

# Background information on restoration of voting rights in Kentucky

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## **A. What does the Kentucky Constitution say about who is eligible to vote?**

### **Apr. 19, 1792 - Kentucky Constitution Is First among US States to Establish Criminal**

**Disenfranchisement** Kentucky's state constitution is ratified. It states "Laws shall be made to exclude from... suffrage those who thereafter be convicted of bribery, perjury, forgery, or other high crimes and misdemeanors."

Section 145 of the Kentucky Constitution (which refers to "persons entitled to vote") was ratified on August 3, 1891 and amended on November 8, 1955 to its current language.

#### *Section 145*

##### *Persons entitled to vote*

Every citizen of the United States of the age of eighteen years who has resided in the state one year, and in the county six months, and the precinct in which he offers to vote sixty days next preceding the election, shall be a voter in said precinct and not elsewhere but the following persons are excepted and shall not have the right to vote.

1. Persons convicted in any court of competent jurisdiction of treason, or felony, or bribery in an election, or of such high misdemeanor as the General Assembly may declare shall operate as an exclusion from the right of suffrage, but persons hereby excluded may be restored to their civil rights by executive pardon.

1. Persons who, at the time of the election, are in confinement under the judgment of a court for some penal offense.

2. Idiots and insane persons.

## **B. How does Kentucky's policy on felon voting rights compare to other states?**

The practice of prohibiting people to vote because of a felony conviction is often called "felony disenfranchisement." Across the US, a crazy-quilt of laws has resulted in the disenfranchisement of 5.9 million Americans with a prior felony conviction. Only about a quarter of those affected are in prison. The rest are either on probation or parole or have completed their full sentences.

Kentucky is one of a small handful of states (Kentucky, Florida, Iowa and Virginia) that permanently bar all citizens with a felony record from voting. Seven other states permanently disenfranchise at least some people who have committed specific types of felonies. In 13 states and the District of Colombia, the right to vote is restored to all people upon release from prison. In 5 states the right to vote is restored after parole ends. In 19 more states, the right to

vote is restored once a person's time on probation ends. Two states allow felons to vote at all times, including from prison.

Of the other three states that permanently bar all felons from voting, Kentucky is the only one that has NOT made major changes in recent years. In Florida and Iowa, sweeping reforms were enacted, and then later reversed, by different governors in each state. In Virginia, Republican Governor Bob McDonnell announced in January 2013 that all non-violent offenders could have their rights restored if they apply. For violent offenders, there is still a five-year waiting period after the sentence has been served, and lengthy application process.

The US Supreme Court has ruled that felony disenfranchisement laws do not violate the Equal Protection clause of the US Constitution (*Richardson v. Ramirez, 1974*). In a later ruling, the Court determined that only actions taken with racially discriminatory intent are unconstitutional or illegal under the Voting Rights Act (*City of Mobile, Alabama v. Bolden, 1980*). In other words, legal challenges to laws that prohibit felons from voting must prove that those laws were motivated by racism.

### ***C. What's the process in KY for applying to get the right to vote restored?***

The KY Constitution allows the Governor to grant an executive pardon that restores an individual's civil rights. It does not spell out any process for making those decisions. As a result, the process has, at times, become politicized. Some governors approve more than 90% of the applications they receive. At other times, the rate of approval has fallen to around 25%. Under one recent administration, applicants were required to submit an essay, application fee, and 3 personal references.

According to an article published on June 7, 2013 on NKY.com, Governor Steve Beshear has restored voting rights to 7,300 people during his 1.5 terms in office, an average of 1,300 per year. Governor Fletcher, on the other hand, only restored voting rights for 1,098 people during his entire 4 years in office.

Under the current Governor Steve Beshear, former felons have to wait until they have served out all their prison time, probation and parole. Then, they have to fill out an application. To do that, they need to communicate with the Division of Probation and Parole and gather dates and case numbers related to any and all felony convictions. The probation officer has to sign and notarize the form before the paperwork can be submitted.

Governor Beshear's office states that they consult with the local prosecuting attorney's office before considering each application. As the Governor's spokesperson told one reporter, "If a prosecutor objects, we give the application further consideration. Otherwise, the Governor routinely restores the right to vote and hold public office." In other words, whether or not a person's rights are restored can depend on the point of view of the local prosecutor. Some Commonwealth Attorneys sign off on most applications that cross their desks. Others give their blessing to very few.

It's possible for a person to get their rights restored in as little as sixty days. But some requests are never granted, and there is no clear process or timeline for those decisions

A copy of the application form can be found here:

[http://www.justice.ky.gov/NR/rdonlyres/7845144F-9A85-4D61-BE3A-3C56F6D57B08/0/Restoration\\_of\\_Civil\\_Rights.pdf](http://www.justice.ky.gov/NR/rdonlyres/7845144F-9A85-4D61-BE3A-3C56F6D57B08/0/Restoration_of_Civil_Rights.pdf)

**D. How many people in Kentucky are affected?**

"An estimated 243,842 Kentuckians with felony convictions were barred from voting in our state in 2010, including 180,984 who have completed their full sentences. Approximately 74% of disenfranchised Kentuckians have fully completed their sentence.

**E. What are the race and class dimensions of this issue?**

Kentucky has the second highest African-American disenfranchisement rate in the country, disenfranchising one in five voting age African-American Kentuckians.

Nationally, almost 7.7 percent of blacks (and 13% of black men) of voting age are disenfranchised because of their criminal records, compared with less than 2 percent for non-blacks. (NYT editorial, July 15, 2012)

"Courts and scholars have long concluded that race explains why minorities are overrepresented in prisons better than any other factor. Until the criminal system is made fairer, the number of people disenfranchised will grow, with blacks unfairly excluded from voting at a much higher rate." (New York Times editorial, July 15, 2012)

**F. What is a felony? What kinds of crimes are considered felonies in Kentucky?**

*"The term 'felon' is derived from the legal classification of crimes. 'Felony' is a generic term, historically used to distinguish certain 'high crimes' or 'grave offenses' such as homicide from less serious offenses known as misdemeanors... In the contemporary United States, felonies are considered crimes punishable by incarceration of more than one year in a state or federal prison, and misdemeanors are considered crimes punishable by local jail sentences, fines, or both. While some felons go to prison, however, many others serve time in jail or on probation in their communities." (From the book *Locked Out: Felon Disenfranchisement and American Democracy*, by Jeff Manza and Christopher Uggen, 2006)*

More than half of state and federal felony convictions in 2010 were for non-violent crimes. Of these, drug offenses are the most common, followed by property offenses, then public order offenses, then other. (From <http://felonvoting.procon.org/view.resource.php?resourceID=004339>)

In Kentucky, the most common felony charges are for drug-related offenses and theft. Felonies in KY are broken down into four classes (A, B, C, and D). Class A felony charges are punishable by 20-50 years or life in prison. Class B felonies are punishable by 10-20 years. This includes intentionally assaulting and seriously injuring someone. Class C felonies can result in a prison term of 5-10 years and include theft of items worth more than \$10,000. Class D felonies are

punishable by 1-5 years in prison. Writing a bad check, unauthorized use of a credit card involving sums between \$500-\$1000, and trafficking marijuana near a school all qualify.

**G. Is there a solution to this issue that doesn't require changing the constitution?**

The Kentucky legislature did pass a law in the 1990's that aimed to ensure that people were well of the process they could use to regain their voting rights. However, it proved entirely ineffective. To this day, there continues to be widespread misunderstanding and misinformation about Kentucky's felony voting laws and procedures among corrections employees, probation and parole officers, and affected citizens.

The fundamental problem with felony disenfranchisement in Kentucky lies in our outdated constitution. Unless that changes, no law passed by the legislature can restore voting rights or determine what process the Governor must use to make Executive pardon decisions.

**H. What does HB 70 say?**

HB 70 has been introduced annually for a number of years. The full text of the bill is printed in the box below. (Remember that words written in **bold and underlined type** are proposed changes to existing law. All the other words in normal type are from Section 145 of the Kentucky State Constitution as it is written today.)

AN ACT proposing an amendment to Section 145 of the Constitution of Kentucky relating to persons entitled to vote.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

Section 1. It is proposed that Section 145 of the Constitution of Kentucky be amended to read as follows:

Every citizen of the United States of the age of eighteen years who has resided in the state one year, and in the county six months, and the precinct in which he offers to vote sixty days next preceding the election, shall be a voter in said precinct and not elsewhere but the following persons are excepted and shall not have the right to vote.

1. Persons convicted in any court of competent jurisdiction of treason, or **of any felony which includes as an element of the offense the intentional killing of a human being not done under the influence of extreme emotional disturbance for which there exists a reasonable explanation or excuse, sexual contact with a minor, sexual intercourse, or deviate sexual intercourse**, or **of** bribery in an election, or of such high misdemeanor as the General Assembly may declare shall operate as an exclusion from the right of suffrage, but persons hereby excluded may be restored to their civil rights by executive pardon. **Persons convicted in any court of competent jurisdiction of any other felony shall be excluded from the right of suffrage until expiration of probation or final discharge from parole or maximum expiration of sentence, but persons hereby excluded may be restored to their civil rights earlier by executive pardon.**

2. Persons who, at the time of the election, are in confinement under the judgment of a court for some penal offense.

3. Idiots and insane persons.

Section 2. This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under KRS 118.415.

**I. What are the main arguments used to oppose restoring voting rights?**

Some groups, including the Heritage Foundation and the Center for Equal Opportunity, claim that people who have committed felonies have “broken the social contract” and should forfeit their right to participate in our democracy – unless they can prove over time that they are worthy of having those rights restored.

Opponents sometimes warn that allowing people with felony convictions to vote could take power out of the hands of law-abiding residents, especially in communities with high rates of arrests and convictions.

People who argue against automatic restoration of voting rights often focus on recidivism rates as a reason not to restore voting rights automatically once a sentence is fulfilled.

In Kentucky, opponents of HB 70 tend to argue that the current system (which requires an individual pardon from the Governor) “works just fine.”

These views are summed up in one sentence written by Roger Clegg, President of the Center for Equal Opportunity, in the New York Times on December 1, 2011: *“The right to vote should be restored carefully, on a case-by-case basis, with consideration given to the seriousness of the crime committed and whether it was one in a series of crimes, and, given the appallingly high rates of recidivism, an eye on how long ago the crime was committed and whether the felon’s post-release record shows that he or she has really turned over a new leaf.”*

Some people may also (or even primarily) oppose HB 70 for partisan political reasons, believing that it would result in more people who are registered and likely to vote for one political party. This view is rarely stated publicly by those who hold it.

**J. What are some of the main arguments for restoring voting rights?**

The right to vote is the cornerstone of our democracy. As US Chief Justice Earl Warren once said, *“The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.”*

Restoring the right to vote when people complete their full sentence is consistent with important religious values of forgiveness, redemption and justice held by many faith traditions.

Restoring voting rights to people with felony convictions increases public safety. People who vote are less likely to be re-arrested than those who do not vote. "People who voted after release from supervision were half as likely to be re-arrested as those who did not vote." (ACLU of Kentucky website, <http://aclu-ky.org/content/view/320/>)

Barring people from voting violates strongly held American values about taxation without representation. Individuals who have served their sentence are expected to contribute to society, pay taxes and raise families. It is only fair that they have a say in how those tax dollars are spent, who sits on their children's school board, and who represents their interests in government.

A significant majority of Kentuckians support an amendment along the lines of HB 70. According to a 2006 survey conducted by the UK Survey Research Center, the majority (56%) of Kentuckians support automatic voting rights restoration for people who have completed their sentences.

Voting rights should not depend upon the arbitrary decisions of politicians, but should automatically be given back to individuals after they have served their sentences.

Kentucky is one of a tiny number of states that permanently take away a person's right to vote when convicted of a felony. We should reform our outdated constitution to reflect our commitment to a strong and healthy democracy.

Restoring the right to vote strengthens our communities. All of us benefit when people with prior convictions re-engage as contributing members of our broader community. We should do everything possible to support their full participation as citizens.

Although Kentuckians who have lost the right to vote may apply for an Executive Pardon from the Governor, the process has at times been politicized and varies widely from administration to administration.

## **K. Helpful Resources**

**KFTC's web pages** about the campaign to restore voting rights:

<http://www.kftc.org/issues/voting-rights>

**July 2012 Sentencing Project study:** State Level Estimates of Felon Disenfranchisement in the United States, 2010 data.

[http://sentencingproject.org/doc/publications/fd\\_State\\_Level\\_Estimates\\_of\\_Felon\\_Disen\\_2010.pdf](http://sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf)

**Brennan Center** webpages about Restoring Voting Rights:

<http://www.brennancenter.org/issues/restoring-voting-rights>

**ProCon.org's** pages about Felon Voting laws: <http://felonvoting.procon.org/>

**Voting Rights In Kentucky:** Felons Who Have Completed All Terms of Their Sentences Should Have The Right To Vote, a report the Kentucky Advisory Committee to the US Commission on Civil Rights, 2009. <http://www.usccr.gov/pubs/KYVotingRightsReport.pdf>

**Voting's Outcasts: Why one in five blacks in Kentucky can't cast a ballot,** an article in the Nation by Aura Bogado and Meta Mendel-Reyes, September 18, 2012. <http://www.thenation.com/blog/170002/votings-outcasts-why-one-five-blacks-kentucky-cant-cast-ballot#>

The **Sentencing Project's** pages on felony disenfranchisement: <http://www.sentencingproject.org/template/page.cfm?id=133>