A BILL FOR AN ACT

RELATING TO VOTING.

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

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

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

The state laws that bar nearly six million people with felony convictions nationwide from voting date from the late nineteenth and early twentieth centuries when southern lawmakers worked feverishly to neutralize the black electorate.

According to the National Association for the Advancement of Colored People, disenfranchisement based on criminal conviction has a disproportionate effect on communities of
color, which often experience a higher incarceration rate than white communities.

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

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

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

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

"§11-13 Rules for determining residency. For the purpose of this title, there can be only one residence for an
individual, but in determining residency, a person may treat oneself separate from the person's spouse. The following rules shall determine residency for election purposes only:

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

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

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

(4) The mere intention to acquire a new residence without physical presence at such the place, does not
establish residency, neither does mere physical
presence without the concurrent present intention to
establish [such] the place as the person's residence;
(5) A person does not gain or lose a residence solely by
reason of the person's presence or absence while
employed in the service of the United States or of
this State, or while a student of an institution of
learning, or while kept in an institution or asylum,
or while confined in a prison[†], jail, correctional
facility, or community correctional center within or
outside of the State of Hawaii;
(6) No member of the armed forces of the United States,
the member's spouse or the member's dependent is a
resident of this State solely by reason of being
stationed in the State; and
(7) A person loses the person's residence in this State if
the person votes in an election held in another state
by absentee ballot or in person.
In case of question, final determination of residence shall be
made by the clerk, subject to appeal to the board of
registration under part III of this chapter."
SECTION 3. Section 11-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

The affidavit shall contain the following information:

(1) Name;

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

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

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

(3) Date of birth;
(4) Residence, including mailing address;

(5) That the residence stated in the affidavit is not simply because of the person's presence in the State, but that the residence was acquired with the intent to make Hawaii the person's legal residence with all the accompanying obligations therein; [and]

(6) That the person is a citizen; and

(7) Address or location of last voluntary residence for persons held or incarcerated in a prison, jail, correctional facility, or community correctional center.

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

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

"§11-23 Changing register; striking names of disqualified voters. (a) Whenever the clerk receives from the department of health or any informing agency, information of the death, loss of voting rights of a person sentenced for a felony as provided in section 831-2, adjudication as an incapacitated person under the provisions of chapter 560, loss of citizenship, or any other
disqualification to vote, of any person registered to vote in that county, or who the clerk has reason to believe may be registered to vote therein, the clerk shall thereupon make [such] an investigation as may be necessary to prove or disprove the information, giving the person concerned, if available, notice and an opportunity to be heard. If after the investigation the clerk finds that the person is dead, or incapacitated to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning voting, [or has lost voting rights pursuant to section 831-27] or has lost citizenship, or is disqualified for any other reason to vote, the clerk shall remove the name of the person from the register.

(b) The clerk shall make and keep an index of all information furnished to the clerk under any requirements of law concerning any of the matters in this section. Whenever any person applies to register as a voter, the clerk shall, before registering the person, consult the index for the purpose of ascertaining whether or not the person is in any manner disqualified to vote. Any person whose name is removed from the register of voters under this section may appeal in the manner
provided by sections 11-26 and 11-51, and [such] the proceedings shall be had upon the appeal as in other appeals under these sections."

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

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

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

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

"§15-5 Delivery of ballots. (a) Immediately upon receipt of a request for absentee ballot within the time limit specified in section 15-4, the clerk shall examine the records to ascertain whether the voter is lawfully entitled to vote as requested. If the clerk ascertains that the voter is lawfully entitled to vote as requested, no earlier than thirty days
before the election, the clerk shall mail in a forwarding
envelope, or deliver in person if the voter appears at the
office of the clerk, an official ballot and other materials
prescribed in section 15-6, except that an incapacitated voter
may send a representative to obtain the voter's ballots pursuant
to the rules adopted by the chief election officer; provided
that official ballots and other materials prescribed in section
15-6 shall be mailed or delivered:

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

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

(b) The chief election officer may adopt rules for the
preparation of special ballots of such different weight of
paper, overall size and shape, or other physical criteria as
shall be prescribed by an applicable federal or state officer to
conform with minimum postal, military, correctional, or other
federal or state statutes and requirements regarding the
transportation and delivery of ballots; provided that the ballot
text shall be identical in substance, except as to type size, with that appearing on the official ballots.

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

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

"(a) A person sentenced for a felony, from the time of the person's sentence until the person's final discharge, may not vote in an election, but if the defendant is placed on probation or the defendant is paroled after commitment to imprisonment, the defendant may vote during the period of the probation or parole; or

(2) Become a candidate for or hold public office."

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

"(a) If the sentence was in this State, the order, certificate, or other instrument of discharge, given to a person sentenced for a felony upon the person's discharge after completion of service of the person's sentence or after service under probation or parole, shall state that the defendant's rights to vote and to hold any future public office, rights of which the defendant was deprived by this chapter, are thereby restored and that the defendant suffers no other disability by
virtue of the defendant's conviction and sentence except as
otherwise provided by this chapter. A copy of the order or
other instrument of discharge shall be filed with the clerk of
the court of conviction."

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

SECTION 10. This Act shall take effect on July 1, 2050.
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. Takes effect 7/1/2050. (SD1)

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