10 period of the probation or parole, or~~

11 ~~(2) Become]~~ become a candidate for or hold public office."

12 SECTION 8. Section 831-5, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) If the sentence was in this State, the order,
15 certificate, or other instrument of discharge, given to a person
16 sentenced for a felony upon the person's discharge after
17 completion of service of the person's sentence or after service
18 under probation or parole, shall state that the [~~defendant's
19 rights to vote and to hold any future public office,~~] rights of
20 which the defendant was deprived by this chapter[~~7~~] are thereby
21 restored and that the defendant suffers no other disability by



1 virtue of the defendant's conviction and sentence except as
2 otherwise provided by this chapter. A copy of the order or
3 other instrument of discharge shall be filed with the clerk of
4 the court of conviction."

5 SECTION 9. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 10. This Act shall take effect on July 1, 2019.
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INTRODUCED BY:

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S.B. NO. 1503

Report Title:

Voting; Incarcerated Persons

Description:

Allows incarcerated persons who were Hawaii residents immediately prior to incarceration to vote in Hawaii elections by absentee ballot.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

