

SENATE BILL REPORT

ESHB 1078

As Reported by Senate Committee On:
State Government & Elections, March 12, 2021

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

Committee Activity: State Government & Elections: 3/10/21, 3/12/21 [DP, DNP].

Brief Summary of Bill

- Provides for automatic restoration of voting rights to a person convicted of a felony when they are 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 list of persons ineligible to vote by reason of a felony conviction monthly.
- Makes conforming changes to the voter registration oath, voter declaration, and statutory eligibility to serve as a juror.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Majority Report: Do pass.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Hasegawa.

Minority Report: Do not pass.

Signed by Senators Wilson, J., Ranking Member; Hawkins.

Staff: Samuel Brown (786-7470)

Background: Voter Registration. Persons who are age 18 or older, are United States citizens, have lived in the state, county, and precinct for 30 days immediately preceding an election, and have not been convicted of an infamous crime, defined as a felony conviction, are entitled to vote under the Washington State Constitution.

Upon a felony conviction, the defendant is required by the court to sign a statement acknowledging, among other things, the person's right to vote has been lost, their 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. A person with a felony conviction may have their voting rights provisionally restored upon completion of their sentence in a Department of Corrections (DOC) facility and, if applicable, completion of a period of community custody. A person may have their voting rights permanently restored after serving a sentence for a felony conviction by:

- 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.

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

Voter Roll Maintenance. At least twice a year, the Secretary of State must compare lists of persons who have lost voting rights due to incarceration and who have had a provisional restoration of rights revoked against the list of registered voters. If a person appears to be ineligible to vote, the Secretary of State must confirm that person's identity by matching the dates of birth on each list prior to suspending that person from the list of registered voters.

Community Custody. Certain felony offenses require the offender to serve a period of community custody after completing their sentence in a DOC facility, with periodic reporting to DOC and certain court-imposed conditions. These offenses include:

- persons convicted of sex offenses or serious violent offenses must serve 36 months of community custody;
- persons convicted of other violent offenses must serve 18 months of community custody; and

- persons convicted of crimes against persons, gang members or associates convicted of unlawful possession of a firearm, persons convicted of controlled substance violations, and persons committing a first failure to register must serve 12 months of community custody.

Any person who violates a condition or requirement of a term of community custody may be sentenced by a court up to 60 days of additional confinement or, by DOC, up to 30 days of additional confinement for each violation.

Legal Financial Obligations. When a person is convicted of a crime, the court may impose legal financial obligations (LFOs) such as restitution, crime victims' compensation fees, costs associated with the person's prosecution and sentencing, fines, penalties, and other assessments, as part of the judgment and sentence. The requirement that an offender pay a monthly sum toward a legal financial obligation is a condition of the sentence, and an offender is subject to penalties for noncompliance.

A provisional restoration of voting rights may be revoked if the person willfully fails to comply with LFOs. If a person fails to make three payments towards the balance of their LFOs 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.

Summary of Bill: Voter Registration. The right to vote is automatically restored to persons with felony convictions once the person is not serving a sentence of total confinement under DOC jurisdiction. A person who served a sentence of total confinement under DOC jurisdiction for a felony conviction must reregister to vote after automatic restoration of rights to be placed on the voter rolls. Provisions authorizing revocation of a person's voting right for reason of failure to pay LFOs are removed.

"Total confinement" is defined as 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, but does not include confinement imposed as a sanction for a community custody violation.

Voter Roll Maintenance. At least once a month, the Secretary of State 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 DOC.

Other Provisions. A defendant convicted of a felony must sign a statement acknowledging the loss of their voting rights only if that person is sentenced to a term of total confinement under the jurisdiction of DOC. Conforming changes are made to the voter registration oath, voter declaration, and statutory eligibility for the jury service pool.

DOC must provide the required notice prior to release from, or transfer to partial confinement from, total confinement under DOC jurisdiction, but is not required to provide

the specified voter registration information to persons who are released from a DOC facility to an out-of-state jurisdiction or to a federal detention center, pursuant to a felony conviction.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This will help formerly incarcerated people who are paying taxes and fighting through stigma find more dignity by exercising the most fundamental and sacred American right. Restoring voting rights has a public safety benefit by reducing recidivism. This bill does not forgive someone's prison term or LFOs, but provides them an alternative so they can be forward-thinking and proactive rather than falling back into a life they do not want. Voting is not a threat to our community, but denying the vote is a threat to our democracy. Individuals who are civically engaged are less than half as likely to commit another crime. People whose voting rights are restored have more trust that government fairly represents the people.

Voter disenfranchisement disproportionately affects communities of color, who are over-represented in our criminal justice system. Removal of voting rights serves to curb the voice of minority communities, and the outcry in the streets last year tells us it is time to do better. This reform brings us closer to a more equitable society in line with the Jewish tradition of sin and repentance. Passing this bill would remove a barrier for students who are considered at-risk, particularly in the Pacific Islander and Southeast Asian communities, who are disproportionately targeted by police and surveyed differently in schools than others.

People with mental illness are dramatically over-represented in our prison system, with 80 percent not diagnosed until they are incarcerated. This reform would allow people to have a voice in a system currently saving their lives and communicate the importance of publicly-funded services they receive. There are many veterans who have become homeless, gotten in trouble, and been convicted of a felony, but still want to uphold the oath to serve their country by voting. The ability to vote signifies that a person's voice, opinions, and experiences matter, and will do good things for mental health. Regaining the ability to vote would have given me hope when I was at rock bottom with addiction and trauma. Many victims of abuse, neglect, and sex trafficking are incarcerated for crimes directly linked to their exploitation and abuse, and restoring voting rights reintegrates them into the community in a way that restores their sense of value.

Passing this bill will send a message that we as a society believe in redemption and

forgiveness, rather than a punishment that never ends. This bill aligns with the Department of Corrections' mission to improve safety by positively impacting the lives of approximately 26,000 people on community supervision and work release. I cannot fathom the idea that this bill would have a deterrent effect—who would pause before robbing a bank and reconsider because they might lose their voting rights? There is no criminological basis for withholding the right to vote. People can remain on community custody for life, so this will standardize voting rights outcomes and curb indeterminate sentencing. The criminal justice system already accounts for the severity of the offense during sentencing, and we should respect the judgment that people are fit to live and work in our communities. Formerly incarcerated people already face barriers in access to housing, employment, education, and social services.

This bill, without any carve-outs for specific offenses, will create a bright line and clear standard for election administrators. The current system causes de facto disenfranchisement of individuals who are incorrectly informed of their rights by judges and attorneys. Current law is confusing; gaining back my right to vote was one of my biggest accomplishments, but it was terrifying because I did not want to accidentally vote while ineligible and be reincarcerated.

Persons Testifying: PRO: Representative Tarra Simmons, Prime Sponsor; Representative Jesse Young; Lexi Hanson, Collegiate Community Transitions; Arthur Rizer, Lincoln Network; Paddy McGuire, Washington State Association of County Auditors; Bill Mowat, Anti-Defamation League; Lea Kronenberg, Seattle Goodwill Re-entry Program; Carlyn Sampson, Hope Sexual Assault Center Pierce County; Kurtis Robinson, I Did The Time; Victor Saucedo; Amber Letchworth; Taleana Wilson; Daniel Holley, University of Washington School of Law Race and Justice Clinic; Melanie Smith, NAMI Washington; Paula Sardinias, Washington Build Back Black Alliance; Yasmin Trudeau, Washington State Office of the Attorney General; Jay Andreottola, Alisa Lee, APACE; Russell Brown, Washington Association of Prosecuting Attorneys; Christopher Poulos, Statewide Reentry Council; Kelly Olson, Civil Survival; Danielle Armbruster, Department of Corrections, Reentry Division; Sean Morales-Doyle, Brennan Center for Justice; Jaime Hawk, ACLU of Washington.

Persons Signed In To Testify But Not Testifying: No one.