



April 11, 2022

The Honorable Shirley Weber
Secretary of State of California
1500 11th Street, 6th Floor
Sacramento, CA 95814
Secretary.Weber@sos.ca.gov
Elections@sos.ca.gov

Via Electronic Mail

Re: NVRA Designation of Specified Offices Providing Public Assistance to California Voters Impacted by the Criminal Legal System

Dear Secretary of State Dr. Shirley Weber:

We write to you on behalf of ACLU California Action (ACLU) and the undersigned organizations to request that your office promptly designate the California Department of Corrections and Rehabilitation's Division of Adult Parole Operations (DAPO), county and city jails, and county probation departments as voter registration agencies under Section 7 of the National Voter Registration Act (NVRA).¹ These offices all provide public assistance, within the meaning of the NVRA, to eligible California voters who are impacted by the criminal legal system. ACLU and our partners have met with representatives from your office, the Governor's Office, and DAPO on multiple occasions about this subject since the passage of Proposition 17 restored voting rights to people on parole, and we now respectfully urge your office to issue these designations as soon as possible in order to increase access to registration for underrepresented voters well ahead of the June 2022 primary.

Eligible California voters impacted by the criminal legal system severely need voter registration services. Although in recent years many states – like California – have rewritten their laws to expand voting rights for people with convictions, these voters frequently experience *de facto* disenfranchisement.² Too often, confusion about the rights of people with convictions leads eligible

¹ 52 U.S.C. § 20506.

² See, e.g., THE GREENLINING INSTITUTE, COMMUNITY VOICES: BARRIERS TO VOTING FOR CALIFORNIA'S FORMERLY INCARCERATED (2015), [greenlining.org/wp-content/uploads/2015/01/Community-Voices-Barriers-to-Voting-for-Californias-Formerly-Incarcerated-spreads.pdf](https://www.greenlining.org/wp-content/uploads/2015/01/Community-Voices-Barriers-to-Voting-for-Californias-Formerly-Incarcerated-spreads.pdf) (“More than 60 percent of our participants said they have been confused at some point about their eligibility to vote due to a criminal conviction.”); THE SENTENCING PROJECT, STUDIES OF VOTING BEHAVIOR AND

individuals to mistakenly believe that they are prohibited from participating in their own democracy. Numerous barriers also stymie incarcerated and recently released individuals who want to vote but struggle to access registration and the ballot. Because structural discrimination still leads to the overrepresentation of Black and Brown Californians in our criminal legal system, *de facto* disenfranchisement acts as another form of voter suppression that unfairly robs communities of color of their political power.³

DAPO, jails, and probation departments are uniquely positioned to offer registration forms and assistance to these eligible – yet highly underrepresented – voters directly at the point when they are receiving relevant public assistance.⁴ These offices have the most contact with these eligible voters during their incarceration and/or reentry and can help ensure that eligible voters impacted by the criminal legal system know what their voting rights are and are able to exercise those rights. NVRA Section 7 offers an untapped mechanism to help close the voter registration gap for eligible Californians on parole, as well as those receiving public assistance from local jails and probation departments. As described below, departments of corrections in Rhode Island and the District of Columbia have already been designated under NVRA Section 7 for several years, showing that voter registration services can be effectively integrated into existing points of contact like jail booking or prison discharge. California must follow their example and rise to the challenge of ending the *de facto* disenfranchisement of eligible voters on parole, in jail, or on probation.

1. DAPO, jails, and probation departments provide the kind of “public assistance” described by the NVRA.

The purpose of the NVRA is to “establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office.”⁵ Section 7 of the NVRA is part of a comprehensive statute designed to facilitate voter registration and “seeks to increase registration of the poor and persons with disabilities who do not have driver’s licenses and will not come into contact with the other principal place to register” under the NVRA, the Department of Motor Vehicles (DMV).⁶

FELONY DISENFRANCHISEMENT AMONG INDIVIDUALS IN THE CRIMINAL JUSTICE SYSTEM IN NEW YORK, CONNECTICUT, AND OHIO (2005), prisonpolicy.org/scans/sp/fd_studiesvotingbehavior.pdf.

³ See, e.g., JUSTICE COUNCIL OF CALIFORNIA, DISPOSITION OF CRIMINAL CASES ACCORDING TO THE RACE AND ETHNICITY OF THE DEFENDANT (2018), courts.ca.gov/documents/lr-2019-JC-disposition-of-criminal-cases-race-ethnicity-pc1170_45.pdf; THE SENTENCING PROJECT, 6 MILLION LOST VOTERS (2016), sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf.

⁴ DEMOS, HOW TO END *DE FACTO* DISENFRANCHISEMENT IN THE CRIMINAL JUSTICE SYSTEM (2020), demos.org/policy-briefs/how-end-de-facto-disenfranchisement-criminal-justice-system (recommending that states “designate the [relevant criminal legal] agency where a person has their last point of contact before becoming eligible to vote – e.g., departments of corrections, probation, parole, or community supervision – as a voter registration agency”).

⁵ 52 U.S.C. § 20501(b)(1).

⁶ Nat’l Council of La Raza v. Cegavske, 800 F.3d 1032, 1035 (9th Cir. 2015) (internal quotations omitted). Because another part of the NVRA, Section 5, requires all states to provide voter registration services during driver’s license or state ID transactions at the DMV, it is sometimes referred to as the “Motor Voter” law.

Letter to Secretary of State Dr. Shirley Weber
April 11, 2022

The NVRA and implementing state law mandate that your office designate “all offices in the State that provide public assistance” as voter registration agencies.⁷ Although the NVRA does not explicitly define what constitutes “public assistance,” courts have held that “its meaning is apparent from the purpose of the Act, the Act’s legislative history, applicable authority, and the usual and ordinary meaning of the term.”⁸ The plain and ordinary meaning of “public assistance” indicates that Section 7’s mandatory voter registration agencies are those which provide “government aid to needy, aged, or disabled persons.”⁹ Once designated as such, voter registration agencies must provide both a voter registration card and a voter preference form, assist in completing the forms, and accept completed voter registration forms and timely transmit them to elections officials.¹⁰

In California, DAPO, local jails, and probation departments are among the offices which provide “public assistance” within Congress’s intended meaning of NVRA Section 7. In describing the responsibilities of DAPO, for instance, California law makes clear that a core purpose of parole supervision is “to provide educational, vocational, family, and personal counseling necessary to assist [people on] parole[] in the transition between imprisonment and discharge.”¹¹ Similarly, the 2021-22 California Budget states that “the mission of [CDCR] is to facilitate the successful reintegration of the individuals in its care back to their communities . . . by providing education, treatment, rehabilitative, and restorative justice programs.”¹² DAPO, specifically, was budgeted \$225 million in fiscal year 2021-22 to provide a host of public assistance services from transitional housing to other wraparound services.¹³

⁷ 52 U.S.C. § 20506(a)(2)(A). Public assistance agencies are also known as “mandatory voter registration agencies” and are required to be designated regardless of whether they are part of a state agency or local government office. *See, e.g.*, *Disabled in Action of Metropolitan New York v. Hammons*, 202 F.3d 110, 120 (2d Cir. 2000).

⁸ *Senior & Disability Action, et al. v. Padilla*, No. CPF-18-516265, Order Granting in Part and Denying in Part Motion for Peremptory Writ of Mandate (S.F. Super. Ct., Mar. 29, 2019) (holding that the California Student Aid Commission and county welfare offices providing General Assistance/General Relief programs are mandatory voter registration agencies under the NVRA because they provide “public assistance.”). *See also* *Lennane v. Franchise Tax Bd.*, 9 Cal. 4th 263, 268 (1994).

⁹ *Public Assistance*, *Merriam-Webster’s Online Dictionary*, [merriam-webster.com/dictionary/public%20assistance](https://www.merriam-webster.com/dictionary/public%20assistance) (last visited Mar. 29, 2022). *See also* *In re Hardy*, 787 F.3d 1189, 1193 (8th Cir. 2015) (defining “public assistance benefits” as “those government benefits provided to the needy”).

¹⁰ 52 U.S.C. § 20506(a)(6), (d).

¹¹ CAL. PENAL CODE § 3000(a)(1). Title 15 of the California Code of Regulations reiterates that “the function of parole” is to provide these services. CAL. CODE REGS. tit. 15, § 3500(c). In addition, these various counseling services which DAPO provides to individuals on parole, DAPO is also required to assist eligible persons under its parole supervision in applying for a state ID or driver’s license and to provide information about voting rights for people impacted by the criminal legal system. *Id.* at § 3007.05(a)-(g); CAL. ELEC. CODE §§ 2105.5(a), 2105.6(a).

¹² Dept. of Corrections & Rehabilitation Agency Report, Cal. State Budget: Fiscal Year 2021-22, <https://www.ebudget.ca.gov/2021-22/pdf/Enacted/GovernorsBudget/5210.pdf>.

¹³ DAPO’s “Adult Community Based Programs . . . include, but are not limited to, Transitional Housing for [People on] Parole[], Day Reporting Centers, Pre-Employment and Transitional Work Programs, Cognitive Behavioral Treatment, Substance Use Disorder Treatment, and other Wraparound Services. The program includes a full continuum of transitional programs [and] provides mental health services and treatment.” *Id.* at CR 11.

Local jails and county probation departments also provide the “public assistance” described by NVRA Section 7 to those under their supervision. This public assistance takes myriad forms and, in specified instances, includes the provision of information and services tailored to the needs of the affected individuals. For example, jails and probation departments must provide people who have been sentenced for drug-related crimes with information about HIV/AIDS,¹⁴ and probation departments must provide certain information about voting rights to persons under their supervision.¹⁵ Jails are also empowered by state law to provide vocational training,¹⁶ work or job training programs,¹⁷ or other rehabilitative programs¹⁸ to the incarcerated individuals in their custody.

Further, people receiving the services provided by DAPO and California’s local jails and probation departments are overwhelmingly low-income or indigent, making them exactly the kind of underrepresented individuals that NVRA Section 7 aims to reach by mandating that “public assistance” offices be designated as voter registration agencies. A report by the Prison Policy Initiative explained, for example, that “formerly incarcerated people are almost 10 times more likely to be homeless than the general public” and “are most likely to be homeless in the period shortly after their release.”¹⁹ These individuals also often do not come into contact with the voter registration opportunities provided through the DMV,²⁰ which means that NVRA designation of DAPO, jails, and probation departments would substantially increase their access to the elections process.

2. DAPO, jails, and probation departments provide public assistance through multiple points of contact at which voter registration services could be offered.

Under the NVRA, offices designated as voter registration agencies must distribute voter registration forms with “each application for [] service or assistance, and with each recertification, renewal, or change of address form” relating to the services the agency provides.²¹ Federal courts have

¹⁴ CAL. PENAL CODE § 4018.1.

¹⁵ CAL. ELEC. CODE §§ 2105.5(b); 2105.6(c).

¹⁶ CAL. PENAL CODE § 4018.5.

¹⁷ *Id.* at § 4019.1.

¹⁸ *Id.* at § 4019.4. Some county jails even have programs under which money from the “inmate welfare fund” may be provided to indigent individuals leaving jail for “assistance with the reentry process” including “work placement, counseling, obtaining proper identification, education, and housing.” *Id.* at § 4025.5.

¹⁹ PRISON POLICY INITIATIVE, NOWHERE TO GO: HOMELESSNESS AMONG FORMERLY INCARCERATED PEOPLE (2018). *See also* PRISON POLICY INITIATIVE, OUT OF PRISON & OUT OF WORK: UNEMPLOYMENT AMONG FORMERLY INCARCERATED PEOPLE (2018) (“formerly incarcerated people are unemployed at a rate of over 27% — higher than the total U.S. unemployment rate during any historical period, including the Great Depression”, with over 30% of people released from prison within the last two years experiencing unemployment).

²⁰ The CAL-ID process provided to eligible individuals leaving California prisons does not currently include the voter registration application (or “Motor Voter”) questions which are provided to other customers applying for a license or ID through the California DMV. Even if the CAL-ID process is integrated into DMV’s Motor Voter system as it should be, the strict requirements of the CAL-ID program make it inaccessible for many returning citizens and less than 30% of people released from prison currently come home with a CAL-ID. THE MARSHALL PROJECT, NO PHOTO ID, NO SERVICES: CORONAVIRUS POSES STEEP HURDLES AFTER PRISON (2020), themarshallproject.org/2020/05/26/no-photo-id-no-services-coronavirus-poses-steep-hurdles-after-prison.

²¹ *Id.* at § 20506(a)(3)(B)(i).

indicated that Section 7 should be read broadly with regard to the covered transactions during which NVRA agencies must provide voter registration services.²² The NVRA also requires a designated office to provide “the same degree of assistance” in completing the voter registration form as it would in completing the office’s own forms, unless the individual declines.²³ If the voter completes their registration form during the covered transaction, the Section 7 agency must transmit the completed form to the relevant elections official within specified timelines.²⁴

As Congress explained during the drafting of NVRA Section 7, “one of the advantages of the agency-based program is that it is an interactive registration. That is, there are individuals to assist registrants in completing the information on the registration application.”²⁵ Requiring designated public assistance offices to provide the people they serve with help in completing voter registration forms, if requested, makes it more likely that those underrepresented individuals will register to vote and feel confident in exercising their voting rights. Simply “hav[ing] a stack of mail registration cards available does not necessarily mean that people are going to pick them up and send them in”²⁶ because service recipients may be confused about or intimidated by the registration process.

As described above, eligible voters impacted by the criminal legal system often mistakenly believe that they are disqualified from voting because of their incarceration or conviction. Eligible voters with criminal records who are correctly informed about their rights may still experience significant barriers when they attempt to register or cast a ballot, especially if they are in jail or they’re experiencing common reentry challenges like housing instability. Because DAPO, jails, and probation departments already provide these eligible voters with the kind of “interactive” assistance contemplated by the NVRA, requiring them to also provide voter registration assistance would be a targeted and effective way to help curb the *de facto* disenfranchisement caused by misinformation and lack of access.

There are numerous existing points-of-contact between these agencies and eligible voters which are natural opportunities to offer voter registration, including interactions which parallel the “application for [] service or assistance” described in Section 7.²⁷ For DAPO, these include the completion of the “Residence/Employment Verification” (CDCR Form 1658), an initial home contact, and an

²² A Section 7 agency must provide voter registration opportunities at each stage of the agency’s application, renewal, or change of address process. Nat’l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Scales, 150 F. Supp. 2d 845 (D. Md. 2001). Section 7 also must provide equal access to voter registration cards and assistance regardless of whether the covered transaction is completed in-person or remotely. Action NC, et al. v. Strach, et al., 216 F.Supp.3d 597, 634 (M.D.N.C. 2016).

²³ 52 U.S.C. § 20506(a)(6)(C).

²⁴ Completed voter registration forms typically must be transmitted to elections officials within 10 days of their acceptance at the agency, but this timeline shortens to 5 days when the forms are accepted within 5 days of the registration deadline before an election. *Id.* at § 20506(d).

²⁵ S. Rep. No. 103-6, at 14 (1993).

²⁶ *Id.* at 14-15.

²⁷ 52 U.S.C. § 20506(a)(6).

“Initial/Comprehensive Interview” with the individual being released.²⁸ Completion of the initial/comprehensive interview during the transitional phase of parole involves: determining the “case management objectives” of the newly released person;²⁹ “inform[ing] the [person on] parole[] of available assistance and services”;³⁰ asking questions about “[a]cademic, employment, and other needs”;³¹ and determining “if any disabilities exist, or if reasonable accommodations are required.”³² These are contacts where newly-eligible voters on parole are first applying for relevant “public assistance” from DAPO. Rhode Island’s Department of Corrections, which has been designated as an NVRA Section 7 agency since 2006, currently provides voter registration services as part of the discharge process and offers a model for how DAPO could integrate registration into established parts of the release process like the initial/comprehensive interview.³³

DAPO also continues to interact with eligible voters as they progress through their parole term in ways that compare to the NVRA’s “recertification, renewal, or change of address” transactions during which voter registration must be offered.³⁴ For instance, people on parole periodically complete a “Case Conference Review” with their parole officer during which there is a “structured analysis of the case,” including a “review of the [person on] parole[]’s individual case factors, and progress relating to [that person’s] Goals and Progress Reports.”³⁵ Completion of Case Conference Reviews at specified points during the parole term is a required procedure, and these milestones act as renewals of DAPO’s services during which the needs of the individual on parole are reassessed and which would be logical points at which to provide Section 7 voter services. Similarly, when people on parole move, they must inform DAPO at least 72 hours before their address change and, during the next required home contact with their parole agent, the CDCR Form 1658 must be updated to reflect the person’s new residence.³⁶ This change of address transaction is the perfect opportunity to ensure that voters on parole also update the address on their voter registration.

Likewise, when individuals in jails and on probation in California are provided with “public assistance” through those agencies, they interact with jail or probation representatives through points-of-contact akin to the NVRA’s “application for [] service or assistance” and “recertification, renewal, or change of address.”³⁷ For example, voter registration services could be offered as part of each jail’s

²⁸ See, e.g., CAL. DEP’T OF CORR. & REHAB., DIV. OF ADULT INSTIT., PROGRAMS, & PAROLE OPERATIONS MANUAL [hereinafter *DOM*], §§ 81020.7.1-81020.9.3, 81020.10.- 81020.10.5. Among other information, the CDCR Form 1658 collects the address of the proposed residence for the individual being released and proposed employment information. *Id.* at § 81020.9.3.

²⁹ *Id.* at § 81020.10.1.

³⁰ *Id.* at § 81020.10.2.

³¹ *Id.* at § 81020.10.4.

³² *Id.* at § 81020.10.5. During the Initial/Comprehensive Interview, the parole officer also issues an individual their first CDCR Form 1661, a “Goals and Progress Report.”

³³ R.I. GEN. LAWS § 17-9.2-3(c).

³⁴ 52 U.S.C. § 20506(a)(6).

³⁵ *DOM*, *supra* note 28 at § 81020.6.

³⁶ *Id.* at § 81020.9.4.

³⁷ 52 U.S.C. § 20506(a)(6).

Letter to Secretary of State Dr. Shirley Weber
April 11, 2022

intake booking process as individuals are admitted into custody and information like name, date of birth, and driver's license and social security number are collected.³⁸ Voters who remain incarcerated in a jail for longer periods of time may also need multiple opportunities to register or update their registration, and they should be provided with these services when they “renew or recertify” their public assistance by meeting with their case managers or when they have a “change of address” by being moved to a different jail location or a different cell.³⁹ Similar procedures are already in place in the District of Columbia Department of Corrections, which is designated as an NVRA agency and which requires its case managers to provide eligible voters in its custody with registration forms, to “review the form with the [incarcerated voter] to ensure that it is accurate and complete,” and to forward completed registration forms to the institution’s “Voting Coordinator.”⁴⁰

Conclusion

Currently in California, there are over 45,000 people on parole,⁴¹ over 60,000 people in local jails,⁴² and over 180,000 people on probation.⁴³ Because the vast majority of these individuals meet all other eligibility criteria – including being a U.S. citizen⁴⁴ and 18 years or older⁴⁵ – they have the right to vote in our state’s elections. Nonetheless, many of these eligible voters fall through the cracks in our democracy because misinformation and practical barriers to registration keep them from exercising their fundamental rights. Due to structural disparities, not only are the people under the supervision of DAPO and California’s jails and probation departments disproportionately Black, Brown, Indigenous, or other people of color, but they are also disproportionately low-income, poor, or unhoused and are less likely to interact with the DMV’s voter registration system because they don’t own cars. These indigent and

³⁸ See, e.g., ORANGE CO. SHERIFF, POLICY 2502.1 – INMATE RECORDS, ocsheriff.gov/sites/ocsd/files/2021-03/Redacted-Policy%202500%20-%20Inmate%20Records.pdf.

³⁹ The Prisoner Legal Services unit at the San Francisco Sheriff’s Department provides similar registration services to incarcerated voters and maintains a log of registered voters’ cell locations so that ballots may be efficiently distributed and collected within each jail housing unit before elections. See ACLU NORCAL ET AL., VOTING IN CALIFORNIA JAILS: A COMMUNITY TOOLKIT 13 (Updated 2021), letmevote.org/toolkit/.

⁴⁰ D.C. DEPT. OF CORRECTIONS, POLICY & PROCEDURE NO. 4020.4A, doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/PP%204020.4A%20Inmate%20Voting%20Process%2001-17-2017.pdf

⁴¹ Cal. Dept. of Corrections & Rehabilitation, Office of Research, Weekly Report of Population (Mar. 16, 2022).

⁴² VERA INSTITUTE FOR JUSTICE, CALIFORNIA INCARCERATION TRENDS: JAIL INCARCERATION (Updated Dec. 2021), available at <https://trends.vera.org/state/CA>.

⁴³ Cal. Dept. of Justice, Criminal Justice Statistics Center, Adult Probation Caseloads & Actions (2020).

⁴⁴ See, e.g., PUBLIC POLICY INST. OF CAL., CALIFORNIA’S PRISON POPULATION (2019), ppic.org/wp-content/uploads/jtf-prison-population-jtf.pdf (“Foreign-born Californians are less likely to be imprisoned. Most inmates in California were born in the United States—81.4%, more than the 65.4% of adult US-born Californians.”); Federal Bureau of Prisons, BOP Statistics: Inmate Citizenship, bop.gov/about/statistics/statistics_inmate_citizenship.jsp.

⁴⁵ See, e.g., THE SENTENCING PROJECT, STATE-BY-STATE DATA: CALIFORNIA (2019), sentencingproject.org/the-facts/#detail; PUBLIC POLICY INST. OF CAL., NEW INSIGHTS INTO CALIFORNIA ARRESTS 14 (2018), ppic.org/publication/new-insights-into-california-arrests-trends-disparities-and-county-difference/ (“In 2016, juveniles represented 24 percent of the population but only 5 percent of arrests.”).

Letter to Secretary of State Dr. Shirley Weber
April 11, 2022

underrepresented voters are exactly who NVRA Section 7 was designed to reach,⁴⁶ and DAPO, jails, and probation departments are the natural “public assistance” providers to offer voter registration assistance to them.

We, therefore, respectfully reiterate our request that your office take immediate steps to designate DAPO, as well as California’s county and city jails and county probation departments, as voter registration agencies as required by Section 7 of the NVRA and implementing state law. Please respond by contacting Brittany Stonesifer at bstonesifer@aclunc.org or (916) 824-3261.

Sincerely,



Brittany Stonesifer
Staff Attorney, Democracy & Civic Engagement
ACLU Foundation of Northern California



Ruth Dawson
Legislative Attorney
ACLU California Action



Patrick Berry
Counsel, Democracy Program
Brennan Center for Justice



Greg Fidell
Policy Manager
Initiate Justice

⁴⁶ A briefing on NVRA Section 7 by the U.S. Commission on Civil Rights under President Obama explained that “Hispanics and blacks were, respectively, three and four times more likely than whites to register to vote at a public assistance agency. . . . Providing for voter registration at public assistance offices is also important for Limited English Proficient persons, who are more likely to be living in poverty than English proficient individuals.” INCREASING COMPLIANCE WITH SECTION 7 OF THE NATIONAL VOTER REGISTRATION ACT 1-2 (2016), usccr.gov/files/pubs/docs/NVRA-09-07-16.pdf.