

MODEL ACT

A MODEL BILL FOR AN ACT
RELATING TO VOTING RIGHTS OF PEOPLE CONVICTED AND/OR
INCARCERATED FOR A CRIMINAL OFFENSE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
[INSERT STATE NAME HERE]

PREAMBLE.

WHEREAS, The legislature finds that disenfranchisement of people convicted of a criminal offense undermines democratic ideals by depriving otherwise-qualified citizens of their right to vote;

WHEREAS, Nationally, disenfranchisement based on criminal conviction has a disproportionate effect on communities of color, which experience a higher incarceration rate than white communities;

WHEREAS, in [Insert State Name Here], this loss of voting power is a burden borne mostly by members of the Native American community, the Latino community and communities of Color, who are and have historically been disproportionately incarcerated;

WHEREAS, the loss of the right to vote impedes the successful

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reentry of convicted and incarcerated people as responsible, productive citizens into the community;

WHEREAS, voting can be an opportunity for incarcerated people to learn about candidates and issues, engage in civic education, and prepare for reintegration into society;

WHEREAS, disenfranchisement can suppress electoral participation among eligible voters by discouraging voting among family and community members of disenfranchised persons;

WHEREAS, restoration of voting rights to those convicted of a criminal offense is often granted in a non-uniform and potentially discriminatory manner;

WHEREAS, basic constitutional principles of fairness and equal protection require an equal opportunity for people to vote;

WHEREAS, allowing incarcerated people to vote by absentee ballot will benefit the State by helping incarcerated people remain aware of issues that are important to society so that they may participate more fully in their communities upon release;

ACCORDINGLY, the purpose of this Act is to allow incarcerated individuals who were [Insert State Name Here] residents immediately prior to incarceration to vote in [Insert State Name Here] elections by absentee ballot.

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SECTION 1.

[Insert Citation to Statute On Felony/Misdemeanor Disenfranchisement] [Insert State Name Here] is amended by deleting [Insert Sections Here] and replacing those as follows:

- (a) The right of an individual who is a resident of [State] to vote in any election shall not be denied or abridged because that individual has been convicted of a criminal offense.
- (b) A person incarcerated in a prison, jail, correctional facility, or community correctional center shall be eligible to vote in any election in [Insert State]. However, during the period of incarceration in a prison, jail, correctional facility, or community correctional center a person shall be ineligible to become a candidate for, or hold, public office.
- (c) The order, certificate, or other instrument of discharge, given upon the person's discharge after completion of service of the person's sentence or after service under probation or parole in [Insert State],

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shall state that the defendant's rights to hold future public office and other rights of which the defendant was deprived by reason of incarceration are restored and that the defendant suffers no other disability by virtue of the defendant's conviction and sentence, except as otherwise provided by this chapter. A copy of the order or other instrument of discharge shall be filed with the clerk of the court of conviction.

SECTION 2.

[Cite To The Statute Determining State Residency], [Insert State Name Here], is deleted and replaced as follows:

Rules for Determining Residency. For the purpose of this title, there can be only one residence for an individual, but in determining residency, a person may treat oneself separate from the person's spouse. The following rules shall determine residency for election purposes only:

- (a)The residence of a person is that place in which the person's habitation is fixed, and to which, whenever

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the person is absent, the person has the intention to return;

(b)A person does not gain residence in any precinct without the present intention of establishing the person's permanent dwelling place within that precinct;

(c)If a person resides with the person's family in one place, and does business in another, the former is the person's place of residence; but any person having a family, who establishes a dwelling place separate from their family, with the intention of remaining there, shall be considered a resident where the person has established that dwelling place;

(d)The mere intention to acquire a new residence without physical presence at that place, does not establish residency, neither does mere physical presence without the concurrent present intention to establish that place as the person's residence;

(e)A person does not gain or lose a residence solely by reason of the person's presence or absence while employed in the service of the United States or of this

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State, or while a student of an institution of learning, or while kept in an institution or asylum, or while confined in a prison, jail, correctional facility, or community correctional center within or outside the State;

(f) No member of the armed forces of the United States, the member's spouse, or the member's dependent is a resident of this State solely by reason of being stationed in the State;

(g) A person loses the person's residence in this State if the person votes in an election held in another state by absentee ballot or in person; and

(h) In case of question, final determination of residence shall be made by the clerk, subject to appeal to the [Insert State Agency For Determining Residency Here]."

SECTION 3.

[Insert Citation To State Statute Concerning Voter Registration Here], [Insert State Name Here], is amended, by deleting Section [Insert Citation To Section] and replacing it as follows:

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(a) An application to register to vote shall include a space to request an absentee ballot.

(b) Any person qualified to and desiring to register as a voter in any county shall make and subscribe to an application which shall state the following information:

1. Name;
2. Social security number;
3. Date of birth;
4. Residence;

ii. That the residence stated in the application is not simply because of the person's presence in the State, but that the residence was acquired with the intent to make [Insert State Name Here] the person's legal residence with all the accompanying obligations therein;

iii. That the person is a citizen; and;

iv. Address or location of the last voluntary residence for a person held or incarcerated in a prison, jail, correctional facility, or community correctional center.

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SECTION 4.

[Insert Citation To State Statute Concerning Incapacity/Death/Removal From The Register or Voting Rolls] is deleted and replaced as follows:

- a) No person shall be disqualified to vote or removed from the register or voters rolls due to conviction of a criminal offense or incarceration in a prison, jail, correctional facility, or community correctional center. All persons who have been previously so removed by reason of conviction or incarceration shall be reinstated.
- b) Whenever the clerk receives from the department of health or any informing agency, information of the death, adjudication as an incapacitated person under the provisions of [Insert State Statute Section on Incapacity Here], loss of citizenship, or any other disqualification to vote of any person registered to vote in that county, or who the clerk has reason to believe may be registered to vote therein, the clerk shall thereupon make such investigation as may be necessary to prove or disprove

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the information, giving the person concerned, if available, notice and an opportunity to be heard. If after the investigation the clerk finds that the person is dead, or incapacitated to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning voting, or has lost citizenship, or is disqualified for any other reason to vote, the clerk shall remove the name of the person from the register.

SECTION 5.

[Insert Citation To State Statute Providing For Absentee Ballots], is amended to read as follows:

Voting By Absentee Ballot.

(a) Any person registered to vote may cast an absentee ballot in the manner provided in this chapter and rules adopted by the chief election officer.

(b) Voting by absentee ballot shall be the sole method of voting for all persons registered to vote as residents of the

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State who are confined or incarcerated in a prison, jail, correctional center, or community correctional center."

SECTION 6.

[Insert Section of State Statute Here Concerning Delivery of Absentee Ballots], is amended to read as follows:

Delivery of ballots.

(a) Immediately upon receipt of a request for absentee ballot within the time limit specified in [Insert Section Here], the clerk shall examine the records to ascertain whether the voter is lawfully entitled to vote as requested. If the clerk ascertains that the voter is lawfully entitled to vote as requested, no earlier than thirty days before the election, the clerk shall mail in a forwarding envelope, or deliver in person if the voter appears at the office of the clerk, an official ballot and other materials prescribed in [Insert Section Here]. An incapacitated voter may send a representative to obtain the voter's ballots pursuant to the rules adopted by the chief election officer.

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(b) Official ballots and other materials prescribed in

[Insert Section Here] shall be mailed or delivered:

i. To uniform military and overseas voters, pursuant to [Insert Section Here];

ii. to residents of the State who are incarcerated, pursuant to rules adopted by the chief election officer; and

iii. No later than twenty-four hours after receipt of the request for absentee ballot.

(c) The chief election officer may adopt rules for the

preparation of special ballots of such different weight

of paper, overall size and shape, or other physical

criteria to conform with minimum postal, military,

correctional, or other federal or state regulations or

orders regarding the transportation and delivery of the

ballots; provided that the text is identical in

substance, except as to type size, with that appearing on

the official ballots.

(d) If mailed absentee ballots are not received by the voter

within five days of an election, a voter may request that

absentee ballots be forwarded electronically or by

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facsimile. The voter may return the voted ballots and executed forms by facsimile or mail; provided that they are received by the issuing clerk no later than the close of polls on election day.

SECTION 8.

This Act shall take effect upon its approval.

INTRODUCED BY: _____

Report Title:

Voting Rights; Incarcerated People; Absentee Voting; Authorized

Description:

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Authorizes incarcerated people who are residents of the State to
vote by absentee ballot.