

Felony Disenfranchisement: A Primer

A striking 6.1 million Americans are prohibited from voting due to laws that disenfranchise citizens convicted of felony offenses.¹ Felony disenfranchisement rates vary by state, which institute a wide range of disenfranchisement policies.

Table 1. Summary of Felony Disenfranchisement Restrictions in 2018²

| No restriction (2) | Prison (15) | Prison & parole (4) | Prison, parole & probation (18) | Prison, parole, probation & post-sentence – some or all (12) |
|--------------------|--|--|--|--|
| Maine Vermont | District of Columbia Hawaii Illinois Indiana Maryland Massachusetts Michigan Montana New Hampshire North Dakota Ohio Oregon Pennsylvania Rhode Island Utah | California Colorado Connecticut New York ^a | Alaska Arkansas Georgia Idaho Kansas Louisiana ^b Minnesota Missouri New Jersey New Mexico North Carolina Oklahoma South Carolina South Dakota Texas Washington West Virginia Wisconsin | Alabama ^c Arizona ^d Delaware ^e Florida ^f Iowa ^g Kentucky ^h Mississippi ⁱ Nebraska ^j Nevada ^k Tennessee ^l Virginia ^m Wyoming ⁿ |

^a In 2018, Governor Andrew Cuomo used his clemency power to restore voting rights to approximately 35,000 New Yorkers under parole supervision, and vowed to continue this practice as new residents with felony convictions enter the parole system each month.

^b In 2018, Louisiana authorized rights restoration for residents on probation or on parole if they have not been in prison for five years; policy excludes residents convicted of felonies for election fraud or other election offenses.

^c In 2016, Alabama eased the rights restoration process after completion of sentence for persons not convicted of a crime of “moral turpitude.” In 2017, state lawmakers clarified the longstanding provision that disenfranchised persons convicted of crimes of “moral turpitude” by establishing a list of 50 specific felonies considered to involve moral turpitude. Previously all felonies were interpreted to be crimes of moral turpitude.

^d Arizona permanently disenfranchises individuals with two or more felony convictions.

^e In 2013, Delaware removed its five-year waiting period, allowing those convicted of most offenses to vote upon completion of sentence and supervision. People who are convicted of disqualifying felonies (murder, bribery, sexual offenses) are permanently disenfranchised.

^f State requires a five-year waiting period before individuals can apply for rights restoration.

^g Governor Tom Vilsack restored voting rights to individuals with previous felony convictions via executive order in 2005. Governor Terry Branstad reversed this executive order in 2011.

^h Governor Steve Beshear restored voting rights to individuals with previous non-violent felony convictions via executive order in 2015. Governor Matt Bevin reversed this executive order shortly after taking office in 2015.

ⁱ Mississippi permanently disenfranchises individuals convicted of certain offenses.

^j Nebraska reduced its indefinite ban on voting to a two-year post-supervision waiting period in 2005.

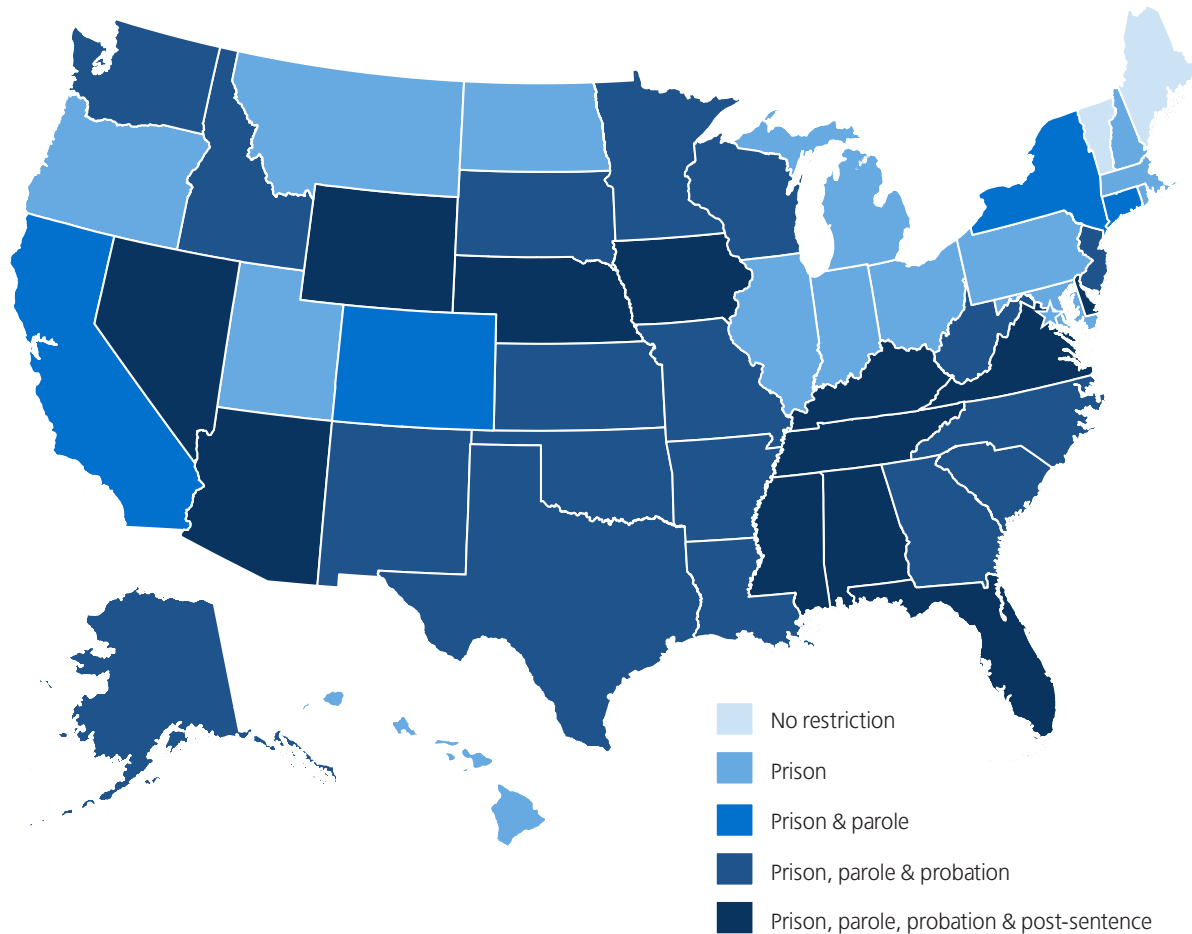
^k Nevada disenfranchises post-sentence except for first-time non-violent offenses.

^l Tennessee disenfranchises those convicted of felonies since 1981, in addition to those convicted of select offenses prior to 1973.

^m In 2016, Governor Terry McAuliffe used his clemency power to restore voting rights to approximately 200,000 Virginians who had completed their sentences. This action was challenged in the state Supreme Court, which ruled that rights restoration needed to be undertaken on an individual basis, and not across the board. Governor McAuliffe subsequently restored rights to 173,000 citizens in this manner. Virginia’s disenfranchisement policy remains unchanged, and the state constitution still disenfranchises all individuals with felony convictions post-sentence.

ⁿ In 2017, Wyoming authorized automatic rights restoration for individuals with first time non-violent felony convictions after they complete their supervision. For other convictions, the state requires a five- or seven-year waiting period depending on the offense before individuals can apply for rights restoration.

Figure A. Felony Disenfranchisement Restrictions by State, 2016



The 12 most extreme states restrict voting rights even after a person has served his or her prison sentence and is no longer on probation or parole; such individuals in those states make up over 50 percent of the entire disenfranchised population.³ Only two states, Maine and Vermont, do not restrict the voting rights of anyone with a felony conviction, including those in prison.

Persons currently in prison or jail represent a minority of the total disenfranchised population. In fact, 77 percent of disenfranchised voters live in their communities, either under probation or parole supervision or having completed their sentence.⁴ An estimated 3.1 million people are disenfranchised due to state laws that restrict voting rights even after completion of sentences.

Rights restoration practices vary widely across states and are subject to the turns of political climate and leadership, which has led some states to vacillate between reform and regression. In Florida, the clem-

ency board voted in 2007 to automatically restore voting rights for many persons with non-violent felony convictions. This decision was reversed in 2011, and individuals must now wait at least five years after completing their sentence to apply for rights restoration. In Iowa, then-Governor Vilsack issued an executive order in 2005 automatically restoring the voting rights of all persons who had completed their sentences, but this order was rescinded in 2011 by Governor Branstad.

Felony disenfranchisement policies have a disproportionate impact on communities of color. Black Americans of voting age are more than four times more likely to lose their voting rights than the rest of the adult population, with one of every 13 black adults disenfranchised nationally. As of 2016, in four states – Florida (21 percent), Kentucky (26 percent), Tennessee (21 percent), and Virginia (22 percent) – more than one in five black adults was disenfranchised. In total, 2.2 million black citizens are banned from voting.⁵

HISTORY OF FELONY DISENFRANCHISEMENT IN THE UNITED STATES

English colonists brought to North America the common law practice of “civil death,” a set of criminal penalties that included the revocation of voting rights. Early colonial laws limited the penalty of disenfranchisement to certain offenses related to voting or considered “egregious violations of the moral code.”⁶ After the American Revolution, states began codifying disenfranchisement provisions and expanding the penalty to all felony offenses.⁷ Many states instituted felony disenfranchisement policies in the wake of the Civil War, and by 1869, 29 states had enacted such laws.⁸ Ward Elliot argues that the elimination of the property test as a voting qualification may help to explain the popularity of felony disenfranchisement policies, as they served as an alternate means for wealthy elites to constrict the political power of the lower classes.⁹

In the post-Reconstruction period, several Southern states tailored their disenfranchisement laws in order to bar black male voters, targeting those offenses believed to be committed most frequently by the black population.¹⁰ For example, party leaders in Mississippi called for disenfranchisement for offenses such as burglary, theft, and arson, but not for robbery or murder.¹¹ The author of Alabama’s disenfranchisement provision “estimated the crime of wife-beating alone would disqualify sixty percent of the Negroes,” resulting in a policy that would disenfranchise a man for beating his wife, but not for killing her.¹² Such policies would endure for over a century. While it is debatable whether felony disenfranchisement laws today are intended to reduce the political clout of communities of color, this is their undeniable effect.

LEGAL STATUS

Disenfranchisement policies have met occasional legal challenges in the last century. In *Richardson v. Ramirez* 418 U.S. 24 (1974), three men from California who had served time for felony convictions sued for their right to vote, arguing that the state’s felony disenfranchise-

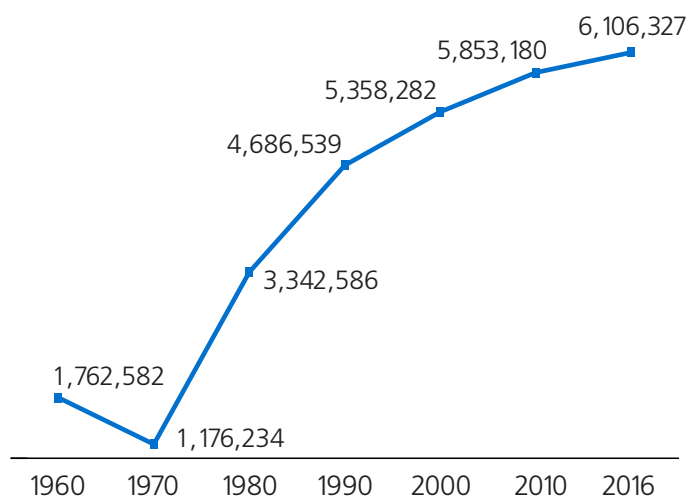
ment policies denied them the right to equal protection of the laws under the U.S. Constitution. Under Section 1 of the Fourteenth Amendment, a state cannot restrict voting rights unless it shows a compelling state interest. Nevertheless, the U.S. Supreme Court upheld California’s felony disenfranchisement policies as constitutional, finding that Section 2 of the Fourteenth Amendment allows the denial of voting rights “for participation in rebellion, or other crime.” In the majority opinion, Justice Rehnquist found that Section 2 – which was arguably intended to protect the voting rights of freed slaves by sanctioning states that disenfranchised them – exempts from sanction disenfranchisement based on a felony conviction. By this logic, the Equal Protection Clause in the previous section could not have been intended to prohibit such disenfranchisement policies.

Critics argue that the language of the Fourteenth Amendment does not indicate that the exemptions established in Section 2 should prohibit the application of the Equal Protection Clause to voting rights cases.¹³ Moreover, some contend that the Court’s interpretation of the Equal Protection Clause in *Richardson* is inconsistent with its previous decisions on citizenship and voting rights, in which the Court has found that the scope of the Equal Protection Clause “is not bound to the political theories of a particular era but draws much of its substance from changing social norms and evolving conceptions of equality.”¹⁴ Therefore, even if the framers of the Fourteenth Amendment seemingly accepted felony disenfranchisement, our interpretation of the Equal Protection Clause today should allow for the ways in which our concept of equality may have evolved since 1868.

GROWTH OF THE DISENFRANCHISED POPULATION

As states began expanding voting rights in the civil rights era, the disenfranchisement rate dropped between 1960 and 1976. Although reform efforts have been substantial in recent years, the overall disenfranchisement rate has increased dramatically in conjunction with the growing U.S. prison population, rising from 1.17 million in 1976 to 6.1 million by 2016.

Figure B. Disenfranchised Population, 1960-2016¹⁵



POLICY REFORMS IN RECENT YEARS

Public opinion surveys report that eight in ten U.S. residents support voting rights for citizens who have completed their sentence, and nearly two-thirds support voting rights for those on probation or parole.¹⁶ In recent years, heightened public awareness of felony disenfranchisement has resulted in successful state-level reform efforts, from legislative changes expanding voting rights to grassroots voter registration initiatives targeting individuals with felony convictions. Since 1997, 24 states have modified felony disenfranchisement provisions to expand voter eligibility and/or inform persons with felony convictions of their voting rights either through legislative or executive action.¹⁷ Among these:

- Nine states either repealed or amended lifetime disenfranchisement laws
- Four states expanded voting rights to some or all persons on probation and/or parole
- Ten states eased the restoration process for persons seeking to have their right to vote restored after the completion of their sentence
- Three states improved data and information sharing

As a result of successful reform efforts from 1997 to 2016, an estimated 840,000 citizens have regained the right to vote.

DISENFRANCHISEMENT IN AN INTERNATIONAL CONTEXT

Although they are rooted in the “civil death” tradition of medieval Europe, disenfranchisement policies in the United States today are exceptional in their severity and the restriction of the voting rights of people who have completed their prison terms or were never incarcerated at all.¹⁸ While only two states (Maine and Vermont) in the United States allow citizens to vote from prison, the European Court of Human Rights determined in 2005 that a blanket ban on voting from prison violates the European Convention on Human Rights, which guarantees the right to free and fair elections.¹⁹ Indeed, almost half of European countries allow all incarcerated individuals to vote, facilitating voting within the prison or by absentee ballot.²⁰ In Canada, Israel, and South Africa, constitutional courts have ruled that any conviction-based restriction of voting rights is unconstitutional.

IMPACT OF FELONY DISENFRANCHISEMENT

The political impact of the unprecedented disenfranchisement rate in recent years is not insignificant. One study found that disenfranchisement policies likely affected the results of seven U.S. Senate races from 1970 to 1998 as well as the hotly contested 2000 Bush-Gore presidential election.²¹ Even if disenfranchised voters in Florida alone had been permitted to vote, Bush’s narrow victory “would almost certainly have been reversed.”²²

Furthermore, restoring the vote to persons leaving prison could aid their transition back into community life. The revocation of voting rights compounds the isolation of formerly incarcerated individuals from their communities, and civic participation has been linked with lower recidivism rates. In one study, among individuals who had been arrested previously, 27 percent of non-voters were rearrested, compared with 12 percent of voters.²³ Although the limitations of the data available preclude proof of direct causation, it is clear that “voting appears to be part of a package of pro-social behavior that is linked to desistance from crime.”²⁴

Table 2. Felony Disenfranchisement Policy Changes, 1997-2018²⁵

| State | Change |
|----------------------------------|---|
| Alabama | Streamlined restoration for most persons upon completion of sentence (2003); codified list of felony offenses that result in disenfranchisement (2017) |
| California | Restored voting rights to people convicted of a felony offense housed in jail, but not in prison (2016) |
| Connecticut | Restored voting rights to persons on probation (2001); repealed requirement to present proof of restoration in order to register (2006) |
| Delaware | Repealed lifetime disenfranchisement, replaced with five-year waiting period for persons convicted of most offenses (2000); repealed five-year waiting period for most offenses (2013) |
| Florida | Simplified clemency process (2004, 2007); adopted requirement for county jail officials to assist with restoration (2006); reversed modification in clemency process (2011) |
| Hawaii | Codified data sharing procedures for removal and restoration process (2006) |
| Iowa | Restored voting rights post-sentence via executive order (2005); rescinded executive order (2011); simplified application process (2012) |
| Kentucky | Simplified restoration process (2001, 2008); restricted restoration process (2004, amended in 2008); restored voting rights post-sentence for non-violent felony convictions via executive order (2015); rescinded executive order (2015) |
| Louisiana²⁶ | Required Department of Public Safety and Corrections to provide notification of rights restoration process (2008); Authorized voting for residents who have not been incarcerated for five years including persons on felony probation or parole (2018) |
| Maryland | Repealed lifetime disenfranchisement (2007); restored voting rights to persons on probation and parole (2016) |
| Nebraska | Repealed lifetime disenfranchisement, replaced with two-year waiting period (2005) |
| Nevada | Repealed five-year waiting period (2001); restored voting rights to persons convicted of first-time non-violent offenses (2003) |
| New Jersey | Established procedures requiring state criminal justice agencies to notify persons of their voting rights when released (2010) |
| New Mexico | Repealed lifetime disenfranchisement (2001); codified data sharing procedures, certificate of completion provided after sentence (2005) |
| New York | Required criminal justice agencies to provide voting rights information to persons who are again eligible to vote after a felony conviction (2010); restored voting rights to persons on parole via executive order (2018) |
| North Carolina | Required state agencies to establish a process whereby individuals will be notified of their rights (2007) |
| Rhode Island | Restored voting rights to persons on probation and parole (2006) |
| South Dakota²⁷ | Established new procedures to provide training and develop voter education curriculum to protect the voting rights of citizens with certain felony convictions (2010); revoked voting rights for persons on felony probation (2012) |
| Tennessee | Streamlined restoration process for most persons upon completion of sentence (2006) |
| Texas | Repealed two-year waiting period to restore rights (1997) |
| Utah | Clarified state law pertaining to federal and out-of-state convictions (2006) |
| Virginia | Required notification of rights and restoration process by Department of Corrections (2000); streamlined restoration process (2002); decreased waiting period for non-violent offenses from three years to two years and established a 60-day deadline to process voting rights restoration applications (2010); eliminated waiting period and application for non-violent offenses (2013); restored voting rights post-sentence via executive order (2016) |
| Washington | Restored voting rights for persons who exit the criminal justice system but still have outstanding financial obligations (2009) |
| Wyoming | Restored voting rights to persons convicted of first-time non-violent offenses (2003); authorized automatic rights restoration for persons convicted of first-time non-violent felony offenses who apply and receive a certificate of voting rights restoration (2015); removed application process and automatically restored voting rights to persons convicted of first-time non-violent felony offenses who have completed their community supervision (2017) |

CONCLUSION

The dramatic growth of the U.S. prison population in the last 40 years has led to record levels of disenfranchisement, with an estimated 6.1 million voters banned from the polls today. Disenfranchisement policies vary widely by state, ranging from no restrictions on voting to a lifetime ban upon conviction. Felony disenfranchisement has potentially affected the outcomes of U.S. elections, particularly as disenfranchisement policies disproportionately impact people of color. Nationwide, as of 2016 one in every 13 black adults could not vote as the result of a felony conviction, and

in four states – Florida, Kentucky, Tennessee, and Virginia – more than one in five black adults was disenfranchised.

Denying the right to vote to an entire class of citizens is deeply problematic to a democratic society and counterproductive to effective reentry. Fortunately, many states are reconsidering their archaic disenfranchisement policies, with 24 states enacting reforms since 1997, but there is still much to be done before the United States will resemble comparable nations in allowing the full democratic participation of its citizens.

ENDNOTES

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