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# 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. According to the National Association for the  
5 Advancement of Colored People, disenfranchisement based on  
6 criminal conviction has a disproportionate effect on communities  
7 of color, which often experience a higher incarceration rate  
8 than do white communities. According to the American  
9 Correctional Association, the loss of the right to vote impedes  
10 "the successful reentry of offenders as responsible, productive  
11 citizens into the community." Voting can be an opportunity for  
12 inmates to learn about candidates and issues, engage in civic  
13 education, and prepare for reintegration into society. Allowing  
14 incarcerated persons to retain their right to vote only by  
15 absentee ballot will benefit the State by helping inmates remain  
16 aware of the issues that are important to society so that they  
17 may participate more fully in their communities upon release.

1           The purpose of this Act is to allow incarcerated  
2 individuals who where Hawaii residents immediately prior to  
3 incarceration to vote in Hawaii elections only by absentee  
4 ballot.

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

7           "**§11-13 Rules for determining residency.** For the purpose  
8 of this title, there can be only one residence for an  
9 individual, but in determining residency, a person may treat  
10 oneself separate from the person's spouse. The following rules  
11 shall determine residency for election purposes only:

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

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

20           (3) If a person resides with the person's family in one  
21 place, and does business in another, the former is the  
22 person's place of residence; but any person having a

1 family, who establishes the person's dwelling place  
2 other than with the person's family, with the  
3 intention of remaining there shall be considered a  
4 resident where the person has established [~~such~~] the  
5 dwelling place;

6 (4) The mere intention to acquire a new residence without  
7 physical presence at [~~such~~] the place, does not  
8 establish residency, neither does mere physical  
9 presence without the concurrent present intention to  
10 establish [~~such~~] the place as the person's residence;

11 (5) A person does not gain or lose a residence solely by  
12 reason of the person's presence or absence while  
13 employed in the service of the United States or of  
14 this State, or while a student of an institution of  
15 learning, or while kept in an institution or asylum,  
16 or while confined in a prison~~[?]~~, jail, correctional  
17 facility, or community correctional facility within or  
18 outside of the State of Hawaii;

19 (6) No member of the armed forces of the United States,  
20 the member's spouse or the member's dependent is a  
21 resident of this State solely by reason of being  
22 stationed in the State; and

1           (7) A person loses the person's residence in this State if  
2           the person votes in an election held in another state  
3           by absentee ballot or in person.

4 In case of question, final determination of residence shall be  
5 made by the clerk, subject to appeal to the board of  
6 registration under part III of this chapter."

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

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

12           The affidavit shall contain the following information:

- 13           (1) Name;
- 14           (2) Social security number;
- 15           (3) Date of birth;
- 16           (4) Residence, including mailing address;
- 17           (5) That the residence stated in the affidavit is not  
18           simply because of the person's presence in the State  
19           but that the residence was acquired with the intent to  
20           make Hawaii the person's legal residence with all the  
21           accompanying obligations therein;
- 22           (6) That the person is a citizen[~~-~~]; and

1        (7) Address or location of last voluntary residence for  
2        persons held or incarcerated in a prison, jail,  
3        correctional center, or community correctional  
4        center."

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

7        **"§11-23 Changing register; striking names of disqualified**  
8        **voters.** (a) Whenever the clerk receives from the department of  
9        health or any informing agency, information of the death, [~~loss~~  
10       ~~of voting rights of a person sentenced for a felony as provided~~  
11       ~~in section 831-2,~~] adjudication as an incapacitated person under  
12       the provisions of chapter 560, loss of citizenship, or any other  
13       disqualification to vote, of any person registered to vote in  
14       that county, or who the clerk has reason to believe may be  
15       registered to vote therein, the clerk shall thereupon make  
16       [~~such~~] an investigation as may be necessary to prove or disprove  
17       the information, giving the person concerned, if available,  
18       notice and an opportunity to be heard. If after the  
19       investigation the clerk finds that the person is dead, or  
20       incapacitated to the extent that the person lacks sufficient  
21       understanding or capacity to make or communicate responsible  
22       decisions concerning voting, [~~or has lost voting rights pursuant~~

1 ~~to section 831-2,~~] or has lost citizenship, or is disqualified  
2 for any other reason to vote, the clerk shall remove the name of  
3 the person from the register.

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

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

17 "**§15-2 Who may vote by absentee ballot.** (a) Any person  
18 registered to vote may cast an absentee ballot in the manner  
19 provided in this chapter and rules adopted by the chief election  
20 officer.

21 (b) Absentee ballot shall be the sole method of voting for  
22 all persons registered to vote as residents of the State of

1 Hawaii who are confined in a prison, jail, correctional center,  
2 or community correctional center."

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

5 "**§15-5 Delivery of ballots.** (a) Immediately upon receipt  
6 of a request within the time limit specified in section 15-4,  
7 the clerk shall examine the records to ascertain whether or not  
8 the voter is lawfully entitled to vote as requested. As soon as  
9 the printed official ballots are available, the clerk shall mail  
10 in a forwarding envelope or deliver in person if the voter  
11 appears at the office of the clerk, an official ballot and other  
12 materials prescribed in section 15-6 except that an  
13 incapacitated voter may send a representative to obtain the  
14 voter's ballots pursuant to the rules [~~promulgated~~] adopted by  
15 the chief election officer. All requests received upon the last  
16 day specified in section 15-4 for receipt shall be mailed to the  
17 voter requesting the same as soon as reasonably practicable, but  
18 in no event later than twenty-four hours after receipt thereof.

19 (b) The chief election officer may adopt rules for the  
20 preparation of special ballots of such different weight of  
21 paper, overall size and shape, or other physical criteria as  
22 shall be prescribed by the secretary of state or other federal

1 or state officer to conform with minimum postal, military,  
2 correctional, or other federal or state regulations or orders  
3 regarding the transportation and delivery of the ballots;  
4 provided that the text is identical in substance, except as to  
5 type size, with that appearing on the official ballots.

6       ~~(b)~~ (c) If mailed absentee ballots are not received by  
7 the voter within five days of an election, the voter may request  
8 that absentee ballots be forwarded by facsimile. Upon receipt  
9 of ~~such~~ a request and confirmation that proper application was  
10 made, the clerk may transmit appropriate ballots by facsimile  
11 together with a form requiring the affirmations and information  
12 required by section 15-6, and a form containing a waiver of the  
13 right to secrecy, as provided by section 11-137. The voter may  
14 return the voted ballots and executed forms by facsimile or  
15 mail; provided that they are received by the issuing clerk no  
16 later than the close of polls on election day. Upon receipt,  
17 the clerk shall verify compliance with the requirements of  
18 section 15-9(c), and prepare the ballots for counting pursuant  
19 to section 15-10."

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



1           "(a) A person sentenced for a felony, from the time of the  
2 person's sentence until the person's final discharge, may not[+  
3       ~~(1) Vote in an election, but if the defendant is placed on~~  
4       ~~probation or the defendant is paroled after commitment~~  
5       ~~to imprisonment, the defendant may vote during the~~  
6       ~~period of the probation or parole; or~~  
7       ~~(2) Become]~~ become a candidate for or hold public office."

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

10          "(a) If the sentence was in this State, the order,  
11 certificate, or other instrument of discharge, given to a person  
12 sentenced for a felony upon the person's discharge after  
13 completion of service of the person's sentence or after service  
14 under probation or parole, shall state that the [~~defendant's~~  
15 ~~rights to vote and to hold any future public office,~~] rights of  
16 which the defendant was deprived by this chapter[7] are thereby  
17 restored and that the defendant suffers no other disability by  
18 virtue of the defendant's conviction and sentence except as  
19 otherwise provided by this chapter. A copy of the order or  
20 other instrument of discharge shall be filed with the clerk of  
21 the court of conviction."

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

3 SECTION 10. This Act shall take effect on July 1, 2009.

**Report Title:**

Voting Rights, Incarcerated Persons

**Description:**

Allows incarcerated persons who were Hawaii residents at the time of their arrest to vote only by absentee ballot in Hawaii's elections. (SD1)