

## WSR 21-21-083

## PROPOSED RULES

## SECRETARY OF STATE

[Filed October 18, 2021, 4:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-13-082.

Title of Rule and Other Identifying Information: Implementing legislation by permanent adoption of WAC changes related to voter registration list maintenance for persons convicted of felony crimes punishable by a term of total confinement at the department of corrections or incarceration in another state or federal facility, including WAC 434-324-106, 434-324-1065, and 434-324-107.

Hearing Location(s): On November 23, 2021, at 8:00 a.m., at 520 Union Avenue, Olympia, WA 98504. The hearing will be conducted using WebEx, to join the hearing a person can call the following telephone number 1-206-207-1700 and enter the meeting number or access code 2487 746 6207. People will be able to hear and comment.

Date of Intended Adoption: November 24, 2021.

Submit Written Comments to: Fina Ormond, P.O. Box 40229, Olympia, WA 98504, email fina.ormond@sos.wa.gov, fax 360-664-4169.

Assistance for Persons with Disabilities: Contact Fina Ormond, phone 360-902-4146, fax 360-664-4169, email Fina.ormond@sos.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update rules in conformance with recent legislation.

Reasons Supporting Proposal: Consistency in operation in all county election offices within the state.

Statutory Authority for Adoption: RCW 29A.04.611.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lori Augino, Olympia, 360-902-4151.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

November 18, 2021

Sheri Nelson

Deputy Secretary of State

**OTS-3166.8**

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

**WAC 434-324-106 Felony screening process—Potential match check.**

(1) The ((law on when the)) right to vote is restored following a fel-

ony conviction (~~is~~) that includes serving a sentence of total confinement upon release from total confinement as established in RCW 29A.08.520.

(2) (a) The secretary of state must compare lists of persons held in total confinement for a felony conviction with the list of registered voters, to identify individuals appearing on both lists.

(b) Upon receiving new data, or at least on a monthly basis, the secretary must compare the voter registration records to lists of persons who (~~are either incarcerated or on community supervision with~~) have been:

(i) Convicted of a felony in Washington state court and are serving a sentence of total confinement under the jurisdiction of the Washington state department of corrections, (~~and to lists of persons convicted in federal district courts with a sentence of at least fifteen months incarceration~~) when lists of such persons are provided by the department of corrections.

(ii) Convicted by a federal court or any state court other than a Washington state court, when lists of such persons are provided by federal or other state authorities.

(3) The secretary must create a list of voters potentially (~~under authority of DOC~~) convicted of a felony as identified in subsection (1) of this section by matching the first name, last name, date of birth, and other identifying information.

(~~(2)~~) (4) (a) For each voter identified through the process set forth in subsections (1) and (2) of this section, the secretary must change the voter's registration status to "pending (~~status~~)" with a status reason that indicates the record is (~~a potential felon~~) for a person who is potentially ineligible to vote due to serving a sentence of total confinement for a felony conviction, or incarcerated for a felony conviction in a state other than Washington state or federal court.

(b) Voters with a pending status must not be issued a ballot.

[Statutory Authority: RCW 29A.04.611. WSR 20-13-043, § 434-324-106, filed 6/10/20, effective 7/11/20. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-324-106, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. WSR 10-03-072, § 434-324-106, filed 1/18/10, effective 2/18/10; WSR 09-18-098, § 434-324-106, filed 9/1/09, effective 10/2/09; WSR 06-23-094, § 434-324-106, filed 11/15/06, effective 12/16/06; WSR 05-24-039, § 434-324-106, filed 11/30/05, effective 12/31/05.]

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

**WAC 434-324-1065 Felony screening process—Mailing to potential matches.** (1) The secretary must mail a notification letter to each (~~person under authority of DOC whose status is pending cancellation~~) registered voter identified through the process set forth in WAC 434-324-106.

(2) The notification letter must contain language informing the person:

(a) That they are potentially a voter whose status is pending cancellation;

(b) That they must contact their county auditor's office to contest the pending cancellation;

(c) That they may request a provisional ballot for any pending elections;

(d) That a person serving a sentence of total confinement under the jurisdiction of the department of corrections for a felony conviction, or currently incarcerated due to a felony conviction in another state or federal court loses the right to vote until the right is restored;

(e) Of the reason the person has been declared ineligible to vote;

(f) That the person's voter registration will be canceled due to their total confinement under the jurisdiction of the department of corrections for a felony conviction or incarceration in another state or federal prison for a felony conviction if they do not respond within 30 days from the date of the letter; and

(g) How to contest the pending cancellation.

(3) The notification letter must be sent to the person's last known registration mailing address and (~~(, if the person is incarcerated or on community supervision with the department of corrections,)~~) to the person's address on file with the department of corrections ((address)) indicating that their voter registration is about to be canceled. ((The letter must contain language notifying the person that they must contact the auditor's office to contest the pending cancellation. The letter must also inform the person that they may request a provisional ballot for any pending elections. The notification letter must include:

~~(1) An explanation that a person under authority of DOC loses the right to vote until the right is restored;~~

~~(2-))~~ (4) The notification letter must contain language informing the person that for a felony conviction in a Washington state court, the right to vote is restored as long as the person is not serving a sentence of total confinement ((~~or subject to community custody with~~)) under the jurisdiction of the department of corrections. For a felony conviction in another state or federal court, the right to vote is restored as long as the person is no longer incarcerated;

~~((3) The reason the person has been identified as ineligible to vote;~~

~~(4) An explanation that the person's voter registration will be canceled due to the felony conviction if they do not respond within thirty days from the date of the letter; and~~

~~(5) How to contest the pending cancellation.)~~ (5) The secretary must send to each auditor the voter registration ((and conviction)) status information for each matched person ((under authority of DOC registered in that county)) registered to vote in that county who has been identified as pending cancellation by this section.

[Statutory Authority: RCW 29A.04.611. WSR 20-13-043, § 434-324-1065, filed 6/10/20, effective 7/11/20.]

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

**WAC 434-324-107 Felony screening process—Contesting cancellation or canceling.** (1) If a person (~~(under authority of DOC)~~) sent a notification by the secretary under the processes set forth in WAC 434-324-1065 fails to contact the auditor within (~~(thirty)~~) 30 days of the date of the letter, that person's voter registration must be canceled. If an election in which the person would otherwise be eligible to vote is scheduled to occur during the (~~(thirty)~~) 30 days, the person must be allowed to vote a provisional ballot. Any unreturned ballot issuances for the voter must be suspended and, if returned, held until the question of the person's eligibility can be resolved.

(2) The question of the person's eligibility ((status)) to vote may be resolved and the pending status reversed (~~((without scheduling a hearing))~~) if:

(a) The person provides ((satisfactory documentation)) verifiable information that the person is not serving a sentence of total confinement;

(b) The person's voting rights have been restored((τ));

(c) The conviction is not a felony((τ));

(d) The person convicted is not the registered voter((τ-øτ));

(e) The person is no longer incarcerated due to a felony conviction in another state or federal court; or

(f) The person is otherwise eligible to vote. ((The auditor must notify the voter, retain a scanned copy of all documentation provided, and notify the secretary. The secretary must flag the voter registration record to prevent future cancellation on the same basis.))

(3) (~~((If the person under the authority of DOC requests a hearing, the auditor must schedule a public hearing to provide the person an opportunity to dispute the finding. In scheduling the hearing, the auditor may take into account whether an election in which the person would otherwise be eligible to vote is scheduled. The notice must be mailed to the person's last known registration mailing address and must be postmarked at least seven calendar days prior to the hearing date. Notice of the hearing must also be provided to the prosecuting attorney.~~

~~(4) The auditor must provide the prosecuting attorney a copy of all relevant registration and felony conviction information. The prosecuting attorney must obtain documentation, such as a copy of the judgment and sentence or custody or supervision information from the Washington department of corrections, the out-of-state court or prison, or the federal court or Bureau of Prisons, sufficient to prove by clear and convincing evidence that the person is ineligible to vote. It is not necessary that the copy of the document be certified.~~

~~(5) If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the person's voting eligibility in time to hold a hearing prior to certification of an election in which the person would otherwise be eligible to vote, the prosecuting attorney must request that the auditor dismiss the current cancellation proceedings. The auditor must reverse the voter's pending status, cancel the hearing, and notify the voter. A provisional ballot voted in the pending election must be counted if otherwise valid. The prosecuting attorney must continue to research the person's voting eligibility. If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the person's voting eligibility prior to the next election~~

in which the person would otherwise be eligible to vote, the prosecuting attorney must notify the auditor. The auditor must notify the secretary, who must flag the voter registration record to prevent future cancellation on the same basis.

~~(6) A hearing to determine voting eligibility is an open public hearing pursuant to chapter 42.30 RCW. If the hearing occurs within thirty days before, or during the certification period of, an election in which the person would otherwise be eligible to vote, the hearing must be conducted by the county canvassing board. If the hearing occurs at any other time, the county auditor conducts the hearing. Before a final determination is made that the person is ineligible to vote, the prosecuting attorney must show by clear and convincing evidence that the voter is ineligible to vote due to a felony conviction. The person must be provided a reasonable opportunity to respond. The hearing may be continued to a later date if continuance is likely to result in additional information regarding the person's voting eligibility. If the person is determined to be ineligible to vote due to felony conviction and lack of rights restoration, the voter registration must be canceled. If the voter is determined to be eligible to vote, the voter's pending status must be reversed and the secretary must flag the voter registration record to prevent future cancellation on the same basis. The person must be notified of the outcome of the hearing and the final determination is subject to judicial review pursuant to chapter 34.05 RCW.~~

~~(7) If the person's voter registration is canceled after the person fails to contact the auditor within the thirty day period, the person may contact the auditor at a later date to request a hearing to dispute the cancellation. The auditor must schedule a hearing in substantially the same manner as provided in subsections (3) through (6) of this section.) If a ballot is received from a voter whose status was changed to "pending" in accordance with WAC 434-324-106 after ballots were issued, the ballot must be held until the question of the person's eligibility can be resolved.~~

The disposition of the ballot can be decided in the following ways:

(a) If the question of the voter's eligibility is resolved as stated in subsection (2) of this section, the ballot should be counted if otherwise valid.

(b) If the voter is verified as serving a sentence of total confinement under the jurisdiction of the department of corrections for a felony conviction or is currently incarcerated due to a felony conviction in a state other than Washington state or federal court, then the ballot should not be counted.

(c) If the voter's eligibility has not been resolved, then the canvassing board, prosecuting attorney, or their designees should attempt to acquire documentation and/or contact the department of corrections or other institution to verify whether the individual is serving a sentence of total confinement under the jurisdiction of the department of corrections for a felony conviction or is incarcerated due to a felony conviction in a state other than Washington state or federal court.

(d) If the voter's status cannot be verified, then the ballot should be counted if otherwise valid.

(4) The auditor must notify the voter and the secretary of state when their pending status is removed. The secretary must flag the voter registration record to prevent future cancellation on the same basis.

[Statutory Authority: RCW 29A.04.611. WSR 20-13-043, § 434-324-107, filed 6/10/20, effective 7/11/20.]