
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. Nationally, disenfranchisement based on criminal
5 conviction has a disproportionate effect on communities of
6 color, which often experience a higher incarceration rate than
7 do white communities. In Hawaii, this loss of voting power is a
8 burden borne most greatly by the Native Hawaiian community, who
9 are and have historically been disproportionately incarcerated.

10 This loss of rights does more than disproportionately
11 disenfranchise minorities and undermine our principles of
12 democracy. According to the American Correctional Association,
13 the loss of the right to vote impedes "the successful reentry of
14 offenders as responsible, productive citizens into the
15 community." Voting can be an opportunity for inmates to learn
16 about candidates and issues, engage in civic education, and
17 prepare for reintegration into society. Allowing incarcerated



1 persons to retain their right to vote only by absentee ballot
2 will benefit the State by helping inmates remain aware of the
3 issues that are important to society so that they may
4 participate more fully in their communities upon release.

5 The purpose of this Act is to allow incarcerated
6 individuals who were Hawaii residents immediately prior to
7 incarceration to vote in Hawaii elections only by absentee
8 ballot.

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

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

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

20 (2) A person does not gain residence in any precinct into
21 which the person comes without the present intention



1 of establishing the person's permanent dwelling place
2 within such precinct;

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

11 (4) The mere intention to acquire a new residence without
12 physical presence at such place, does not establish
13 residency, neither does mere physical presence without
14 the concurrent present intention to establish such
15 place as the person's residence;

16 (5) A person does not gain or lose a residence solely by
17 reason of the person's presence or absence while
18 employed in the service of the United States or of
19 this State, or while a student of an institution of
20 learning, or while kept in an institution or asylum,
21 or while confined in a prison[+], jail, correctional



1 facility, or community correctional facility within or
2 outside of the State;

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

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

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

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

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

18 The affidavit shall contain the following information:

- 19 (1) Name;
20 (2) Social security number;
21 (3) Date of birth;



- 1 (4) Residence, including mailing address;
- 2 (5) That the residence stated in the affidavit is not
- 3 simply because of the person's presence in the State,
- 4 but that the residence was acquired with the intent to
- 5 make Hawaii the person's legal residence with all the
- 6 accompanying obligations therein; ~~and~~
- 7 (6) That the person is a citizen~~[-]~~; and
- 8 (7) Address or location of last voluntary residence for
- 9 persons held or incarcerated in a prison, jail,
- 10 correctional center, or community correctional center.

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

13 SECTION 4. Section 11-23, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Whenever the clerk receives from the department of
16 health or any informing agency, information of the death, [~~loss~~
17 ~~of voting rights of a person sentenced for a felony as provided~~
18 ~~in section 831-2,~~] adjudication as an incapacitated person under
19 the provisions of chapter 560, loss of citizenship, or any other
20 disqualification to vote, of any person registered to vote in
21 that county, or who the clerk has reason to believe may be



1 registered to vote therein, the clerk shall thereupon make such
2 investigation as may be necessary to prove or disprove the
3 information, giving the person concerned, if available, notice
4 and an opportunity to be heard. If after the investigation the
5 clerk finds that the person is dead, or incapacitated to the
6 extent that the person lacks sufficient understanding or
7 capacity to make or communicate responsible decisions concerning
8 voting, [~~or has lost voting rights pursuant to section 831-2,~~]
9 or has lost citizenship, or is disqualified for any other reason
10 to vote, the clerk shall remove the name of the person from the
11 register."

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

14 "§15-2 Who may vote by absentee ballot. (a) Any person
15 registered to vote may cast an absentee ballot in the manner
16 provided in this chapter and rules adopted by the chief election
17 officer.

18 (b) Absentee ballot shall be the sole method of voting for
19 all persons registered to vote as residents of the State who are
20 confined in a prison, jail, correctional center, or community
21 correctional center."



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

3 "§15-5 Delivery of ballots. (a) Immediately upon receipt
4 of a request for absentee ballot within the time limit specified
5 in section 15-4, the clerk shall examine the records to
6 ascertain whether the voter is lawfully entitled to vote as
7 requested. If the clerk ascertains that the voter is lawfully
8 entitled to vote as requested, no earlier than thirty days
9 before the election, the clerk shall mail in a forwarding
10 envelope, or deliver in person if the voter appears at the
11 office of the clerk, an official ballot and other materials
12 prescribed in section 15-6, except that an incapacitated voter
13 may send a representative to obtain the voter's ballots pursuant
14 to the rules adopted by the chief election officer; provided
15 that official ballots and other materials prescribed in section
16 15-6 shall be mailed or delivered:

- 17 (1) To uniform military and overseas voters pursuant to
18 section 15D-9; and
19 (2) No later than twenty-four hours after receipt of the
20 request for absentee ballot for requests received on
21 the last day specified in section 15-4.



1 (b) The chief election officer may adopt rules for the
2 preparation of special ballots of such different weight of
3 paper, overall size and shape, or other physical criteria to
4 conform with minimum postal, military, correctional, or other
5 federal or state regulations or orders regarding the
6 transportation and delivery of the ballots; provided that the
7 text is identical in substance, except as to type size, with
8 that appearing on the official ballots.

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



1 compliance with the requirements of section 15-9(c), and prepare
2 the ballots for counting pursuant to section 15-10."

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

5 "(a) A person sentenced for a felony, from the time of the
6 person's sentence until the person's final discharge, may not[+

7 ~~(1) Vote in an election, but if the defendant is placed on
8 probation or the defendant is paroled after commitment
9 to imprisonment, the defendant may vote during the
10 period of the probation or parole; or~~

11 ~~(2) Become] become a candidate for or hold public office."~~

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

14 "(a) If the sentence was in this State, the order,
15 certificate, or other instrument of discharge, given to a person
16 sentenced for a felony upon the person's discharge after
17 completion of service of the person's sentence or after service
18 under probation or parole, shall state that the [~~defendant's
19 rights to vote and to hold any future public office,~~] rights of
20 which the defendant was deprived by this chapter[~~7~~] are thereby
21 restored and that the defendant suffers no other disability by

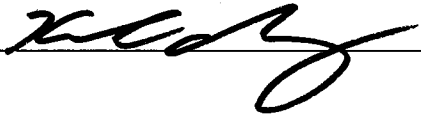


1 virtue of the defendant's conviction and sentence except as
2 otherwise provided by this chapter. A copy of the order or
3 other instrument of discharge shall be filed with the clerk of
4 the court of conviction."

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

7 SECTION 10. This Act shall take effect upon its approval.
8

INTRODUCED BY:



JAN 27 2016



H.B. NO. 2773

Report Title:

Voting Rights; Incarcerated Persons

Description:

Repeals statutory provisions that disenfranchise incarcerated persons. Provides for the determination of residency of and delivery of ballots to incarcerated persons.

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

