

# HOUSE BILL REPORT

## ESHB 1078

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### As Passed Legislature

**Title:** An act relating to restoring voter eligibility for all persons convicted of a felony offense who are not in total confinement under the jurisdiction of the department of corrections.

**Brief Description:** Restoring voter eligibility for all persons convicted of a felony offense who are not in total confinement under the jurisdiction of the department of corrections.

**Sponsors:** House Committee on State Government & Tribal Relations (originally sponsored by Representatives Simmons, Young, Dolan, Berry, Fitzgibbon, Johnson, J., Wicks, Chopp, Wylie, Bateman, Ramos, Berg, Shewmake, Tharinger, Ramel, Ortiz-Self, Peterson, Gregerson, Walen, Goodman, Senn, Sells, Ryu, Valdez, Callan, Hackney, Morgan, Ormsby, Pollet, Riccelli, Taylor, Springer, Stonier, Lekanoff, Frame, Santos, Jacobsen, Macri, Davis, Bergquist and Harris-Talley).

### Brief History:

#### Committee Activity:

State Government & Tribal Relations: 1/14/21, 1/21/21 [DPS].

#### Floor Activity:

Passed House: 2/24/21, 57-41.

Passed Senate: 3/24/21, 27-22.

Passed Legislature.

### Brief Summary of Engrossed Substitute Bill

- Replaces the two-step approach of provisional and permanent restoration of a person's voting rights after a felony conviction with a process where voting rights are automatically restored for a person convicted of a felony when he or she is not serving a sentence of total confinement under the jurisdiction of the Department of Corrections.
- Removes provisions authorizing the revocation of provisional restoration of voting rights upon failure to pay legal financial obligations.
- Requires the Secretary of State to compare a list of registered voters to a

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list of persons ineligible to vote by reason of a felony conviction once a month, rather than twice a year.

- Makes conforming changes to the voter registration oath, voter declaration enclosed with a ballot, and statutory eligibility to serve as a juror.

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## HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Valdez, Chair; Lekanoff, Vice Chair; Dolan and Gregerson.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Volz, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Graham.

**Staff:** Desiree Omli (786-7105).

### **Background:**

#### Voting Rights.

All persons who are at least 18 years old, a United States citizen, and have lived in the state, county, and precinct for 30 days preceding an election are entitled to vote, unless that person has been convicted of an infamous crime and their civil rights have not been restored. An "infamous crime" includes crimes punishable by death in the state penitentiary or imprisonment in a state or federal correctional facility, which are crimes classified as a felony.

A person who has been convicted of a felony in a state court may have their right to vote provisionally restored if the person is not under the authority of the Department of Corrections (DOC). A person is under the authority of the DOC if the person is:

- serving a sentence of confinement in the custody of the DOC; or
- subject to community custody.

A person's right to vote may then be permanently restored by any of the following methods for each felony conviction:

- a certificate of discharge issued by the sentencing court;
- a court order restoring voting rights;
- a final order of discharge issued by the Indeterminate Sentence Review Board; or
- a certificate of restoration issued by the Governor.

All defendants who are convicted of a felony are required by the court to sign a statement acknowledging that, among other things, the person's right to vote has been lost, his or her

voter registration will be canceled, the ways in which the person's right to vote may be restored, and that the person must reregister before voting.

#### Community Custody.

Community custody is the portion of a person's sentence served in the community subject to conditions imposed by the court and the DOC. Courts must order community custody for persons convicted of certain crimes or in accordance with a sentencing alternative. Community custody conditions may include living in an approved residence; refraining from contacting certain persons; drug and alcohol treatment; and others. If a person violates the conditions of community custody, the person may be subject to a variety of sanctions. Certain violations may result in the person being returned to confinement for specified periods.

#### Legal Financial Obligations.

When a person is convicted of a crime, the court may impose legal financial obligations (LFOs) as part of the judgment and sentence. Legal financial obligations include restitution; crime victims' compensation fees; costs associated with the offender's prosecution and sentence; fines; penalties; and assessments. If a person willfully fails to pay their LFOs, he or she may be subject to penalties for noncompliance.

A person may have the provisional restoration of their voting rights revoked if a sentencing court determines that a person willfully failed to comply with the terms of his or her order to pay their LFOs. In addition, if a person fails to make three payments towards the balance of their LFO in a 12-month period and the county clerk or restitution recipient requests, the prosecutor must seek to revoke that person's provisional voting right.

#### Voter Rolls.

At least twice a year, the Secretary of State (Secretary) must compare the list of registered voters to a list of persons not eligible to vote due to a felony conviction or having their provisional voting rights revoked. If a person is found to not be eligible to vote, the Secretary or the county auditor must send that person a notice of the proposed cancellation of their voter registration and an explanation of the requirements for provisionally and permanently restoring their right to vote.

#### Department of Corrections.

Prior to the termination of its authority over an inmate, the DOC must notify the inmate in writing of the process to provisionally and permanently restore the inmate's voting rights.

### **Summary of Engrossed Substitute Bill:**

#### Voting Rights.

After a felony conviction in a state court, the right to vote is automatically restored if the person is not serving a sentence of total confinement under the jurisdiction of the DOC.

"Total confinement" is 24-hour confinement inside the physical boundaries of a facility or

institution operated or used under contract by the state or any other unit of government. Total confinement, as used in the elections code, does not include confinement imposed as a sanction for a community custody violation.

A person who is convicted of a felony offense must reregister to vote only if they are sentenced to a term of total confinement under the jurisdiction of the DOC.

A defendant who is convicted of a felony is required to sign a statement acknowledging the loss of their voting right only if that person is sentenced to a term of total confinement under the jurisdiction of the DOC. Conforming changes are made to the content of the statement of acknowledgment.

#### Legal Financial Obligations.

Provisions authorizing revocation of a person's voting right for reason of failure to pay their LFOs are removed.

#### Voter Rolls.

At least once a month, the Secretary must compare the list of registered voters to a list of persons not eligible to vote due to serving a sentence of total confinement under the jurisdiction of the DOC.

#### Department of Corrections.

Conforming changes are made to the DOC's notice requirement to inmates. It is also clarified that the DOC must provide the required notice prior to release from, or transfer to partial confinement from, total confinement under the jurisdiction of the DOC. The DOC is not required to provide the specified voter registration information to persons who are released from the DOC's facility to an out-of-state jurisdiction or to a federal detention center, pursuant to a felony conviction.

#### Other Provisions.

Conforming changes are made to the voter registration oath, voter declaration enclosed with a ballot, and statutory eligibility to serve as a juror.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2022.

#### **Staff Summary of Public Testimony:**

(In support) The right to vote is a fundamental right of every American and a way for Americans to engage in our democratic process. It is an inherent right, which is fundamental to ensuring a free and open democracy. Currently, a person convicted of a

felony may have their voting rights restored, but it is a complicated process, and if they do not have the money to pay their legal financial obligations, they can lose their voting rights. This bill would make the restoration process easier to administer, establishing bright lines and clear standards for administrators to follow. In addition, federal laws limit circumstances when a person can be removed from voter rolls, and this bill will ensure that a person's name is not accidentally removed.

This bill is in alignment with the DOC's mission to improve public safety by positively changing lives. It will potentially restore voting rights to over 26,000 Washingtonians. Restoring a person's right to vote has no public safety risk. Research shows that restoring a person's right to vote reduces recidivism. When a person is released from custody, they are deemed by the DOC to be safe to reenter the community. These individuals need to be given the opportunity to reengage in the community so that they feel connected to the community, and the policies in place need to motivate them to be engaged. When the system works to rehumanize people by having them engage in democracy, they succeed; but when the system marginalizes people, it discourages success. The bill would restore dignity to a person after they have served their time.

People with felony convictions who have been released into the community, or who are on work release, are working and paying taxes just like everyone else. However, they have a hard time reentering society because they have to fight the stigma of being a felon. Apprentices in the trades sector, for example, have been criminally involved and this bill would help them be engaged in the civic process. People who have been released should have a voice in matters that impact them, such as decisions relating to behavioral health systems that people rely on to keep them safe. The right to vote gives a person a voice and lets them know that they matter.

Many victims of trafficking, child abuse, and sexual abuse, become involved in the criminal system themselves because of situations directly linked to their abuse, such as trauma. In addition, people with serious mental illness represent 15 percent of the prison population—these are people who the system has failed. Inequality in our system is palpable. Our society is still addressing the impact of Jim Crow laws on certain populations and would reconcile the disproportionate trauma perpetuated on tribal citizens and people of color. This bill would help to correct the disproportionate impact of criminal laws on that population. In addition, by allowing people in community custody to vote, the bill will curb the impact of indeterminate sentencing because a person convicted of a class A felony can be sentenced to community custody for life.

Conditioning whether a person's voting rights are restored on the severity of the crime committed is misguided. The legal system already accounts for the severity of the crime at sentencing. No state that provides for automatic restoration of voting rights provides for such carve outs.

Regarding legal financial obligations, debtors' prisons don't work, and it is

counterproductive.

(Opposed) None.

(Other) The Secretary believes in the rule of law and follows the law precisely. The bill is constitutional and administrable.

**Persons Testifying:** (In support) Representative Simmons, prime sponsor; Danielle Armbruster and Mac B. Pevey, Department of Corrections; Amber Letchworth and Kurtis Robinson, I Did the Time; Sahar Fathir, Washington State Office of the Attorney General; Heather Kurtenbach, Iron Workers Local 86; Russell Brown, Washington Association of Prosecuting Attorneys; Jillian Andreottola, Asian Pacific American Coalition for Equality; Patricia Whitefoot; Thomas Di Giorgio; Victor Sauceada; Datyous Mahmoudian; Kim Bogucki, The IF Project; Caryln Sampson, Rebuilding Hope! Pierce County Sexual Assault Center; Melanie Smith, National Alliance on Mental Illness; Mary Hall, Thurston County Auditor's Office; Paddy McGuire, Mason County Auditor's Office, Washington State Association of County Auditors; Chris Poulos, Washington Statewide Reentry Council; Ysabel Mullarky, University of Washington School of Law's Race and Justice Clinic; Sean Morales-Doyle, Brennan Center for Justice; Kelly Olson, Civil Survival; Jaime Hawk, American Civil Liberties Union; and Arthur Rizer.

(Other) Jay Jennings, Office of the Secretary of State.

**Persons Signed In To Testify But Not Testifying:** None.