



October 12, 2017

Hon. Xavier Becerra
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code 9005, we have reviewed the constitutional and statutory initiative (A.G. File No. 17-0023, Amendment No. 1) that would allow individuals incarcerated in prison and under parole supervision to vote.

Background

Who Can Vote? With certain restrictions, state law allows U.S. citizens who are residents of California and at least 18 years of age at the time of the election to vote. Those who can vote in California typically can run for elected office in California. The state constitution and state law prohibit from voting individuals who a court has found to be mentally incompetent and individuals in prison or on parole from prison. (Individuals on parole are those who remain under supervision by parole agents after leaving prison.)

Counties Remove State Prison Inmates From the Voter Roll. State law requires the clerk of the trial court of each county to report monthly to the county elections officials the names of individuals convicted of felonies. Elections officials, upon receipt of this list, are required to cancel the voter registration for those sentenced to prison and on parole from prison.

Most Individuals Incarcerated in County Jail or Under County Probation Supervision Can Vote. State law does not prohibit most individuals in county jails from voting. Generally, individuals in county jails are awaiting trial or have been convicted of misdemeanors or lower-level felonies. Individuals in jail vote using vote-by-mail ballots. In some counties, the county sheriff picks up the ballots from the county registrar and delivers the ballots to the jail, returning the ballots to the registrar once completed. In other counties, inmates simply receive and return their vote-by-mail ballots via the U.S. Postal Service. Currently, very few individuals in jail opt to vote. Individuals under county probation supervision can vote similarly to the rest of the electorate (in person or by mail).

Voting Address Determined by Voters. To register to vote, individuals must complete an affidavit of registration. The affidavit requires individuals to provide identifying personal

information about themselves including their name, residence, and place of birth. Individuals must certify that the content of the affidavit is truthful and correct under penalty of perjury. Generally, state law provides broad discretion to individuals to determine their residence for the purpose of voting. For instance, college students can choose to continue to vote using their parents' address or opt to use their college address. An individual's voting address affects what local, state, and federal elections the individual will vote in. Currently, individuals in county jail can choose to register to vote using their last known residence or the address of the jail in which they are incarcerated.

How Are Voting Districts Determined? For some elected offices, the voting district is determined by the boundaries of the government. For instance, for a city mayor, the voting district is the city's boundaries. For a state governor, the boundary of the voting district is the state. For other elected offices—including city councils, county supervisors, state legislators, and the House of Representatives—the voting district boundaries are determined by local and state governments. State law requires these voting districts be adjusted after each decennial census and that each district be nearly equal in population. In some cases, including some county supervisorial districts, individuals in prison are excluded from the population count for district boundaries. In contrast, the independent state redistricting commission—which establishes boundaries for the state Assembly, state Senate, Board of Equalization, and U.S. House of Representatives—counts individuals in prison as part of the population represented by the district in which the individual is incarcerated. After the 2020 Census, state law allows adjustments to be made to count these individuals as part of the population represented by the district in which they lived prior to incarceration.

Proposal

Allows Individuals Incarcerated in Prison or on Parole From Prison to Vote. This measure would allow individuals in prison or on parole from prison to vote. The measure would apply to individuals in federal and state prison. As a result, these individuals also would be able to run for elected office (with some exceptions for certain types of convictions). The measure does not specify a place of residence for these individuals, which potentially could allow them to register to vote using their prison address or their last known address in the community. Making individuals in prison or on parole from prison eligible to vote also could result in changes to local voting districts due to the resulting increase in the voting population. Lastly, the measure eliminates the requirement for trial courts to provide conviction information to county elections officials.

Fiscal Effect

Counties Would See Increased Election Costs. Roughly 162,000 individuals—110,000 state prison inmates, 12,000 federal prison inmates, and 40,000 parolees—would become eligible to register to vote under the proposal. The increase in counties' election costs would depend heavily on how many inmates and parolees choose to register and vote. For instance, if *all* prison inmates and parolees registered to vote, county costs to provide vote-by-mail ballots would be roughly \$1 million statewide annually. (This estimate [1] assumes inmates and parolees participate in primaries and general elections, [2] assumes counties conduct consolidated elections in even-numbered years, and [3] averages the costs into an annual amount. For context, in 2014-15, a

general election year, counties reported spending roughly \$250 million on elections.) It is more likely, however, that far fewer inmates and parolees would register and vote, resulting in lower county costs statewide—probably a few hundred thousand dollars annually. Those counties with large prison populations relative to their non-incarcerated populations—typically smaller, more rural counties—would bear a disproportionate share of these elections costs if most inmates chose to register with their prison address and request ballots. This is because in these counties, prison inmates would represent a sizable increase in eligible voters.

State Would Incur Prison-Related Costs. The state also would incur prison costs related to assisting inmates with voting, distributing vote-by-mail ballots, collecting ballots, and providing postage to indigent inmates. If *all* individuals in prison elected to vote, these added costs could be a couple of millions of dollars annually. It is more likely, however, that far fewer inmates would request ballots, with costs commensurately lower—potentially up to \$1 million annually. These costs primarily are due to prison personnel overtime needs to assist inmates with voting as well as disseminating and collecting the ballots in a timely manner. (In 2016-17, California spent roughly \$11 billion on the state prison system.) There also would be some relatively minor state costs associated with changes to Secretary of State voting materials. These costs would be partially offset by minor cost reductions due to trial courts no longer having to provide conviction information to county elections officials.

Summary of Fiscal Impact. The measure would have the following fiscal effects:

- State prison costs of up to \$1 million annually to register and provide ballots to prisoners.
- County election costs of a few hundred thousand dollars annually to register and provide ballots to prisoners and parolees.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance