


<p>California Department of Justice DIVISION OF LAW ENFORCEMENT John D. Marsh, Chief</p> 	<h1>INFORMATION BULLETIN</h1>	
<p>Subject:</p> <p><b>Access to Voting For Eligible Persons With a Criminal History or Who are Incarcerated</b></p>	<p>No.</p> <p>2022-DLE-14</p> <p>Date:</p> <p>10/11/2022</p>	<p>Contact for information:</p> <p>John D. Marsh, Chief Division of Law Enforcement (916) 210-6300</p>

**TO: ALL LOCAL CALIFORNIA LAW ENFORCEMENT AGENCIES**

This bulletin is designed to ensure that local law enforcement agencies in California have the necessary information to protect the right to vote of individuals who have a criminal history or who are currently incarcerated but are nonetheless eligible to vote. It provides information about eligibility to vote, related legal requirements for law enforcement agencies (LEAs) that operate local detention facilities, and encourages agencies to adopt best practices to eradicate barriers to voting that exist for persons currently incarcerated in California's local detention facilities. Understanding who is entitled to vote and LEAs' related responsibilities are particularly important given the October 24, 2022 deadline to register to vote for the November 8, 2022 election.

**I. WHO IS ELIGIBLE TO VOTE?**

The right to vote is fundamental and is guaranteed to all eligible citizens in the California Constitution. In California, among those who are entitled to exercise this crucial right are persons with a criminal history (i.e., past convictions), as well as eligible persons currently incarcerated in California's local detention facilities,<sup>1</sup> subject to certain exceptions.

**A. Eligibility Requirements**

Under California law, a person is eligible to vote if they:

- Are a United States citizen;
- Are a California resident;
- Are at least 18 years old by Election Day (which, this year, is November 8, 2022);
- Are not currently serving a state or federal prison term; and
- Have not been declared mentally incompetent by a Court.<sup>2</sup>

(Cal. Const., Art., II, §§ 2, 4; Elec. Code, § 2101.)

<sup>1</sup> "Local detention facility" means any city, county, city and county, or regional jail, camp, court holding facility, or other correctional facility, whether publicly or privately operated, used for confinement of adults or of both adults and minors, but does not include that portion of a facility for confinement of both adults and minors which is devoted only to the confinement of minors. (Cal. Code Regs. tit. 15, § 1006.)

<sup>2</sup> For information regarding this requirement, see [Voting Rights: Persons Subject to Conservatorship](#).

## **B. Persons With a Criminal History Who Are Not Currently Incarcerated Are Allowed to Vote, Even If On Parole**

Once a person is released from serving a state or federal prison term for a felony conviction,<sup>3</sup> their criminal history **does not** impact their ability to vote, even if following their release they remain on one of the following:

- Parole;
- Probation;
- Mandatory supervision;
- Post-release community supervision;
- Federal supervised release; or
- Have a juvenile wardship adjudication.

Prior to November 2020, the right to vote in California excluded persons on parole for a felony conviction. In November 2020, California voters approved Proposition 17, the Voting Rights Restoration for Persons on Parole Amendment. Proposition 17 amended the California Constitution to allow people on parole for felony convictions to vote in California. (Cal. Const., Art., II, §§ 2, 4.)

Accordingly, under California law, persons with a criminal history who served a felony prison sentence are entitled to vote regardless of their post-release supervision status, provided that they meet all other requirements, including citizenship, age, residency, and competency requirements. LEAs should review their existing policies or informational materials, if any exist, applicable to or designed to inform persons with a criminal history about their voting eligibility, to ensure that these materials reflect the current state of the law (i.e., post-Proposition 17), which **allows persons on parole from felony convictions to vote**.

## **C. Persons Currently Incarcerated in Local Detention Facilities Who Are Eligible to Vote**

Regardless of their criminal history, persons currently incarcerated in local detention facilities are eligible to vote if they: (1) meet the eligibility requirement in Section A above, and (2) are not subject to the exceptions in Section D below. This includes, but is not limited, to person who are:

- In a local detention facility:
  - Serving a misdemeanor sentence
  - Because jail time is a condition of probation (misdemeanor or felony)
  - Serving a county jail sentence for a felony (pursuant to Pen. Code, § 1170, subd. (h))
  - Awaiting trial
- On parole\*
- On probation\*

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<sup>3</sup> Misdemeanor convictions alone do not impair a person's right to vote.

\* A person who is **servicing a prison term** in county jail as a result of a parole or probation violation or as a result of a new offense is not allowed to register and vote until the prison term is completed.

- On mandatory supervision
- On post-release community supervision
- On federal supervised release
- With a juvenile wardship adjudication.

(Cal. Const., Art., II, §§ 2, 4; Elec. Code, § 2101.) Persons in county jail who are on probation or parole have the right to register and vote, unless (as discussed below) the person is **servicing a prison term** in the county jail as a result of a parole or probation violation, or a new offense.

#### **D. Persons Currently Incarcerated Who Are Not Permitted to Register and Vote**

The only persons in California who are **not** permitted to register and vote, even if they meet the eligibility requirements in Section A above, are those who are **currently servicing** a state or federal prison term. This includes individuals who are currently serving a prison term following a probation or parole violation.

The prison term may be served in state prison, federal prison, county jail, or other correctional facility. Therefore, the following persons currently incarcerated in local detention facilities cannot vote even if they meet the eligibility requirements above:

- Awaiting transfer to a state or federal prison following a felony conviction;
- Serving a state prison sentence under a contract with a county jail (Pen. Code, § 2910); or
- Serving a prison term in county jail as a result of a parole or probation violation.

## **II. REQUIREMENTS FOR LOCAL DETENTION FACILITIES REGARDING VOTING FOR INCARCERATED PERSONS**

To ensure that eligible persons currently incarcerated in local detention facilities have access to their constitutionally-protected right to vote, local detention facility operators or administrators are required to have written policies and procedures to facilitate this access. Specifically, Title 15, Minimum Standards for Local Detention Facilities, requires:

The facility administrator of a Type I (holding sentenced inmate workers) II, III or IV facility shall develop written policies and procedures whereby the county registrar of voters allows qualified voters to vote in local, state, and federal elections, pursuant to election codes.

(Cal. Code Regs., tit. 15, § 1071.)

Local detention facility operators or administrators should ensure they have a written policy as required by Title 15, and that the policy reflects the most current law, as outlined above.

## **III. HOW TO FACILITATE ACCESS TO VOTING FOR ELIGIBLE INCARCERATED PERSONS**

The 2022 elections will take place on **November 8, 2022**. To maximize access to voting for eligible incarcerated persons, and to ensure that LEAs that operate local detention facilities comply with their statutory mandate to maintain written policies and procedures regarding

voting, the Attorney General recommends that local detention facility operators or administrators review the facility's current procedures regarding voter access and consider implementing the following:

- Include in Inmate Request Forms a category for "Voting."
- Designate a voting coordinator.
- Post informational flyers, such as the one provided by the California Secretary of State in 10 different languages, attached, and available at [Voting Rights: Persons with a Criminal History](#), prominently in housing and common areas.
- Consider holding an informational session, including potentially with outside government agencies (i.e. your county elections officials) or nonprofit organizations, that provides information regarding eligibility requirements, deadlines, and steps to register to vote and vote.
- Make voter registration forms available to incarcerated persons, and provide them with information regarding how to complete them and deadlines for completing.
  - As a reminder, to vote in the election on November 8, 2022, voter registration forms must be completed and returned or postmarked to county election officials by **October 24, 2022**.
  - Once an incarcerated person has submitted a voter registration form, they will receive a Vote-by-Mail ballot in the mail, which must be **postmarked on or before Election Day** (November 8) and received by the voter's county elections office no later than 7 days after Election Day.

Questions regarding voting procedures in local detention facilities and ways to ensure access to this vital right, including for persons with disabilities, should be directed to the California Secretary of State at (800) 345-VOTE (8683).

You should also consult with your local county elections official. Contact information regarding your county's elections office can be found at <https://www.sos.ca.gov/elections/voting-resources/county-elections-offices>.

This Information Bulletin does not create or confer any rights for or on any person or entity, nor does it impose any requirements beyond those required under applicable law and regulations. For questions about this Information Bulletin, please contact Division of Law Enforcement Chief John Marsh at (916) 210-6300.