

JAN 23 2009

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 via absentee
15 ballot will benefit the State by helping inmates remain aware of
16 the issues that are important to society so that they may
17 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 via absentee ballot.

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

6 "**§11-13 Rules for determining residency.** For the purpose
7 of this title, there can be only one residence for an
8 individual, but in determining residency, a person may treat
9 oneself separate from the person's spouse. The following rules
10 shall determine residency for election purposes only:

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

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

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



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

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

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

18 (6) No member of the armed forces of the United States,
19 the member's spouse or the member's dependent is a
20 resident of this State solely by reason of being
21 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, [~~less~~
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 831-27]~~ 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 method of voting for all
22 persons registered to vote as residents of the State of Hawaii



1 who are confined in a prison, jail, correctional center, or
2 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) Beecome] 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.

4

INTRODUCED BY: Will Eyo
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Report Title:

Voting Rights, Incarcerated Persons

Description:

Allows incarcerated persons who were Hawaii residents at the time of their arrest to vote via absentee ballot in Hawaii's elections.

