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Elections

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Elections

Elections; voter disqualification – mental incompetency

Elections Code §§504, 608, 706, 706.1, 706.2, 706.3, 10007.5, 10010.1 (repealed); §§504, 608, 706, 706.1, 706.2, 706.3, 707.8, 10007.5, 10010.1 (new); §§503, 505, 610, 611.1, 701, 707.5, 800, 801, 803, 804, 825, 826 (amended).

AB 9 (Leonard); 1983 STAT. Ch 811

AB 1373 (Klehs); 1983 STAT. Ch 820

Support: Department of Finance; Department of Mental Health; Secretary of State

Existing law provides that a county clerk must cancel a voter's registration under specified circumstances, which include finding that the voter is legally incompetent.¹ Chapter 820 broadens the definition of mental incompetency for purposes of voter disqualification.²

Pursuant to Chapter 811, a person is deemed mentally incompetent, and therefore disqualified from voting, if during specified proceedings³ a court finds the person incapable of completing an affidavit of voter registration,⁴ and the person (1) has been declared incompetent to stand trial,⁵ or (2) has been found not guilty by reason of a plea of insanity and is gravely disabled at the time of judgment.⁶ Chapter 811 further requires

1. See CAL. ELEC. CODE §701. The circumstances under which the clerk must cancel a voter's registration include (1) at the request of the person registered, (2) when the mental incompetency of the person registered is legally established and a conservator is appointed, (3) upon proof that the person presently is imprisoned or on parole for conviction of a felony, (4) upon production of a certified copy of a judgment directing the cancellation to be made, (5) upon the death of the person registered, and (6) pursuant to other statutory provisions. *Id.* Furthermore, with the enactment of Chapter 820, the clerk must cancel a voter's registration (1) upon receipt of any mailing returned by the postal service as undeliverable, and (2) upon official notification that the voter is registered to vote in another county or state. Compare *id.* with 1982 Cal. Stat. c. 656, §1, at ___, and 1982 Cal. Stat. c. 1166, §4, at ___ (amending CAL. ELEC. CODE §701).

2. Compare CAL. ELEC. CODE §701 with 1982 Cal. Stat. c. 656, §1, at ___, and 1982 Cal. Stat. c. 1166, §4, at ___ (amending CAL. ELEC. CODE §701).

3. These proceedings include conservatorship proceedings pursuant to provisions of existing law and incompetency or insanity hearings pursuant to the California Penal Code. See CAL. ELEC. CODE §707.5; CAL. PROBATE CODE §§1400-3803; CAL. WELF. & INST. CODE §§5350-5371.

4. CAL. ELEC. CODE §705.5(a); see *id.* §500 (contents of affidavit of registration).

5. *Id.* §707.5(a); see CAL. PENAL CODE §1370 (resolution of question of mental incompetence); see also Comment, *California's New Scheme For The Commitment Of Individuals Found Incompetent To Stand Trial*, 6 PAC. L.J. 484 (1975).

6. CAL. ELEC. CODE §707.5(a)(4); see CAL. PENAL CODE §1026 (provisions pertaining to a plea of insanity). While one section of Chapter 811 disqualifies a person from voting if the person is found not guilty by reason of insanity and gravely disabled at the time of judgment, the legislature apparently has inadvertently omitted the "gravely disabled"

voter disqualification for convicted felons judicially determined to be mentally disordered sex offenders under provisions of prior law,⁷ or convicted felons being treated for mental difficulties in a state hospital.⁸ Disqualification under these provisions will continue for the duration of the person's involuntary confinement⁹ in a public or private facility.¹⁰

Once a person is committed to a treatment facility, Chapter 811 requires the court to notify the clerk of the individual's county of residence and issue an order disqualifying the person from voting.¹¹ Upon the release of an individual from a treatment facility, Chapter 811 requires the court to notify the county clerk that the individual's voter registration rights have been restored.¹²

language from a similar provision of Chapter 811 under which a person found not guilty by reason of a plea of insanity must be disqualified. CAL. ELEC. CODE §§707.5(a)(4), 707.8(a)(1); *see also* telephone conversation with Joan Christianson, Assistant to Assemblyman Leonard (September 12, 1983) (notes on file at the *Pacific Law Journal*). California Election Code section 707.8 may therefore be subject to clean-up legislation during the 1984-85 regular session. *Id.*

7. CAL. ELEC. CODE §707.8(a); *see* 1967 Cal. Stat. c. 1667, §37, at 4107 (repealed by 1981 Cal. Stat. c. 928, §2, at 3485).

8. CAL. ELEC. CODE §707.8(a); *see* CAL. PENAL CODE §2684 (provisions relating to transfer to a state hospital and the duration of treatment).

9. The person's involuntary confinement must be pursuant to court order. CAL. ELEC. CODE §707.8(a).

10. *Id.*

11. *Id.* §707.8(b).

12. *Id.* §707.8(c)