



*California's Protection & Advocacy System  
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# Your Right to Vote and Register to Vote When You are in a Facility

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*October 2016, Pub #5414.01*

## **Right of Facility Residents to Vote**

California Elections Code section 2211 provides that people committed under California Penal Code section 1026 (not guilty by reason of insanity), California Penal Code section 1370 (incompetent to stand trial), the old mentally disordered sex offender (MDSO) statute and California Penal Code section 2684 (mentally disordered prisoners) are automatically disqualified from voting or registering to vote while "involuntarily confined, pursuant to a court order, in a public or private facility." Such individuals automatically become eligible to vote again when they are discharged from the facility. It is the court's responsibility to notify the county elections official that the person's right to vote has been restored.

However, California Elections Code section 2211 makes no mention of sexually violent predators (SVP), pursuant to California Welfare and Institutions Code section 6600; mentally disordered offenders (MDO), pursuant to California Penal Code sections 2962 and 2972; those not guilty by reason of insanity whose commitment has been extended, pursuant to California Penal Code section 1026.5; those who are incompetent to stand trial based on developmental disability, pursuant to California Penal Code section 1370.1; or those who are charged with having committed a misdemeanor, pursuant to California Penal Code section 1370.01. Thus there is no restriction on the ability of those groups to register and vote. Additionally, some people under a conservatorship are not able to register to vote because a judge removed the right to voter when establishing the

conservatorship. To learn more about conservatorships and regaining the right to vote please see: “Your Voting Rights Under Conservatorship (SB 589) ([pdf](#)) ([rtf](#)), October 2016, #5590.01.”

## **National Voter Registration Act of 1993 (NVRA) and SB 35**

The NVRA is the “motor voter” act and SB 35 is California’s implementing statute that took effect in 2013. (California Election Code section 2400-2408.) These laws require that voter registration services be provided when mental health services are provided to consumers. This includes state hospital services (See Department of Mental Health (DMH) Special Order No.: 718). For state hospitals:

1. DMH must provide voter registration services to any consumer even if DMH believes that there is reason to believe that the individual does not meet registration requirements. (DMH can flag the registration form, without writing on the form, for county eligibility review when the form is sent to the county.)
2. DMH must obtain the resident’s signature on a Voter Application/Declination form. This form must be kept separate from the regular hospital record. If the resident wants to register to vote, DMH must help the consumer fill out a voter registration form and forward it to the county.

## **ELECTIONS CODE SECTION 2208-2212**

### **§ 2208. Mentally incompetent persons; disqualification from voting; order; exceptions**

- (a) A person is presumed competent to vote regardless of his or her conservatorship status. A person shall be deemed mentally incompetent, and therefore disqualified from voting, if, during the course of any of the proceedings set forth below, the court finds by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process, and any of the following apply:
  - (1) A conservator for the person or the person and estate is appointed pursuant to Division 4 (commencing with Section 1400) of the Probate Code.

- (2) A conservator for the person or the person and estate is appointed pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code.
- (3) A conservator is appointed for the person pursuant to proceedings initiated under Section 5352.5 of the Welfare and Institutions Code, the person has been found not competent to stand trial, and the person's trial or judgment has been suspended pursuant to Section 1370 of the Penal Code.
- (4) A person has plead not guilty by reason of insanity, has been found to be not guilty pursuant to Section 1026 of the Penal Code, and is deemed to be gravely disabled at the time of judgment as defined in paragraph (2) of subdivision (h) of Section 5008 of the Welfare and Institutions Code.
- (b) If the proceeding under the Welfare and Institutions Code is heard by a jury, the jury shall unanimously find that the person is not capable of completing an affidavit of voter registration before the person shall be disqualified from voting.
- (c) If an order establishing a conservatorship is made and in connection with the order it is found by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process, the court shall forward the order and determination to the Secretary of State and the county elections official of the person's county of residence in the format prescribed by the Secretary of State.
- (d) A person shall not be disqualified from voting pursuant to this section on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration:
  - (1) Signs the affidavit of voter registration with a mark or a cross pursuant to subdivision (b) of Section 2150.
  - (2) Signs the affidavit of voter registration by means of a signature stamp pursuant to Section 354.5.
  - (3) Completed the affidavit of voter registration with the assistance of another person pursuant to subdivision (d) of Section 2150.
  - (4) Completes the affidavit of voter registration with reasonable accommodations.

**2209. Mentally incompetent persons; review under Probate Code of capability to communicate desire to participate in voting process; findings by investigator; hearing**

- (a) For conservatorships established pursuant to Division 4 (commencing with Section 1400) of the Probate Code, the court investigator shall, during the yearly or biennial review of the conservatorship as required by Chapter 2 (commencing with Section 1850) of Part 3 of Division 4 of the Probate Code, review the person's capability of communicating, with or without reasonable accommodations, a desire to participate in the voting process.
- (b) If the person had been disqualified from voting by reason of being incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, or by reason of being incapable of completing an affidavit of voter registration, the court investigator shall determine if the person continues to be incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and the investigator shall so inform the court.

If the investigator determines that the person continues to be incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, a court hearing on the issue is unnecessary. If the investigator finds that the person is not incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, the court shall hold a hearing to determine if, by clear and convincing evidence, the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process. Unless the person is found incapable of communicating that desire, the person's right to register to vote shall be restored, and the court shall so notify the Secretary of State and the county elections official in the format prescribed by the Secretary of State.

- (c) If the person had not been found to be incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and the court investigator determines that the person is no longer capable of communicating that desire, the investigator shall so notify the court. The court shall hold a hearing to determine if, by clear and convincing evidence, the person cannot

communicate, with or without reasonable accommodations, a desire to participate in the voting process. If the court determines that the person cannot communicate that desire, the court shall order the person to be disqualified from voting pursuant to Section 2208, and the court shall so notify the Secretary of State and the county elections official in the format prescribed by the Secretary of State.

**2210. Mentally incompetent persons; contest under Welfare and Institutions Code of disqualification from voting; restoration of right to vote; notice**

- (a) If the person or the person and estate is under a conservatorship established pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code, the person may contest his or her disqualification from voting pursuant to the procedure set forth in Section 5358.3 of the Welfare and Institutions Code.
- (b) When the conservatorship described in subdivision (a) terminates after one year, the person's right to register to vote shall also be automatically restored and notification shall be made to the Secretary of State and the county elections official in the format prescribed by the Secretary of State. If a petition is filed for the reappointment of the conservator, a new determination shall be made as to whether the person should be disqualified from voting.
- (c) If the right to vote is restored pursuant to Section 5358.3 of the Welfare and Institutions Code or if the conservatorship is terminated in a proceeding held pursuant to Section 5364 of the Welfare and Institutions Code, the court shall notify the Secretary of State and the county elections official of the person's county of residence in the format prescribed by the Secretary of State that the person's right to register to vote is restored.

**2211. Mentally incompetent person; determination under Penal or Welfare and Institutions Code provisions; disqualification from voting or registering to vote during period of confinement in facility; notice; release from treatment facility**

- (a) Any person who (1) has plead not guilty by reason of insanity and who has been found to be not guilty pursuant to Section 1026 of the

Penal Code, (2) has been found incompetent to stand trial and whose trial or judgment has been suspended pursuant to Section 1370 of the Penal Code, (3) has been convicted of a felony and who was judicially determined to be a mentally disordered sex offender pursuant to former Section 6300 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981, or (4) has been convicted of a felony and is being treated at a state hospital pursuant to Section 2684 of the Penal Code shall be disqualified from voting or registering to vote during that time that the person is involuntarily confined, pursuant to a court order, in a public or private facility.

- (b) Upon the order of commitment to a treatment facility referred to in subdivision (a), the court shall notify the elections official of the county of residence of the person and order the person to be disqualified from voting or registering to vote.
- (c) If the person is later released from the public or private treatment facility, the court shall notify the county elections official of the county of residence of the person that the right of the person to register to vote is restored.

**2212. Statement of persons convicted of felonies; cancellation of affidavits of registration for those imprisoned or on parole**

The clerk of the superior court of each county, on the basis of the records of the court, shall furnish to the chief elections official of the county, not less frequently than the first day of April and the first day of September of each year, a statement showing the names, addresses, and dates of birth of all persons who have been convicted of felonies since the clerk's last report. The elections official shall, during the first week of April and the first week of September in each year, cancel the affidavits of registration of those persons who are currently imprisoned or on parole for the conviction of a felony. The clerk shall certify the statement under the seal of the court.

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