



**THE
SENTENCING
PROJECT**

RESEARCH AND ADVOCACY FOR REFORM

Testimony of Marc Mauer

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**Collateral Consequences:
The Crossroads of Punishment,
Redemption and the Effects on
Communities**

Before the U.S. Commission
on Civil Rights

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Thank you for the opportunity to testify about the impact of collateral consequences on individuals with felony convictions. I am Marc Mauer, Executive Director of The Sentencing Project, a nonprofit research and advocacy organization based in Washington, D.C. I have written extensively and presented legislative testimony on these issues, and was a co-editor of one of the first books to explore these issues in depth, *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*.

Today I will be addressing the issue of felony disenfranchisement and its impact on individuals with felony convictions, but also its effects on American democracy. Disenfranchisement is one of a number of policies that create barriers to successful reentry for individuals returning home from prison. These include challenges to gaining employment, housing, public benefits, and other services. With growing numbers of disenfranchised citizens these policies are now having a greater impact on our society than at any point in our history.

OVERVIEW

Felony disenfranchisement policies are established by each state and consequently there is broad variation in the impact on individuals with convictions. Two states, Maine and Vermont, do not restrict voting by people with felony convictions, so prisoners are free to vote. The other 48 states, and the District of Columbia, prohibit voting while serving a felony sentence in prison. Of this group, 34 states also impose a voting ban on individuals under probation and/or parole supervision. The 12 most restrictive states in the country disenfranchise not only those under current criminal justice supervision, but also some or all after they have completed their sentence. In four of these states – Florida, Iowa, Kentucky, and Virginia – anyone with a felony conviction is barred from voting for life. In these states voting rights can only be restored through the action of the governor or a pardons board.

Felony disenfranchisement policies can be traced back to the country's founding, when they were adopted as a continuation of the "civil death" policies of the Colonial era. While the founding of the United States represented an experiment in democracy, it was a very limited one at the time. Wealthy white male property holders granted themselves the right to vote, but excluded women, African Americans, those who were illiterate, poor people, and those with felony convictions. Over the course of two centuries these other prohibitions have been eliminated, but felony disenfranchisement represents a key remaining obstacle to full electoral participation in society.

THE SCALE OF DISENFRANCHISEMENT

Coinciding with the dramatic growth of the criminal justice system in recent decades, the number of individuals subject to felony disenfranchisement is now at a record high. In 1976 an estimated 1.1 million Americans were disenfranchised by these policies. Today that figure has grown to 6.1 million. In six states – Alabama, Florida, Kentucky, Mississippi, Tennessee, and Virginia – more than 7% of voters are disenfranchised, led by Florida with one of every ten residents excluded.

As a result of the racial disparities that pervade the criminal justice system, disenfranchisement effects are heavily skewed by race as well. Nationally, one of every 13 African Americans of voting

age is disenfranchised (7.4%), a rate four times that of non-African Americans. In four states – Florida (21%), Kentucky (26%), Tennessee (21%), and Virginia (22%) – more than one in five African Americans is disenfranchised.

An additional challenge relates to the 700,000 people incarcerated in local jails throughout the country. The vast majority of this population is eligible to vote since they are either awaiting trial or are serving misdemeanor sentences, but have not been convicted of a felony. Yet while this group is legally eligible to vote, in practice there are just a handful of jails nationally that provide assistance in securing absentee ballot access. Thus, this de facto disenfranchisement compounds the impact of excluding incarcerated people from the ballot.

Recent scholarship also suggests that incarcerating people in a community at high rates “has important spillover effects that suppress participation not only of the incarcerated individual but also of those living around him or her.”¹ This decline in community engagement can be seen in lower rates of voter registration and turnout, as well as reduced levels of volunteer activity and group membership.

PUBLIC SAFETY IMPACT

While disenfranchisement raises fundamental questions about democracy the effect of such large-scale exclusion is also a concern for reentry and public safety goals. Of the total disenfranchised population of 6.1 million, three-quarters (77%) are not incarcerated. Many of these individuals have been previously incarcerated and are now living in the community. They are expected to abide by the rules and regulations of society while they establish themselves in the workplace, school, family, and community.

A critical factor in achieving successful reentry is developing connections with supportive institutions in the community, including participation in the electoral process. Thus, when disenfranchisement is applied to this group of people the message that comes across is essentially that despite their engagement in the community they are still “second class citizens.”

There is limited research to date on the effect of such exclusion on public safety, but a Minnesota study sheds light on these outcomes. Using self-reported data on crime and arrest involvement, researchers found that among young adults who had been previously arrested, 27% of non-voters were rearrested compared to 12% of voters. While the authors recognize that “the single behavioral act of casting a ballot is unlikely to be the sole factor that turns felons’ lives around,” they nonetheless conclude that “the act of voting manifests the desire to participate as a law-abiding stakeholder in a larger society.”²

¹ Traci Burch (2013). *Trading Democracy for Justice*. University of Chicago Press, 102.

² Christopher Uggen and Jeff Manza (2004). “Voting and Subsequent Crime and Arrest: Evidence from a Community Sample,” in *Columbia Human Rights Law Review*, Vol. 36, No. 1, 213.

INTERNATIONAL PERSPECTIVE

As is true of American criminal justice policies generally, disenfranchisement policies in the U.S. are far more restrictive than in comparable nations. Among other industrialized nations, many do not impose any restrictions on people with felony convictions, including those in prison. And of those that do impose a ban this is almost always solely limited to the period of incarceration, with automatic restoration upon release.

Legal cases brought in a range of nations have largely upheld the right to vote for prisoners as well. Constitutional courts in Canada, South Africa, Israel, and the European Court of Human Rights have essentially ruled that the fundamental rights of citizenship should not be abridged as a result of a criminal conviction.

REFORM MOVEMENTS

Over the past two decades 24 states have enacted reforms to disenfranchisement policies. In a number of states these reforms have eliminated various categories of felony disenfranchisement. In New Mexico, for example, the legislature ended the prohibition on voting post-sentence, and Delaware has done the same for almost all offense categories.

Several states have extended voting rights to individuals currently under community supervision. Connecticut granted probationers the right to vote in 2001 and Rhode Island voters approved a ballot measure to enfranchise persons on probation or parole in 2006. Maryland legislators first repealed the ban on voting post-sentence and subsequently extended voting to those on probation or parole last year.

In several states with lifetime bans on voting gubernatorial action has extended voting rights to people who have completed their sentences. In Iowa Governor Tom Vilsack restored voting rights to all ex-felons in 2005, and Virginia Governor Terry McAuliffe is in the process of doing so for an estimated 200,000 residents of that state. Governors in Florida and Kentucky have restored the right to vote in thousands of similar cases in their states. Note, though, that these executive actions do not change the underlying lifetime ban in these states, and in three of these four states – Iowa, Florida, and Kentucky – succeeding governors have repealed the policy of their predecessors.

NEED FOR POLICY CHANGE

Felony disenfranchisement policies represent an antiquated restriction on democratic participation that should have no place in 21st century America. Various rationales have been advanced to support the need for such policies, but without any convincing evidence.

Over many years I have spent a good deal of time in prisons engaging in conversations with a broad range of inmates. Some have little concern about politics, but many have a strong interest in government policies. Whether the issue is taxation, abortion, defense spending or any other topic, I hear the same range of opinions that we hear among the general population. Felony

disenfranchisement is also problematic in establishing an environment in which a concerned parent is not able to cast a vote in a school board election that will directly impact the quality of his or her child's education.

Felony disenfranchisement policies run counter to public safety objectives by creating a group of second-class citizens. In order for people to successfully transition home from prison they need to establish or renew connections with the world of work, family, peer groups, and the broader community. Participation in the electoral process is one means by which citizens can affirm their connection to the broader community and play a constructive role in public policy debates.



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