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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

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**Bill No:** AB 787                      **Hearing Date:** July 9, 2019  
**Author:** Gipson  
**Version:** February 20, 2019  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Elections: Voter Registration*

## HISTORY

**Source:** A New Way of Life

**Prior Legislation:** AB 3115 (Gipson), amended into a different bill  
AB 1344 (Weber), Ch. 796, Stats. 2017  
AB 2466 (Weber), Ch. 757, Stats. 2016  
AB 2243 (Weber), Ch. 899, Stats. 2014  
AB 149 (Weber), Ch. 580, Stats. 2013

**Support:** ACLU of California; California Public Defenders Association; California State Conference of the National Association for the Advancement of Colored People; Ella Baker Center for Human Rights; Initiate Justice; League of Women Voters of California; Los Angeles County Board of Supervisors; Orange County Communities Organized for Responsible Development; Rubicon Programs; San Francisco Public Defender's Office

**Opposition:** California State Sheriff's Association

**Assembly Floor Vote:** 52 - 23

## PURPOSE

***The purpose of this bill is to require a county or a city and county that operates a jail facility to allow organizations to conduct in-person voter registration activities, as specified, and requires policies to be created related to those activities.***

*Existing law* provides that a United States citizen 18 years of age and resident in this state may vote. (Cal. Const., art. II, § 2.)

*Existing law* requires the Legislature to provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony. (Cal. Const., art. II, § 4.)

*Existing law* permits a person who is a United States citizen, a resident of California, not imprisoned or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election, to register to vote. (Elec. Code, § 2101, subd. (a).)

*Existing law* permits a person who is a United States citizen, a resident of California, not imprisoned or on parole for the conviction of a felony, and at least 16 years of age, to pre-register to vote. (Elec. Code, § 2101, subd. (b).)

*Existing law* includes the following definitions:

- “Imprisoned” means currently serving a state or federal prison sentence.
- “Parole” means a term of supervision by the Department of Corrections and Rehabilitation.
- “Conviction” does not include a juvenile adjudication. (Elec. Code, § 2101, subd. (c).)

*Existing law* declares it is the intent of the Legislature that voter registration be maintained at the highest possible level. Requires the Secretary of State (SOS) to adopt regulations requiring each county elections official to design and implement programs intended to identify qualified electors who are not registered to vote, and to register those person to vote, as specified. (Elec. Code, § 2105.)

*Existing law* requires CDCR to do both of the following:

- Establish and maintain on the department’s internet website a hyperlink to the internet website at which the SOS’s voting rights guide for person with a criminal history may be found; and,
- Post, in each parole office where parolees are seen, a notice that contains the internet website address at which the SOS’s voting rights guide for persons with a criminal history may be found. (Elec. Code, § 2105.5, subd. (a).)

*Existing law* requires each county probation department to do both of the following:

- Establish and maintain on the county probation department’s internet web site a hyperlink to the internet web site at which the SOS’s voting rights guide for persons with a criminal history may be found; and
- Post, in each county probation department office where probationers are seen, a notice that contains the internet website address at which the SOS’s voting rights guide for persons with a criminal history may be found. (Elec. Code, § 2105.5, subd. (b).)

*Existing law* requires CDCR to provide to each parolee within its jurisdiction, upon the completion of their parole, upon request, information provided by the SOS regarding voting rights for persons with a criminal history. (Elec. Code, § 2105.6, subd. (a).)

*Existing law* 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 the department’s supervision is available upon request. (Elec. Code, § 2105.6, subd. (b).)

*Existing law* requires each county probation department to provide each person under the department’s supervision upon the person’s request, information provided by the SOS regarding voting rights for persons with a criminal history. (Elec. Code, § 2105.6, subd. (c).)

*Existing law* requires a state or local juvenile detention facility, as specified, to do all of the following:

- Identify each individual housed in the facility who is of age to register to vote and not in prison or on parole for the conviction of a felony.
- Provide an affidavit of registration to each individual housed in the facility who is of age to register to vote and not in prison or on parole for the conviction of a felony by doing either of the following:
  - Provide the individual a paper affidavit of registration.
  - Direct the individual to an affidavit of registration provided on the Internet Web site of the SOS.
- Assist each individual housed in the facility who is eligible to register to vote with the completion of the affidavit of registration, unless the individual declines assistance. Requires the facility, if it provides paper affidavits of registration, to either assist the individual who completed the voter registration card in returning the completed card to the county elections official or accept any completed voter registration card and transmit the card to the county elections official. (Elec. Code, § 2105.7, subd. (a).)

*Existing law* requires the clerk of the superior court of each county, on the basis of the records of the court, to furnish to the SOS and the county elections official in the format prescribed by the SOS, not less frequently than the first day of every month, a statement showing the names, addresses, and dates of birth of all persons who have been committed to state prison as the result of a felony conviction since the clerk's last report. Requires the SOS or county elections official to cancel the affidavits of registration of those persons who are currently imprisoned or on parole for the conviction of a felony. (Elec. Code, § 2212.)

*This bill* requires a county or city and county that operates a jail facility to allow organizations to conduct in-person voter registration activities, including, but not limited to, the provision of vote-by-mail applications, in each jail facility.

*This bill* requires a county or city and county to develop public policies and criteria for organizations conducting the voter registration activities that, at a minimum, satisfy all of the following:

- The jail facility is prohibited from denying admittance of an individual member from an organization unless the jail facility has a reasonable basis to determine that allowing the individual to have personal conduct with individuals in the jail facility would create an unreasonable risk to the security of the jail facility.
- The jail facility is required to provide an individual who is denied admittance to the jail facility with written notice of the denial. Requires the notice to include the factual basis and rationale for the denial and information regarding the opportunity to, and procedures for, appeal of the denial.
- The jail facility is required to provide an individual member of an organization who is denied admittance to the jail facility an opportunity to appeal that decision.
- The jail facility is required to provide an individual whose appeal is denied with written notice of the denial. Requires the notice to include the factual basis and rationale for the denial.

*This bill* requires the sheriff of the county or city and county in which a jail facility is located to publish a copy of the policies and criteria on the sheriff's internet website.

*This bill* requires a county or city and county to maintain a centralized, current list of individuals and organizations approved to conduct voter registration activities. Requires the list to be accessible to officers and personnel assigned to process and admit individuals or organizations into the jail facilities.

*This bill* requires a county or city and county to provide public notice of any proposed change to the policies and criteria at least 14 days before making the change. Requires the county or city and county to create a public comment process and allow for public comment on proposed changes to those policies during the notice period. Requires the sheriff for the county a city and county in which the jail is located to publish all final policy changes on the sheriff's internet website.

*This bill* provides the following definitions:

- "Conviction" has the same meaning as set forth in Section 2101.
- "Department" means CDCR.
- "Parole" has the same meaning as set forth in Section 2101.
- "Imprisoned" has the same meaning as set forth in Section 2101.

*This bill* requires CDCR to provide to SOS, on a weekly basis and in a format prescribed by the SOS, identification information, as specified, for the following persons:

- Persons imprisoned, or on parole, for the conviction of a felony and under the jurisdiction of the department.
- Persons released from imprisonment, or released from parole, for the conviction of a felony and no longer under the jurisdiction of the department.

*This bill* provides that personal identification information includes all of the following:

- All known first and last names.
- 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.

*This bill* requires the SOS to provide the information it receives from CDCR to county elections officials within three days of receipt of the information.

*This bill* requires a county elections official, upon receipt of information from SOS, to do all of the following:

- Cancel the affidavit of registration of any person who is ineligible to register to vote, as described.
- Notify a person who is eligible to vote that the person's voting rights have been restored and advise the person that the person may register to vote. Requires the county elections official to also provide the person with information regarding the procedure for registering to vote.

## COMMENTS

### 1. Need for This Bill

According to the author:

Given California's felony disenfranchisement laws many people in California's criminal justice system are not accurately apprised of their voting rights. The complexity of the laws and a lack of awareness about them have caused confusion and misinformation among formerly incarcerated communities, as well as probation officers and the general public. Many prospective voters have been confused about their eligibility to vote due to a criminal conviction or their changing status and are not given adequate information about their right to vote.

### 2. Voting Rights: Individuals with a Criminal History

#### a. Individuals on Post-Release Community Supervision or Mandatory Supervision

Generally, people with felony convictions have their voting rights restored after the completion of their terms of incarceration and parole. Realignment shifted individuals convicted of non-serious, non-violent, non-sex offenses from the state's prisons to the county jails. Additionally, Realignment created two new forms of non-custodial supervision for individuals convicted of less serious felonies—mandatory supervision and post-release community supervision (PRCS). Supervision of these individuals is performed by the county probation departments rather than the state's parole offices.

In December 2011, at the request of county elections officials, the then-Secretary of State issued a memorandum concluding that PRCS and mandatory supervision were “functionally equivalent to parole,” and that individuals on either form of supervision were ineligible to vote. Several civil rights groups filed a lawsuit challenging the policy, and argued that individuals on PRCS and mandatory supervision are eligible to vote under Article II, Section 4 of the state constitution. (*Scott v. Bowen* (2014) No. RG14-712570.)

In May 2014, the Alameda County Superior Court issued a final judgment rejecting the interpretation of Realignment in the SOS's memorandum. The Superior Court held “as a matter of law that California Constitution Article II, Section 2 and Elections Code 2101, require the State of California to provide all otherwise eligible persons on [mandatory supervision and PRCS] the same right to register to vote and to vote as all otherwise eligible persons.” The court concluded that restoring voting rights of persons under PRCS and or mandatory supervision is consistent with the Realignment policy goal to promote reintegration of low-level offenders back into the community. In addition, the court relied upon the long-held principle in California law requiring courts “to give every reasonable presumption in favor of the right of people to vote” and to “not engage in any construction of an election law that would disenfranchise any voter if the law is reasonably susceptible of any other meaning.”

In June 2014, the Superior Court issued a writ of mandate ordering the SOS to withdraw the previous memorandum and to notify elections officials that it had been withdrawn. The state appealed the Superior Court's order which was pending until the Secretary of State Alex Padilla announced an end to the appeal and a settlement of the case in August 2015.

(<https://www.sos.ca.gov/administration/news-releases-and-advisories/2015-news-releases-and-advisories/secretary-padilla-ends-appeal-scott-v-bowen-case/>)

### **b. Individuals Who are Incarcerated**

AB 2466 (Weber), Chapter 757, Statutes of 2016, amended the Elections Code to reflect the decision in *Scott v. Bowen* and clarified that individuals serving a felony term in county jail are eligible to vote. The facility administrator of each local detention facility is required to adopt written policies and procedures whereby the county registrar of voters allows those qualified voters in the detention facility to vote. (Cal. Code of Regs., tit. 15, § 1071.)

To summarize, the following individuals with a criminal history are permitted to register to vote in California:

- A person incarcerated in county jail who is:
  - Serving a misdemeanor sentence
  - Serving jail time as a condition of probation
  - Serving a felony jail sentence
  - Awaiting trial
- A person on probation
- A person on mandatory supervision
- A person on PRCS
- A person on federal supervised release
- A person with a juvenile wardship adjudication. (<https://www.sos.ca.gov/elections/voting-resources/voting-california/who-can-vote-california/voting-rights-californians/>)

### **3. Duties of CDCR and Probation Departments with Respect to Voter Registration**

Existing law requires CDCR and county probation departments to maintain department websites which include a link to the SOS's voting rights guide for persons with a criminal history, and to post in their offices which serve their respective supervised populations a notice with the website address where the voting rights guide can be found. Existing law additionally requires CDCR to provide each parolee, upon the completion of parole and upon request, information provided by the SOS regarding voting rights for persons with a criminal history. Current law also requires each county probation department to provide each person under the department's supervision, upon the person's request, information provided by the SOS regarding voting rights for persons with a criminal history.

State or local juvenile detention facilities are additionally required to identify each individual housed in the facility who is eligible to vote, provide an affidavit of registration to each eligible voter, and assist each person eligible to vote with the completion of the affidavit, unless the individual declines assistance.

### **4. Current Voter Registration Practices in County Jails**

Some sheriff's departments, such as the San Francisco Sheriff's Department, assist inmates with voter registration. (San Francisco Chronicle, *SF Sheriff Registers Nearly 500 Inmates to Vote* <<https://www.sfexaminer.com/news/sf-sheriff-registers-nearly-500-inmates-to-vote/>> [as of Jul. 3, 2019].) There are also county elections offices within the state that currently provide county jail inmates who are eligible to vote with voter registration assistance. (See

<https://www.lavote.net/home/voting-elections/voter-registration/voter-registration-programs/inmate-voting>; Santa Cruz Sentinel, *Santa Cruz County Inmates Register to Vote* <<https://www.santacruzsentinel.com/2016/05/17/santa-cruz-county-inmates-register-to-vote/>> [as of Jul. 3, 2019].) In Alameda County, the public defender's office registered inmates to vote prior to the 2018 election. (San Francisco Chronicle, *Record Number of East Bay Jail Inmates Likely to Vote in 2018 Midterms* <<https://www.sfchronicle.com/crime/article/Record-number-of-East-Bay-jail-inmates-to-vote-in-13318922.php>> [as of Jul. 3, 2019].) Some non-profit organizations would like to provide this service to county jail inmates. However, there are reports that some sheriffs are not permitting voter registration activities, at least those conducted by non-profit organizations, to take place inside of the jail. (Huffington Post, *They Want To Register Voters in Jail. The Sheriff Won't Let Them Do It*, <[https://www.huffpost.com/entry/register-to-vote-southern-california-orange-county\\_n\\_5bd22882e4b0a8f17ef5c9e2?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce\\_referrer\\_sig=AQAAAAJMFx-2noZQsrzD75VAF6n34MyZvdaLyZsQ\\_abeafIFAYy4hlcLh9b-XFhEyfnGeqnKBB8D0neJJQTBV-Ds9ef6rnImsoGc\\_ai1E3hLOZcmUV8MIRPzPoJ3k4HzeMVci71wYZDcvTLZzAoj6Oa0ltWxLeo vmoHfesINUK7RFaIF](https://www.huffpost.com/entry/register-to-vote-southern-california-orange-county_n_5bd22882e4b0a8f17ef5c9e2?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAAJMFx-2noZQsrzD75VAF6n34MyZvdaLyZsQ_abeafIFAYy4hlcLh9b-XFhEyfnGeqnKBB8D0neJJQTBV-Ds9ef6rnImsoGc_ai1E3hLOZcmUV8MIRPzPoJ3k4HzeMVci71wYZDcvTLZzAoj6Oa0ltWxLeo vmoHfesINUK7RFaIF)> [as of Jul. 3, 2019].)

## 5. Effect of This Legislation

This bill would require a jail to allow organizations to conduct in-person voter registration activities inside of the jail. This bill would additionally require a county or city and county to develop policies and criteria for organizations conducting the voter registration activities. A jail would be prohibited from denying entry of an individual member from an organization unless the staff at the facility has a reasonable basis to determine that allowing the person to interact with inmates would create an unreasonable risk to the security of the facility. The bill would also require each jail to provide a person denied entry with a notice of the denial and an opportunity to appeal the decision, as well as notice if the appeal is denied.

This bill would repeal Elections Code section 2212 which currently requires the county courts to notify the SOS and county elections officials, at least monthly, of individuals who are ineligible to register to vote due to the fact that the person has been committed to state prison as the result of a felony conviction, and requires the SOS or county elections officials to cancel the affidavit of registration for a person currently imprisoned or on parole for a felony conviction. Instead, the bill would require:

- CDCR to provide the SOS, on a weekly basis, with specified identification information for:
  - Persons imprisoned, or on parole, for the conviction of a felony and under the jurisdiction of CDCR
  - Persons released from prison, or released from parole, for the conviction of a felony and no longer under the jurisdiction of CDCR
- SOS to provide the information received from CDCR to county elections officials within 3 days of receipt
- County elections officials to cancel the affidavit of registration of a person ineligible to vote or notify a person who is eligible to vote of their right to vote based on the information received from the SOS

This bill raises a number of questions:

What, if any, additional policies with respect to in-person voter registration activities should be included in this bill?

Should there be additional bases for the denial of the admittance of a person into the jail for voter registration activities besides the one outlined in the bill?

Should there be an appeals process for the denials of admittance?

Should there be a 14-day waiting period before any policy is changed, and should there be a public comment period?

## 6. Argument in Support

The ACLU of California writes:

Voting is a fundamental constitutional right. Understanding how the voting process works and having the ability to voice community support and opposition for elected officials and policies that impact the community is a vital component of civic engagement. This is especially true for Californians who are and who have been incarcerated. California incarcerates approximately 80,000 people in its jails. More than half of them have not been convicted or are un-sentenced. Many Californians involved or impacted by the criminal justice system are confused about the status of their voting rights, either because of misinformation or lack of information. Thanks to recent clarifications in the law, such as AB 2466 (Weber-2016), many of them are eligible to register and vote if they are awaiting trial or on trial for any crime, in jail for a misdemeanor conviction, in jail on a probation violation, in jail on a felony probation violation, or serving a county jail sentence under Realignment.

By providing voter education in the jails and streamlining data sharing, AB 787 will be a step forward in helping this population that has historically been excluded from civic engagement and participation by providing them with critical information and assistance regarding their voting rights.

## 7. Argument in Opposition

According to the California State Sheriffs' Association:

While we understand the desire to increase inmates' participation in the electoral process, this bill largely ignores any efforts that may be already ongoing within a jail facility. Counties across the state offer inmates assistance with voter registration and the casting of ballots. They often provide registration and ballot materials and assist with the delivery of completed registration cards and ballots.

Allowing persons or groups into jails as contemplated by this bill requires staff time and resources, since they will ostensibly be escorted through the jail and subject to staff supervision. Additionally, we are concerned about the burdensome nature of the notice and comment procedures included in this bill. Finally, limiting a jail's ability to preclude specified individuals based on risk created by *personal conduct* with inmates ignores any other safety concerns that might be raised about the person if he or she does not personally interact with inmates but nevertheless has access to the jail.