
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 544 **Hearing Date:** July 2, 2024
Author: Bryan
Version: June 20, 2024
Urgency: No **Fiscal:** Yes
Consultant: JD

Subject: *Voting pilot program: county jails*

HISTORY

Source: Ella Baker Center and the League of Women Voters

Prior Legislation: AB 2466 (Weber), Chapter 757, Statutes of 2016.
ACA 6 (McCarty), Chapter 24, Statutes of 2020.

Support: AAPIs for Civic Empowerment; ACLU California Action; Anti-Recidivism Coalition (UNREG); Asian Americans Advancing Justice - Asian Law Caucus; Asian Americans Advancing Justice Southern California; Bay Rising; Bend the Arc California; California Black Power Network; California Community Foundation; California Community Foundation (UNREG); California Environmental Voters (formerly Clcv); California Faculty Association; California Public Defenders Association; Californians United for A Responsible Budget; Catalyst California; Center for Employment Opportunities; CFT - A Union of Educators & Classified Professionals, AFT, AFL-CIO; Communities United for Restorative Youth Justice (CURYJ); Courage California; Disability Rights California; Ella Baker Center for Human Rights; Hmong Innovating Politics; Initiate Justice; Initiate Justice Action; Inland Empire United; Interfaith Coalition for Justice in Our Jails; League of Women Voters of California; Legal Services for Prisoner With Children; Oakland Privacy; San Francisco Public Defender; Secure Justice; The Sentencing Project; UC Berkeley's Underground Scholars Initiative (USI); Voices for Progress; Western Center on Law & Poverty; Multiple Individuals

Opposition: Multiple Individuals

Assembly Floor Vote: 53 - 14

PURPOSE

The purpose of this bill is to require the Secretary of State to institute a pilot grant program that provides grants to three counties for the development of a program intended to improve voter participation in jail facilities, the grants may be used by counties to provide in-person voting accessible to eligible incarcerated persons.

Existing law provides that a person entitled to register to vote shall be a United States citizen, a resident of California, not in prison for the conviction of a felony, and at least 18 years of age at the time of the next election. (California Constitution Article II, §§2, 4)

Existing law 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)

Existing law defines a “polling place” to mean a location where a voter casts a ballot and includes the following terms, as applicable: poll, polling location, and vote center. (Elections Code §338.5)

Existing law requires a county elections official to mail a ballot to every active registered voter for every election in which the voter is eligible to participate, and provides that the distribution of VBM ballots to registered voters does not prevent a voter from voting in person at a polling place, vote center, or other authorized location. (Elections Code §3000.5)

Existing law defines the term “conditional voter registration” to mean a properly executed affidavit of registration that is delivered by the registrant to the county elections official during the 14 days immediately preceding an election or on election day and which may be deemed effective after the elections official processes the affidavit, determines the registrant’s eligibility to register, and validates the registrant’s information, as specified. (Elections Code §2170 et seq.)

Existing law requires a county elections official to offer conditional voter registration and voting at all permanent and satellite offices of the county elections official and all polling places in the county. (Elections Code §2170(d))

Existing law authorizes any county, pursuant to the CVCA, to conduct elections in which every registered voter is mailed a ballot and vote centers and ballot drop-off locations are available prior to and on election day, in lieu of operating polling places for the election, subject to certain conditions. (Elections Code §4005)

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 information provided by the SOS regarding voting rights for persons with a criminal history may be found.
- Post, in each probation office where probationers are seen, a notice that contains the Internet Web site address at which information provided by the SOS regarding voting rights for persons with a criminal history may be found. (Elections Code §2105.5(b))

Existing law allows a person to cast a provisional ballot when there is a question about their eligibility that must be resolved before the vote can be counted. (Elections Code § 14310)

Existing law outlines required supplies, information and characteristics that a polling place must have during an election. (Elections Code, Division 14, Chapter 2)

Existing law defines and prohibits the intimidation of voters and acts that may dissuade a person from voting. (Elections Code, Division 18, Chapter 6, Article 3)

Existing law defines electioneering as the visible display or audible dissemination of information that advocates for or against any candidate or measure on the ballot within the 100 foot limit, and provides acts that are considered to fit this definition. (Elections Code §319.5)

Existing law prohibits acts that are considered to be electioneering and sets forth penalties and notification instructions for informing the public of its prohibition. (Elections Code, Division 18, Chapter 4, Article 7)

Existing law allows the Secretary of State to determine when it is appropriate for a county to provide facsimile copies of ballots and ballot instructions in other languages outside of English when there is a significant and substantial need. (Elections Code §14201)

Existing law prohibits on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. (Government Code §11135)

Existing law allows a person who has received a certificate of rehabilitation or granted a pardon from the Governor to exercise thereafter all civil and political rights of citizenship, including, but not limited to the right to vote. (Penal Code §4852.17)

This bill requires the SOS to operate a pilot grant program to provide grants to three counties to design, implement, and evaluate a program to improve voter participation in jail facilities using appropriated funds.

This bill requires grants to be issued in time to support increased participation in statewide primary and general elections from 2026 through 2028. Counties may also provide in-person voting for local and special elections as part of this pilot program.

This bill requires the county elections official to coordinate with the county sheriff or county jail facility administrator to provide in-person voting opportunities to eligible incarcerated persons at each jail facility. Requires a plan describing the program to be posted on the county elections official's internet website.

This bill requires eligible incarcerated individuals to be provided with information pertaining to accessibility, language translations, voter intimidation, electioneering, and other election-specific information during in-person voting.

This bill provides a participating county to provide at least one voting day within at least 29 days before an election.

This bill permits an elections official to deviate from the procedures in the bill, apart from specified sections, if they feel the procedures are impractical or unsafe in a jail facility and would undermine the goals of the pilot program to increase voter participation in elections.

This bill provides in-person voting opportunities provided by this bill do not count towards a jurisdiction's overall number of required polling locations.

This bill requires the county sheriff or jail facility administrator to designate an employee as a voting coordinator at each jail facility for in-person voting who would complete a training prepared by the SOS. The voting coordinator's responsibilities would include, but not be limited to:

- Ensuring voter registration forms are continuously available to incarcerated persons and providing information regarding how to complete the forms and relevant deadlines for completing them; and
- Ensuring the jail facility library contains updated nonpartisan voter education materials and information regarding the voting rights and eligibility of an incarcerated or formerly incarcerated person.

This bill requires informational flyers regarding the voting rights and eligibility of an incarcerated person or a person with a criminal history to be posted at least 60 days prior to an election and continuing through Election Day in a conspicuous location in housing and common areas to which incarcerated persons have access.

This bill requires the county sheriff or jail facility administrator to, at a minimum, develop policies and procedures to ensure:

- All registration forms and completed vote by mail ballots are timely submitted to the appropriate elections official; and
- The secrecy of the ballot is protected.

This bill requires the county sheriff to provide voter eligibility information for incarcerated or formerly incarcerated persons upon intake to, and discharge from, the county jail.

This bill permits the county sheriff or jail facility administrator to hold an informational session in a jail facility at least 60 days prior to an election that provides voter education information and materials regarding voter eligibility requirements, deadlines, and steps to register to vote and vote.

This bill contains a sunset date of January 1, 2030.

COMMENTS

1. Need for This Bill

According to the Author:

In practice, many counties have vote by mail programs to facilitate voting in county jails. However, statistics indicate that incarcerated persons—a group that is overwhelmingly comprised of people from low-income communities of color – still experience significant barriers to voting and to accessing voter educational materials which results in very low voter turnout among this population of eligible voters.

AB 544 will create a pilot program that will require the Secretary of State to provide grants to three counties to improve access for people detained at a county jail. It will require the pilot counties to establish a polling location that allows an incarcerated person to return their completed vote by mail ballot, update their voter registration, conditionally register to vote, and vote.

2. Incarcerated Person’s Right to Vote in California

California law provides that a person loses their voting eligibility when serving a sentence in a state or federal prison for a felony conviction or parole violation. A person’s right to vote is immediately restored upon completion of a sentence or placed on parole, post-release community supervision, mandatory supervision, federal supervision, or probation. A person convicted of a misdemeanor conviction does not lose their ability to vote. And a person can still vote while awaiting trial for any charge, even if incarcerated in a county jail, as long as you have not lost your right to vote due to a prior conviction. (U.S. Vote Foundation, [California Voting Rights Restoration](#))

Therefore, if a person is not serving a state or federal prison term for the conviction of a felony and meets all of the other registration requirements, they are eligible to vote and to receive a ballot in the mail. Regardless of this bill, local jurisdictions are required to provide registration and voting access to all eligible people. To deny access or provide inadequate access to voting for eligible individuals is voter disenfranchisement.

3. In-Person Voting for Incarcerated Individuals

There are models of voter engagement in California and in other states that have increased voter participation among those held in local jails, providing safe, secure elections and improved access for incarcerated persons. In 2020, the Los Angeles (LA) County Registrar-Recorder/County Clerk, in collaboration with the LA County Sheriff’s Department and organizations in the community, launched the “We All Count” campaign to educate and assist eligible voters detained in LA County jails with the registration and voting process. The campaign resulted in 1,700 incarcerated voters registered at two jail facilities in LA County. Additionally, during the March 2020 presidential primary election, an in-person voting opportunity was established at the Century Regional Detention Facility and over 90 people cast their ballot inside the jail facility. During the November 2022 statewide general election, LA County expanded its program to a second detention facility and over 40 people cast their ballots inside the two jail facilities.

Other jurisdictions that have made in-person voting available in their local jail facilities include Denver, Washington, D.C., Cook County and Will County in Illinois, and Harris County, Texas.

4. Unique Barriers and Recent Research

A 2020 Prison Policy Initiative report, “Eligible but Excluded: A Guide to Removing the Barriers to Jail Voting,” discussed that while most people in local jails are legally eligible to vote, in practice many are unable to exercise those rights. The report discussed several barriers that prevent those in jail from voting, including confusion about voter eligibility requirements and deadlines for registering to vote and casting a ballot. For example, some states require personal identification (e.g., a social security number or driver’s license number) in order to register or cast a ballot, which can be problematic because when a person is arrested and

detained in jail, their personal effects, such as identifications, are typically confiscated. Additionally, incarcerated people have limited or no access to the internet or various paper resources, making it significantly challenging to access voting forms, election resources, or confirm a ballot has been received and/or accepted by election officials. Delays in receiving mail in jail may also impede the timely casting of ballots or voter registration forms.

Barriers to obtaining and submitting a ballot was also highlighted in the report. Some states limit who may vote by mail and typically do not recognize detention in jail as a valid justification to obtain a mail ballot. Additionally, the report discusses high population turnover rates in jails. According to the report, the average jail stay is between three to four weeks. However, many people are incarcerated for much shorter periods of time. A person may register to vote, but end up in jail on Election Day (or for the duration of the voting period). Or conversely, a person may register to vote while in jail, but also be released prior to receiving and/or casting their ballot. In either scenario, a person's registration information will not match their status on Election Day, and thus the person may be unable to vote.

5. Broad Ability to Waive the Bill's Provisions

This bill allows a local elections official and local official responsible for the safety of incarcerated persons to deviate from the procedures in this bill if they agree that the procedures are impractical, unsafe, or would undermine the goals of the pilot program. It also requires that any exceptions to election procedures would need to be explained and justified in the report the bill requires the elections official to prepare following each election.

The broad criteria provided by the bill's requirement to ensure practicality, safety, or the pilot program's goals could provide an opportunity for abuse. Officials responsible for local elections or the facility's safety would be able to restrict, based on their own self-determinations, an incarcerated person's ability to vote using their vote by mail ballot, register to vote, receive a provisional ballot, and vote using an accessible voting machine, among others. Whether the officials' self-determination actually satisfies the original intention of the bill would be irrelevant. The Author may wish to consider whether this broad authority to effectively waive provisions of the bill is appropriate or whether it would be better to identify specific sections that should be adjusted to both ensure the safety of those in jail and support the goals of the bill's pilot program.

6. Argument in Support

According to the Ella Baker Center for Human Rights:

California law provides that eligible voters held in jails, including those held pre-trial for lack of bail, held post-sentence, or due to a probation or parole violation, have the right to vote. However, incarcerated Californians are often unable to access their voting rights either because they are underserved by the elections system, or because they are unaware of their constitutional rights and civic opportunities.

Currently, most elections offices and Sheriff's Departments in California only allow for mail-in voting, which has resulted in historically low rates of participation. This is in part because jail administrators generally lack training about voting laws or lack support from county elections officials, and voters must be pre-registered to vote from jail weeks before the election for their ballots to arrive on time.

There are models of voter engagement in California and in other states that have increased voter participation among those held in local jails, which provide safer and more secure elections access to eligible California voters. In Los Angeles County, the LA Registrar, in collaboration with the LA Sheriff, used flex and mobile voting centers to get 1,700 incarcerated voters registered at two jail facilities in LA during the 2020 election. Cook County Jail in Chicago established its first jail-based polling location in 2020. Before polling stations were established in jail, voter turnout was less than 7 percent by mailed ballot. By contrast, the first year that polling stations were introduced inside, voter turnout increased to 37 percent. And in the June 2022 primary, people in the Cook County jail turned out at a higher rate than registered voters in Chicago. The availability of same day registration was a key component in the success of the program. (Prison Policy Initiative, [*Jail-based polling locations: A way to fight voter disenfranchisement*](#), (October 25, 2022))

AB 544 (Bryan) provides much needed protections for eligible incarcerated voters in the pilot counties and is an important step forward to ensure that our democracy works for everyone.

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