

JAN 20 2016

A BILL FOR AN ACT

RELATING TO VOTING RIGHTS.

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 white communities. In Hawaii, this loss of voting power is a
8 burden borne most greatly by members of the Native Hawaiian
9 community, who are and have historically been disproportionately
10 incarcerated.

11 This loss of rights does more than disproportionately
12 disenfranchise minorities and undermine the 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 vote by absentee ballot will benefit the State by
3 helping inmates remain aware of issues that are important to
4 society so that they may participate more fully in their
5 communities upon release.

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

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 [~~sueh~~] that 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 [~~sueh~~] that
12 dwelling place;
- 13 (4) The mere intention to acquire a new residence without
14 physical presence at [~~sueh~~] that place, does not
15 establish residency, neither does mere physical
16 presence without the concurrent present intention to
17 establish [~~sueh~~] that 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[?], jail, correctional
3 facility, or community correctional center within or
4 outside 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 the last voluntary residence
- 11 for a person held or incarcerated in a prison, jail,
- 12 correctional facility, or community correctional
- 13 center.

14 An application to register to vote shall include a space to
 15 request a permanent absentee ballot."

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

18 "(a) Whenever the clerk receives from the department of
 19 health or any informing agency, information of the death, [~~less~~
 20 ~~of voting rights of a person sentenced for a felony as provided~~
 21 ~~in section 831-2,~~] adjudication as an incapacitated person under



1 the provisions of chapter 560, loss of citizenship, or any other
2 disqualification to vote, of any person registered to vote in
3 that county, or who the clerk has reason to believe may be
4 registered to vote therein, the clerk shall thereupon make such
5 investigation as may be necessary to prove or disprove the
6 information, giving the person concerned, if available, notice
7 and an opportunity to be heard. If after the investigation the
8 clerk finds that the person is dead, or incapacitated to the
9 extent that the person lacks sufficient understanding or
10 capacity to make or communicate responsible decisions concerning
11 voting, [~~or has lost voting rights pursuant to section 831-2,~~]
12 or has lost citizenship, or is disqualified for any other reason
13 to vote, the clerk shall remove the name of the person from the
14 register."

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."



1 (b) Voting by absentee 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 6. 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 7. 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] become a candidate for or hold public office."~~

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

18 "(a) If the sentence was in this State, the order,
19 certificate, or other instrument of discharge, given to a person
20 sentenced for a felony upon the person's discharge after
21 completion of service of the person's sentence or after service



1 under probation or parole, shall state that the [~~defendant's~~
2 ~~rights to vote and to hold any future public office,~~] rights of
3 which the defendant was deprived by this chapter, are thereby
4 restored and that the defendant suffers no other disability by
5 virtue of the defendant's conviction and sentence except as
6 otherwise provided by this chapter. A copy of the order or
7 other instrument of discharge shall be filed with the clerk of
8 the court of conviction."

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

11 SECTION 10. This Act shall take effect upon its approval.

12

INTRODUCED BY: BR. Clarence R. Fisk



S.B. NO. 2024

Report Title:

Voting Rights; Incarcerated Felons; Absentee Voting; Authorized

Description:

Authorizes incarcerated felons who were residents of the State to vote by absentee ballot.

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