



SAN DIEGO LEGAL OFFICE
1111 Sixth Avenue, Suite 200, San Diego, CA 92101
Telephone: (619) 239-7861 Fax: (619) 239-7906
Toll Free: (800) 776-5746 TTY: (800) 576-9269
www.pai-ca.org

MEMORANDUM

TO: Mental Health Advocates

FROM: Daniel Brzovic with an update by Margaret Jakobson

RE: Right to Vote When in a Facility or Under a Conservatorship

DATE: October 6, 2003

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 registering or voting while "involuntarily confined pursuant to a court order, in a public or private facility." The disqualification ends automatically when the person is discharged from the facility as the court is to notify the county elections official that the person's right to vote has been restored.

There is no mention of sexually violent predators (SVP), California Welfare and Institutions Code section 6600; California Penal Code sections 2962 and 2972 for mentally disordered offenders (MDO); California Penal Code section 1026.5 for those not guilty by reason of insanity whose commitment has been extended; California Penal Code section 1370.1 for those who are incompetent to stand trial based on developmental disability; or California Penal Code section 1370.01 for those who are charged with having committed a misdemeanor. Thus there is no restriction on the ability of those groups to register and vote.

Right of conservatees (including LPS and Murphy conservatees) to vote

California Elections Code section 2208 provides for disqualification of Lanterman Petris Short (LPS) conservatees (including Murphy conservatees), and California Probate Code conservatees only if the court finds that the person is "not capable of completing an affidavit of voter registration."

For LPS conservatees, the court must notify the county registrar of voters of the automatic restoration of the right to vote if the conservatorship is terminated following a rehearing on the establishment of conservatorship pursuant to Welfare & Institutions Code § 5364. All other disqualifications end when the conservatorship ends.

If there is a jury trial, the jury must make the disqualification determination by unanimous verdict.

National Voter Registration Act of 1993 (NVRA)

This is the "motor voter" act. It requires 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.