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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 the  
2 disenfranchisement of persons following criminal convictions  
3 undermines democratic ideals by depriving otherwise-qualified  
4 citizens of their right to vote. Nationally, disenfranchisement  
5 based on criminal conviction has a disproportionate effect on  
6 communities of color, which often experience a higher  
7 incarceration rate than do white communities. In Hawaii, this  
8 loss of voting power is a burden borne most greatly by the  
9 Native Hawaiian community, who are and have historically been  
10 disproportionately incarcerated.

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



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

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

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

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

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



- 1           (2) A person does not gain residence in any precinct into  
2           which the person comes without the present intention  
3           of establishing the person's permanent dwelling place  
4           within such precinct;
- 5           (3) If a person resides with the person's family in one  
6           place, and does business in another, the former is the  
7           person's place of residence; but any person having a  
8           family, who establishes the person's dwelling place  
9           other than with the person's family, with the  
10          intention of remaining there shall be considered a  
11          resident where the person has established such  
12          dwelling place;
- 13          (4) The mere intention to acquire a new residence without  
14          physical presence at such place, does not establish  
15          residency, neither does mere physical presence without  
16          the concurrent present intention to establish such  
17          place as the person's residence;
- 18          (5) A person does not gain or lose a residence solely by  
19          reason of the person's presence or absence while  
20          employed in the service of the United States or of  
21          this State, or while a student of an institution of



1 learning, or while kept in an institution or asylum,  
2 or while confined in a prison[~~7~~], jail, correctional  
3 facility, or community correctional facility within or  
4 outside of the State;

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

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

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

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

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

20 The affidavit shall contain the following information:

21 (1) Name;



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

13           An application to register to vote shall include a space to

14   request a permanent absentee ballot."

15           SECTION 4. 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.



1        (b) Absentee mail in ballot shall be the sole method of  
2 voting for all persons registered to vote as residents of the  
3 State who are confined in a prison, jail, correctional center,  
4 or community correctional center."

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

7        "§15-5 Delivery of ballots. (a) Immediately upon receipt  
8 of a request for absentee ballot within the time limit specified  
9 in section 15-4, the clerk shall examine the records to  
10 ascertain whether the voter is lawfully entitled to vote as  
11 requested. If the clerk ascertains that the voter is lawfully  
12 entitled to vote as requested, no earlier than thirty days  
13 before the election, the clerk shall mail in a forwarding  
14 envelope, or deliver in person if the voter appears at the  
15 office of the clerk, an official ballot and other materials  
16 prescribed in section 15-6, except that an incapacitated voter  
17 may send a representative to obtain the voter's ballots pursuant  
18 to the rules adopted by the chief election officer; provided  
19 that official ballots and other materials prescribed in section  
20 15-6 shall be mailed or delivered:



1 (1) To uniform military and overseas voters pursuant to  
2 section 15D-9; and

3 (2) No later than twenty-four hours after receipt of the  
4 request for absentee ballot for requests received on  
5 the last day specified in section 15-4.

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

14 [~~(b)~~] (c) If mailed absentee ballots are not received by  
15 the voter within five days of an election, a covered voter under  
16 chapter 15D may request that absentee ballots be forwarded by  
17 facsimile. Upon receipt of such a request and confirmation that  
18 proper application was made, the clerk may transmit appropriate  
19 ballots by facsimile together with a form requiring the  
20 affirmations and information required by section 15-6, and a  
21 form containing a waiver of the right to secrecy, as provided by



1 section 11-137. The voter may return the voted ballots and  
2 executed forms by facsimile or mail; provided that they are  
3 received by the issuing clerk no later than the close of polls  
4 on election day. Upon receipt, the clerk shall verify  
5 compliance with the requirements of section 15-9(c), and prepare  
6 the ballots for counting pursuant to section 15-10."

7 SECTION 6. Section 831-2, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

9 "(a) A person sentenced for a felony, from the time of the  
10 person's sentence until the person's final discharge [~~may not~~

11 ~~(1) Vote in an election, but if the defendant is placed on~~  
12 ~~probation or the defendant is paroled after commitment~~  
13 ~~to imprisonment, the defendant may vote during the~~  
14 ~~period of the probation or parole; or~~

15 ~~(2) Become] :~~

16 (1) May not become a candidate for or hold public  
17 office [~~-~~];

18 (2) May vote unless the person is incarcerated for:

19 (A) A class A felony;

20 (B) A class B felony; or





1           (C) A class C felony for voter fraud pursuant to  
2                           section 19-3.5 or one or more violent crimes  
3                           pursuant to section 351-32;

4           (2) May vote if the person is placed on probation or on  
5                           parole after commitment to imprisonment during the  
6                           period of the probation or parole unless the person  
7                           was sentenced for voter fraud pursuant to section 19-  
8                           3.5; and

9           (3) May not vote if the person is incarcerated for  
10                           concurrent sentences for the following offenses:

11                   (A) A class A felony;

12                   (B) A class B felony; or

13                   (C) A class C felony pursuant to voter fraud pursuant  
14                           to section 19-3.5 or one or more violent crimes  
15                           pursuant to section 351-32."

16           SECTION 7. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18           SECTION 8. This Act shall take effect upon its approval.



**Report Title:**

Voting Rights; Incarcerated Persons

**Description:**

Allows certain incarcerated individuals who were Hawaii residents immediately prior to incarceration to vote in Hawaii elections only by absentee mail in ballot. (HB2773 HD1)

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

