



DONNY YOUNGBLOOD
Sheriff-Coroner

1350 Norris Road, Bakersfield, California 93308-2231
Telephone (661) 391-7500

Kern County

SHERIFF

ISSUE: 22-39

TRAINING BULLETIN


DATE: October 28, 2022

**DOJ Information Bulletins 2022-DLE-14 and 2022-DLE-16
Access to Voting and Protecting Voters**

Please see the attached DOJ Information Bulletins No. 2022-DLE-14 and 2022-DLE-16.

DOJ Information Bulletin No. 2022-DLE-14, dated October 11, 2022 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.

DOJ Information Bulletin No. 2022-DLE-16, dated October 11, 2022 serves as a reminder of relevant laws that you may be called upon to address during voting through Election Day.

<p>California Department of Justice DIVISION OF LAW ENFORCEMENT John D. Marsh, Chief</p> 	<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i></p> <p>Access to Voting For Eligible Persons With a Criminal History or Who are Incarcerated</p>	<p><i>No.</i></p> <p>2022-DLE-14</p> <p><i>Date:</i></p> <p>10/11/2022</p>	<p><i>Contact for information:</i></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,¹ 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.²

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

¹ "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.)

² 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,³ 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*

³ 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.

<p>California Department of Justice DIVISION OF LAW ENFORCEMENT John D. Marsh, Chief</p> 	<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i></p> <p>Protecting California Voters on Election Day and During Early Voting</p>	<p><i>No.</i></p> <p>2022-DLE-16</p> <p><i>Date:</i></p> <p>10/11/2022</p>	<p><i>Contact for information:</i></p> <p>John D. Marsh, Chief Division of Law Enforcement (916) 210-6300</p>

TO: ALL CALIFORNIA LAW ENFORCEMENT AGENCIES

This bulletin serves as a reminder of relevant laws that you may be called upon to address during voting through Election Day. A similar bulletin (2022-DLE-07) was issued earlier this year, and this bulletin contains updated information and references.

This bulletin discusses California state laws prohibiting election interference and voter intimidation, laws governing the possession of firearms at polling locations, and laws concerning poll watchers.¹ Law enforcement officers should be aware of these state statutes as they relate to voter protection in California.

Peace officers should also be mindful that, when responding to any situation at a polling place, weapons can inadvertently intimidate voters. To the extent that officers can avoid being inside a polling place, they should try to do so.

In addition to the resources in this bulletin, law enforcement may also want to review recent guidance issued by the Secretary of State concerning:

- Voter intimidation (<https://elections.cdn.sos.ca.gov/ccrov/2022/september/22231jl.pdf>)
- Electioneering and the corruption of the voting process (<https://elections.cdn.sos.ca.gov/ccrov/2022/september/22222jl.pdf>); and
- Election observers (<https://elections.cdn.sos.ca.gov/ccrov/2022/september/22233jl.pdf>).

LAWS PROHIBITING ELECTION INTERFERENCE AND INTIMIDATION

Election Interference

An individual may not interfere with an official holding an election or conducting a canvass (the counting of ballots). Any person who in any manner interferes with elections officers who are holding an election or voters who are casting their ballots at an election site is guilty of a felony. (Elec. Code, § 18502.

Any person who, before or during an election, tampers with, interferes with, or attempts to interfere with, the correct operation of, or willfully damages in order to prevent the use of, any voting machine, voting device, voting system, vote tabulating device, or ballot tally software program source codes is guilty of a felony. (Elec. Code, § 18564, subd. (a).)

1. There may be additional federal laws or local ordinances that also protect voters from election interference and intimidation that are not discussed in this bulletin.

Below are some examples of election interference described in California law and written advisories issued by the California Secretary of State that law enforcement may be called upon to address during early voting or on Election Day:²

- Blocking access to voting locations.
- Disrupting the process of opening or closing polling stations.
- Disrupting the process of counting ballots.
- Damaging voting devices or ballot drop-off boxes.
- Deceiving a voter to cast a ballot in an unofficial ballot box.

Voter Intimidation and Dissuasion

Voter intimidation encompasses conduct that is intended to compel voters to not vote or vote against their preferences through activity that is reasonably calculated to instill fear.³ Voter intimidation is prohibited at any election; violation of this section is a felony. (Elec. Code, § 18540.)

Threats, or the use of any force, violence, or tactic of coercion or intimidation to prevent a voter from casting their ballot or to cause a voter to change their vote for a particular candidate or measure on the ballot is a felony. (Elec. Code, § 18540, subd. (a).) Any person who hires or arranges for someone else to use or threaten to use force, violence, or other tactics of coercion or intimidation to affect a voter's right to vote is also committing a felony. (Elec. Code, § 18540, subd. (b).)

Voter Dissuasion and Electioneering Within 100 Feet of a Curbside Voting Area or Election Locations

In addition to the general prohibitions against voter intimidation, there are specific restrictions on prohibited activities relating to dissuasion of voters and electioneering within 100 feet of: (1) an outdoor site, including a curbside voting area, at which a voter may cast or drop off a ballot; or (2) the entrance to a building that contains a polling place, an elections official's office, or a satellite location.⁴

It is unlawful to take certain actions within 100 feet of an outdoor site, including a curbside voting area, at which a voter may cast or drop off a ballot, the entrance to a building that contains a polling place, an elections official's office, or a satellite location with the intent to dissuade a voter from casting their ballot. (Elec. Code, § 18541.) These actions include: (1) soliciting a vote or speaking to a voter about marking their ballot; (2) posting signs about voter qualifications; (3) speaking to a voter about their qualifications (except for certain challenges by precinct board members); (4) recording voters with photo or video technology as they enter or exit the polling place⁵; or (5) obstructing ingress, egress, or parking. (Elec. Code, § 18541, subds. (a) and (b).) Violations of this section may be charged as a felony.

2. See Elec. Code, §§ 18502, 18564; California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum # 22231, "Primary Election: Voter Intimidation; Prohibited Voter Challenges," (September 16, 2022), <<https://elections.cdn.sos.ca.gov/ccrov/2022/september/22231jl.pdf>> [as of September 16, 2022, 2022].

3. U.S. Dept. of Justice, Federal Prosecution of Election Offenses *Eighth Edition*, (Dec. 2017), p. 52 (discussing 18 U.S.C. § 594).

4. See Elec. Code, § 319.5 (prohibits electioneering within 100 feet of the entrance to a building that contains a polling place, an elections official's office, a satellite location, or an outdoor site, including a curbside voting area, at which a voter may cast or drop off a ballot.).

5. For more information on the use of cameras at polling locations, see California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum # 22232, "Primary Election: Cameras at Polling Locations," (September 19, 2022), <<https://elections.cdn.sos.ca.gov/ccrov/2022/september/22232jl.pdf>> [as of September 19, 2022].

The law also prohibits “electioneering” by any person within 100 feet of an outdoor site, including a curbside voting area, at which a voter may cast or drop off a ballot, the entrance to a building that contains a polling place, an elections official’s office, or a satellite location, which is a misdemeanor. (Elec. Code, § 18370.) Electioneering includes, but is not limited to: (1) a display of a candidate’s name, likeness, or logo; (2) a display of a ballot measure’s number, title, subject, or logo; (3) a display of buttons, hats, pencils, pens, shirts, signs, or stickers containing information about a candidate or measure on the ballot; (4) the dissemination of audible information about a candidate or measure on the ballot; (5) at vote by mail ballot drop boxes, obstructing access to, loitering near or disseminating visible or audible information about a candidate or measure on the ballot; and (6) circulating an initiative, referendum or any other petition. (Elec. Code, §§ 319.5, 18370.) While the display of a candidate’s name, likeness, or logo on voter’s clothing—such as a hat, t-shirt or button—constitutes electioneering prohibited under the law, the display of a political movement or campaign slogan on clothing—without inclusion of the name, likeness, or logo of a candidate—does not constitute electioneering.⁶ Examples of campaign slogans or political movement slogans include but are not limited to: Make America Great Again (MAGA), Black Lives Matter (BLM), Keep America Great (KAG), Vote for Science, and Build Back Better.⁷

Similarly, it is unlawful to, with the intent of dissuading another person from voting, do any of the following within the immediate vicinity of a voter in line to cast a ballot or drop off a ballot: (1) solicit a vote; (2) speak to a voter about marking the voter’s ballot; or (3) disseminate visible or audible electioneering information. (Elec. Code, § 18541, subd. (c).) Violations of this section may be charged as a felony.

Examples of Voter Intimidation

Below are some examples of intimidation described in California law and written advisories issued by the California Secretary of State that law enforcement may be called upon to address during early voting or on Election Day:⁸

- Threatening to engage in criminal action against voters.
- Presenting false information about the voting process or voter eligibility requirements, including:
 - informing prospective voters that the ability to speak English is an eligibility requirement to vote;
 - informing voters that they need to present certain types of photo identification in order to vote; or
 - informing voters that there could be criminal consequences for voting (e.g., that voting rolls will be used for debt collection purposes, to undertake arrest warrant checks, etc.).

6. California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum # 22222, “Primary Election: Prohibitions on Electioneering and the Corruption of the Voting Process” (September 15, 2022), p. 2, <<https://elections.cdn.sos.ca.gov/ccrov/2022/september/22222il.pdf>> [as of September 15, 2022].

7. California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum # 22093, “Primary Election: Prohibitions on Electioneering and the Corruption of the Voting Process” (September 15, 2022), p. 2, <<https://elections.cdn.sos.ca.gov/ccrov/2022/september/22222il.pdf>> [as of September 15, 2022].

8. See Elec. Code, §§ 14240, subd. (b), 18370, 18540, 18541; Civ. Code, §§ 51, subd. (b), 51.7, subd. (b); California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum # 22103, “Primary Election: Voter Intimidation; Prohibited Voter Challenges,” (September 16, 2022), pp. 1-3, <<https://elections.cdn.sos.ca.gov/ccrov/2022/september/22231jl.pdf>> [as of September 16, 2022].

- Harassing or threatening behavior toward voters based on a person's race, ethnicity, or gender identity.
- Aggressively questioning voters about their citizenship, criminal record, or other qualifications to vote.
- Engaging in assault, battery, verbal threats of violence or physical violence, or brandishing of weapons.
- Photographing or recording a voter entering or exiting a polling place, or intentionally obstructing entrance, exit, or parking at a voting site.
- Attempting to ascertain how a voter voted on their ballot.

WEAPONS AND SECURITY PERSONNEL PRESENCE AT POLLING PLACES

California law prohibits any person, including a person with a concealed weapon license, from possessing a firearm at or in the immediate vicinity of a polling place; this restriction applies whether such persons are voting or acting as poll watchers, and prohibits the hiring of someone else to do the same. (Elec. Code, §§ 18544, subd. (a), 18545.) Violations of these sections may be charged as a felony. Immediate vicinity refers to the area within 100 feet of the room or rooms in which the voters are signing the roster and casting ballots. (Elec. Code, § 18546, subd. (b).) Peace officers conducting official business or casting their own vote while on duty are permitted to possess a firearm at a polling place. (Elec. Code, § 18544, subd. (b).)

Additionally, any person in possession of a firearm or any uniformed peace officer, private guard, or security personnel or any person who is wearing a uniform of a peace officer, guard, or security personnel, may neither be stationed in the immediate vicinity of nor posted at a polling place without written authorization from the city or county elections official.⁹ (Elec. Code, § 18544, subd. (a).) Anyone who violates section 18544 may be charged with a felony and held criminally liable for voter intimidation. (*Ibid.*) Only four types of individuals are exempt from this law:

- Unarmed, uniformed security personnel who are at the polling place to cast their vote;
- Peace officers engaging in official business in their capacity as peace officers or who are there to cast their vote;
- Private security personnel arranged for by elections officials; and
- Private security personnel arranged for by the owner or manager of the polling place location who were not hired solely for Election Day.

(Elec. Code, § 18544, subd. (b)(1)-(4).)

POLL WATCHING

Observation of election proceedings in the polling locations is permissible, but only poll workers and voters engaged in voting may be within the voting booth area when the polls are open. (Elec. Code, § 14221.) Restricting access to the voting booth area protects a voter's right to cast a secret ballot free from intimidation. (Elec. Code, § 2300, subd. (a)(4).)

Poll watchers (also called poll observers) are individuals who observe the elections and canvassing process. Anyone may poll watch. (Elec. Code, § 2300 subd. (a)(9)(A).) Nonetheless, there may be

9. This requirement does not apply to law enforcement responding to a specific incident at a polling place.

limitations on the number of poll watchers who may observe at any given time, since poll watchers “must adhere to any health and safety provisions in place in the county in which the observation occurs”¹⁰ and because the Secretary of State has advised county elections officials to follow state and local health guidance in light of COVID-19 and associated variants, and to take all possible steps to ensure the safety of workers and voters.

What are poll watchers permitted to do?

Poll watchers are observers of elections proceedings. They must not interfere with the elections process. They are permitted to take notes and use electronic devices, including smartphones and tablets, as long as such devices are not used to record voters or interfere with the elections process or otherwise violate any other provision of the Elections Code. (Elec. Code, § 2302.)

Observation of elections proceedings includes the right to ask poll workers questions about elections procedures and to receive an answer or be directed to the appropriate official for an answer. However, if a poll watcher’s persistent questioning disrupts the poll workers’ duties, the poll workers can stop responding and direct the poll watcher to the county elections office for further answers. (Elec. Code, § 2300, subd. (a)(9).) While poll watchers may undertake the above activities, they are not part of the official elections team and may not act as an elections officer. (Elec. Code, § 18575.)

What is prohibited behavior of poll watchers?

Poll watchers cannot interfere with the elections process or intimidate voters. (Elec. Code, §§ 18502, 18540, 18541, 18543, 18564.) Interference may be caused by talking loudly on a cellular telephone, by persistently questioning poll workers in a manner that disrupts the execution of their duties, by sitting at a table reserved for provisional voters, and by standing unreasonably close to poll workers while they are performing their duties.¹¹

Poll watchers are not permitted to communicate with voters in line to cast a ballot or drop off a ballot, or within 100 feet of an outdoor site, including a curbside voting area, at which a voter may cast or drop off a ballot, the entrance to a building that contains a polling place, an elections official’s office, or a satellite location, in order to encourage voters to vote any particular way discourage them from voting, or otherwise speak to a voter on the subject of marking the voter’s ballot; to question a voter’s qualifications; or to take photographs or video record voters as they enter or exit the polling place. (Elec. Code, § 18541.) Moreover, poll watchers are not allowed to display or audibly disseminate information that advocates for or against any candidate or measure on the ballot. (Elec. Code, §§ 18370, 18541.) Prohibited poll watcher advocacy includes, but is not limited to, the display of a candidate’s name, likeness, or logo; the number, title, subject, or logo of a ballot measure; and the use of buttons, hats, pencils, shirts, signs, or stickers containing candidate or ballot measure information. (Elec. Code, §§ 319.5, 18370.)

10. California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum # 22109, “Primary Election: Election Observations Rights and Responsibilities,” (September 19, 2022), p. 1, <<https://elections.cdn.sos.ca.gov/ccrov/2022/september/22233jl.pdf>> [as of September 19, 2022].

11. California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum # 22109, “Primary Election: Election Observations Rights and Responsibilities,” (September 19, 2022), p. 3, <<https://elections.cdn.sos.ca.gov/ccrov/2022/september/22233jl.pdf>> [as of September 19, 2022].

Poll watchers are not permitted to challenge or question any person concerning their qualifications to vote. (Elec. Code, § 14240, subd. (b).) Poll watchers also may not “fraudulently advise” voters that they are not eligible to vote or that they are not registered when the voter is, in fact, registered and eligible. (Elec. Code, § 18543.) Only a member of a precinct board may challenge a voter’s qualifications to vote within the polling place, and the challenge must be based upon the limited grounds expressly set forth in Elections Code section 14240, subdivision (a). (Elec. Code, § 14240; see also Elec. Code, § 18543.)

Finally, individuals are not permitted to wear peace officer, private security guard, or security personnel uniforms while poll watching.¹² Violations of these provisions may lead to criminal liability.

If you have further questions, please contact:

Rachelle Delucchi
Elections Counsel
California Secretary of State
(916) 764-5934

Robbie Anderson
Elections Counsel
California Secretary of State
(916) 216-6488

John D. Marsh, Chief
Division of Law Enforcement
California Department of Justice
(916) 210-6300

12. California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum # 22109, “Primary Election: Election Observations Rights and Responsibilities,” (September 19, 2022), p. 3, <<https://elections.cdn.sos.ca.gov/ccrov/2022/september/22233jl.pdf>> [as of September 19, 2022].