

# Kentucky Bars 198,000 Citizens from Voting

Despite a gubernatorial executive order in 2019 designed to ease the burden of Kentucky's lifetime disenfranchisement law for people with felony convictions, the commonwealth still denies the right to vote to more people with a felony conviction than 40 other states.<sup>1</sup> Nearly 198,000 Kentuckians are excluded from participation in our democracy, representing 5.9% of the commonwealth's voting age population.<sup>2</sup>

Kentucky has the country's third highest rate of disenfranchisement for Latinx Americans and the sixth highest rate of disenfranchisement for African Americans. Driving Kentucky's high disenfranchisement rate is the commonwealth's ban on voting against 45,000 people on probation or parole, and 128,000 people who have completed their sentence. To ameliorate this racial injustice and protect its democratic values, Kentucky should extend voting rights to all people affected by the criminal legal system.

## Racial Injustice Causes Disparities in Disenfranchisement

People of color are disproportionately disenfranchised in Kentucky because they are overrepresented in the commonwealth's criminal legal system. The commonwealth denies voting rights to 15% of Black voting age Kentuckians and 6% of Latinx voting age Kentuckians due to system involvement. The rate of disenfranchisement for Black Kentuckians is twice the national average for Black Americans.<sup>3</sup>

Racial disparities in Kentucky's criminal legal system go beyond differences in criminal offending. While African Americans make up only 8% of the population in Kentucky, they represent 21% of people in prisons and 18% of people on felony probation or parole.<sup>4</sup> According to Ladeidra Jones, chair of the Kentucky Parole Board, Black people incarcerated in Kentucky are granted parole at lower rates than whites, exacerbating racial disparities in the commonwealth's criminal legal system.<sup>5</sup> Kentucky's lack of racial data from which jury pools are drawn, in combination with prosecutorial bias, can lead to the repeated exclusion

of Black citizens from juries.<sup>6</sup> In his study on the impact of jury race on trials, economist Patrick Bayer found that Black defendants are significantly disadvantaged in trials with disproportionately small numbers of Black jurors.<sup>7</sup> Racial bias and discrimination in the criminal legal system lock people of color out of the democratic process. Kentucky must re-enfranchise its citizens and curb its expanding prison population by investing in alternatives to incarceration that address racial injustice.

## End Permanent Disenfranchisement

In 1891, Kentucky constitutionally disenfranchised all people convicted of a felony for the rest of their lives; voting rights can only be restored through gubernatorial pardon.<sup>8</sup> In the decades after the Civil War, felony disenfranchisement laws were also added to the state constitutions of Alabama, Florida, Mississippi, Virginia, South Carolina, and Oregon—all intended to prevent African Americans from voting. Kentucky is one of only 12 states that have ever had some form of lifetime felony disenfranchisement.<sup>9</sup>

Between 1995 and 2020, only 17,794 Kentuckians were re-enfranchised through gubernatorial pardon.<sup>10</sup> In 2015, then-Governor Steve Beshear issued an executive order that restored voting rights to people with non-violent past convictions.<sup>11</sup> However, in December of 2015, Governor Matt Bevin retracted the policy, and Kentucky remained one of only two states that still permanently revoked the voting rights of its citizens with prior convictions.

In December of 2019, Governor Andy Beshear issued an executive order to re-enfranchise over 170,000

people with past nonviolent convictions.<sup>12</sup> However, voting restoration cannot be achieved through executive action alone, and voting rights advocates have criticized the order for excluding people with violent convictions who have completed their sentences, given that the severity of their crime had already been taken into account during sentencing.

As evidenced by the commonwealth's recent history with executive reform, legislative action and constitutional change are crucial to making this progress permanent. Several other states have made significant legislative changes to their lifetime felony disenfranchisement laws. Maryland repealed lifetime disenfranchisement in 2007, and restored voting rights to people on probation and parole in 2016. New Mexico has also abandoned lifetime disenfranchisement, restoring the right to vote to people upon completion of their sentence in 2001.<sup>13</sup>

### **Supporting Voting Rights Improves Public Safety**

Research suggests that re-enfranchisement can facilitate successful re-entry and reduce recidivism. University of Minnesota's Christopher Uggen and New York University's Jeff Manza find that among people with a prior arrest, there are "consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and self-reported criminal behavior."<sup>14</sup> One study has suggested that re-enfranchisement is related to increased cooperation with law enforcement, a critical tool for solving crimes.<sup>15</sup> Having a say and a stake in the life and well-being of your community is at the heart of democracy. By ending disenfranchisement as a collateral consequence of a conviction, Kentucky can improve public safety.

### **Kentucky Can Preserve its Democracy by Restoring the Right to Vote**

Excluding an entire population of people from exercising their right to vote undermines democracy. Despite the nearly 27% decrease in both violent and property crime rates in the commonwealth between 2008 and 2019, the number of Kentuckians disenfranchised due to felony convictions increased nearly 7% during these years.<sup>16</sup> While Governor Beshear's 2019 executive order was a monumental step towards re-enfranchisement, advocates

in Kentucky have expressed frustration at the commonwealth's limited attempts to alert its citizens of their rights.<sup>17</sup> As of 2021, only 17% of Kentuckians with felony convictions have successfully submitted a voting application—approximately 31,000 people.<sup>18</sup> Dispelling notions that people with convictions do not wish to engage in the political process, studies have found that voter turnout is greater in states that actively inform formerly incarcerated people of their rights.<sup>19</sup>

Felony disenfranchisement is the ultimate form of voter suppression, as it results in lifelong disenfranchisement that is onerous for Kentuckians to reverse. The restoration of voting rights has already become a bipartisan cause in Kentucky, with members of law enforcement, religious leaders, elected officials and civil rights groups from both sides of the aisle supporting the cause.<sup>20</sup> Further supporting voting restoration as a bipartisan goal, a survey conducted by the *Marshall Project* and *Slate* found that re-enfranchising people with criminal legal involvement will not universally benefit one party over the other.<sup>21</sup>

Across Kentucky, organizers are pushing for a constitutional amendment that would institute automatic re-enfranchisement for people who have completed their felony sentence.<sup>22</sup> Universal voting promotes fair and equal representation and establishes trust between communities and their governments. Kentucky should continue its momentum of voting rights reform to re-enfranchise its entire voting age population.

## Endnotes

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1705 DeSales Street NW, 8th Floor  
Washington, D.C. 20036  
[sentencingproject.org](https://www.sentencingproject.org)

This fact sheet was created by Research Fellow Emma Stammen and Senior Research Analyst Nazgol Ghandnoosh. Published January 2022.

The Sentencing Project promotes effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice.