

# FELONY DISENFRANCHISEMENT IN THE COMMONWEALTH OF KENTUCKY

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## A REPORT OF THE LEAGUE OF WOMEN VOTERS OF KENTUCKY

January 2013



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The League of Women Voters of Kentucky, a nonpartisan political organization, encourages the informed and active participation of citizens in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. Members include both women and men.

The League of Women Voters is an outgrowth of the suffragist movement. Carrie Chapman Catt founded the organization in 1920 during the convention of the National American Woman Suffrage Association. The convention was held only six months before the 19th amendment to the U.S. Constitution was ratified, giving women the right to vote after a 57-year struggle.

The League works with citizens through the American political process to bring about constructive change. We **REGISTER** voters and **DEFEND** voting rights. We **MONITOR** government activities - including city councils, school boards, state legislatures and the U.S. Congress. We **EDUCATE** citizens about their rights and responsibilities. We **SPONSOR** candidate forums and public issue forums. We **STUDY** issues in order to reach member consensus. And we **TAKE ACTION** by lobbying, testifying and educating legislators on issues we care about. As a nonpartisan body, the League takes action on **ISSUES**. We do not support or oppose candidates or parties.

## **REPORT FINDINGS**

- 1) Kentucky is one of four remaining states (along with FL, IA, and VA) that permanently disenfranchise all persons with felony convictions even after they have completed their full sentence.
- 2) Kentucky has the third highest rate of disenfranchisement in the country. One out of every 14 Kentucky residents is disenfranchised, a rate almost three times the national rate.
- 3) Kentucky has the second highest African American disenfranchisement rate in the country with more than one of every five African Americans ineligible to vote. This rate is nearly triple the national African American disenfranchisement rate.
- 4) Three-fourths (75%) of people ineligible to vote because of felony convictions have completed their sentence.
- 5) In 2001, a simplification of the restoration process increased applications for restoration and the number of people granted their voting rights grew.
- 6) In 2004, additional requirements added to the application process produced a decline in the number of people who had their voting rights restored.
- 7) In 2008, Governor Steve Beshear removed some of the additional requirements (processing fee, written essay, and three recommendations). During the period 2008-2010 the restorations again increased.

## **KENTUCKY DISENFRANCHISEMENT POLICY**

Kentucky is one of just four permanent disenfranchisement states that bar all persons with felony convictions from voting even after they have completed their full sentences. Voting rights can be restored only when an individual submits an application to the governor requesting an executive pardon for reinstatement of voting rights and the governor decides to restore the right to vote.

## **KENTUCKY IN THE NATIONAL CONTEXT**

With an estimated 243,842 persons barred from voting in Kentucky, the state has the third highest disenfranchisement rate in the country (behind Florida and Mississippi).<sup>1</sup> The proportion of the voting age population ineligible to vote because of a felony conviction – 7.35%, or one out of every 14 residents – is nearly three times the national rate of 2.5%, or one in 40.<sup>2</sup>

## **WHO IS DISENFRANCHISED IN KENTUCKY?**

Overall, 90% of the disenfranchised population is not in prison, but living in the community. Of the total number of persons disenfranchised in Kentucky, an overwhelming majority of these persons – 74% – have completed their sentence.<sup>3</sup>

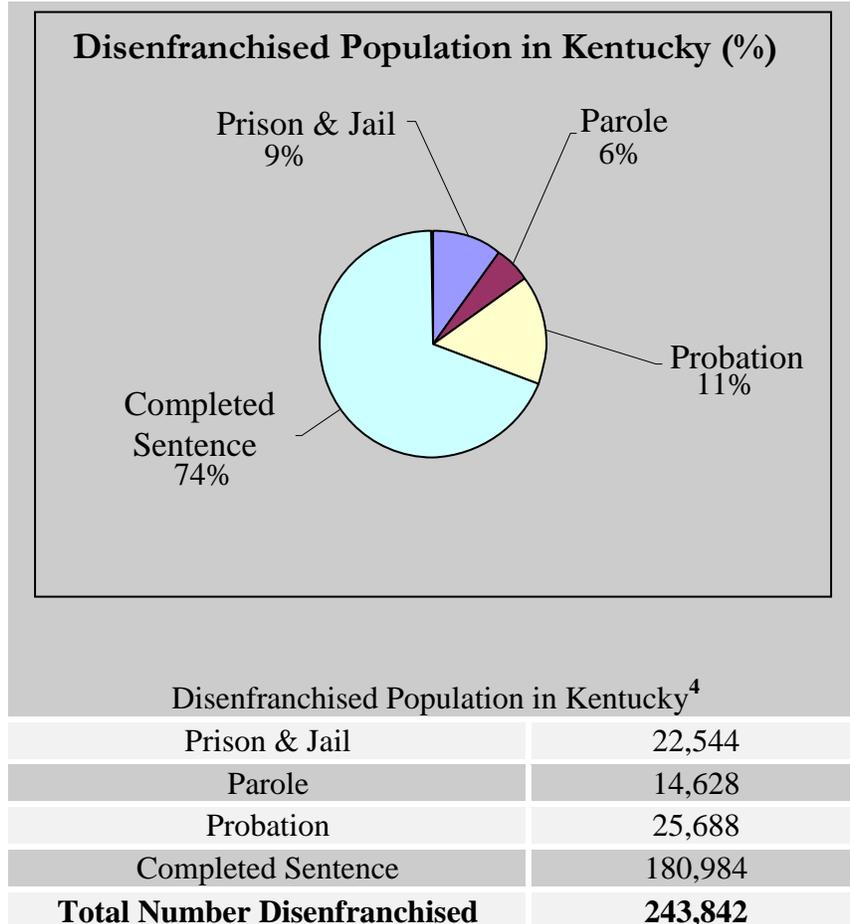
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<sup>1</sup> C. Uggen, S. Shannon, and J. Manza. *State Level Estimates of Felon Disenfranchisement in the United States, 2012*. The Sentencing Project, July, 2012.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

**FIGURE #1**



**RACIAL IMPACT**

In addition to having one of the highest overall disenfranchisement rates in the nation, Kentucky possesses the second highest African American disenfranchisement rate in the country.

While whites comprise 88.9% of the state’s population and African Americans make up 8%,<sup>5</sup> 24% of the total Kentucky prison population is African American.<sup>6</sup> Kentucky’s high rate of incarceration of African Americans, in turn, contributes to its high rate of disenfranchisement. Consequently, more than one of every five African American adults in Kentucky cannot vote. This rate (22.3%) is nearly triple the national African American disenfranchisement rate of 7.66% – or one of every 13 African Americans.<sup>7</sup>

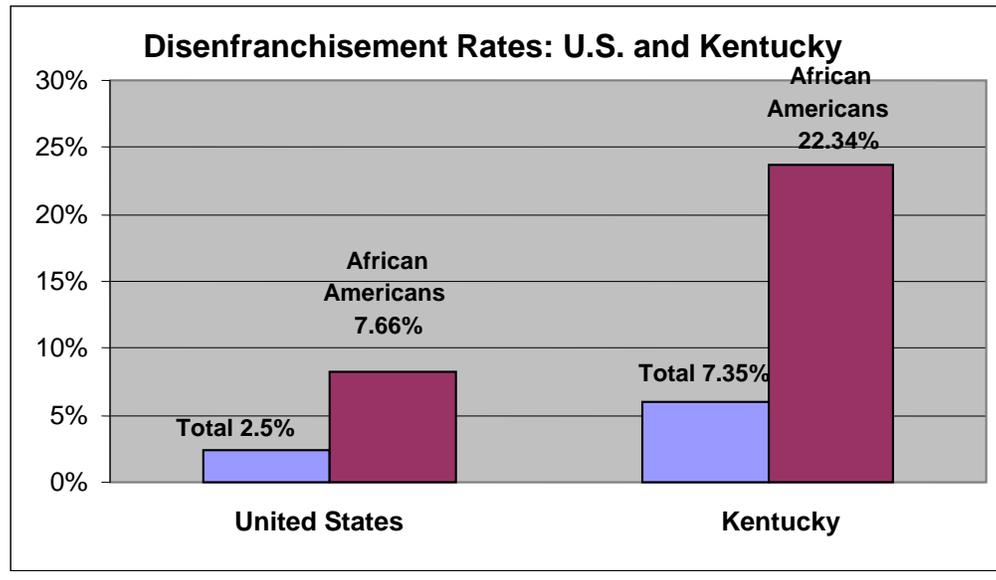
<sup>4</sup> *Supra* note 1.

<sup>5</sup> U.S Census 2010, <http://quickfacts.census.gov/qfd/states/21000.html>; Kentucky Data.

<sup>6</sup> Kentucky Department of Corrections Inmate Profile (November 15, 2012).

<sup>7</sup> *Supra* note 1.

FIGURE #2



### **RESTORATION POLICY**

Kentucky's requirement for restoration of voting rights is one of the most burdensome in the nation. The Kentucky Constitution grants the power to restore voting rights at the discretion of the governor. Individuals seeking to have their rights reinstated and who have completed their full sentence can submit an application detailing their convictions and sentences served. Consequently, the difficulty of having voting rights restored varies greatly depending on the values or political positions of the current governor. The criteria for restoration are inconsistent and inequitable. For example, in 2004, Governor Ernie Fletcher instituted a practice requiring that all applicants, as part of their applications, also submit a written statement on why the person wants and believes he/she should receive restoration of his or her voting rights, along with three character references. The governor also required that the application be presented to the prosecutors in the jurisdiction where the person lives and where the felony was committed for a recommendation on whether voting rights should be restored. On the other hand, in 2008 Governor Steve Beshear removed some of the hurdles. Felons who had fulfilled their sentencing requirements no longer had to pay a \$2 fee, write an essay or get three recommendations in order to regain their voting rights.

### **IMPACT OF RESTORATION POLICIES**

In 2001, the Kentucky General Assembly passed legislation (HB 281) implementing a simplified process for restoration of voting rights. See KRS 196.045. The measure requires the Department of Corrections to inform all eligible individuals of their right to apply and to assist them with the application process. The legislation was implemented to counter the lack of awareness of restoration policies and application procedures exhibited by many currently and formerly incarcerated persons and also to facilitate more restorations. With the implementation of this policy, the number of applications for

voting rights restoration rose from 831 in 2000 to an average of over 1,200 from 2002 to 2004.<sup>8</sup> The number of voting rights restorations also significantly increased.

After the issuance of Governor Fletcher’s executive order in 2004, however, both the number of applications and the number of approvals for restoration markedly declined. According to the Kentucky Voting Rights Coalition, in fiscal year 2002-2003, 97.2% of the 1,266 applications for restoration of voting rights were approved.<sup>9</sup> In the following fiscal year, 2003-2004, 53.4% of the 1,171 applications were approved. After the implementation of Governor Fletcher’s order, 941 people applied and 49.3% (464) were approved in fiscal year 2004-2005. The declining trend in applications and approvals continued into fiscal year 2005 through March 2006, where of the 583 applications for restoration of voting rights, 28.1% (164) were approved.<sup>10</sup> Overall, of the more than 100,000 people who had completed their sentences and were without the right to vote in Kentucky, 1% had their rights restored between 2002 and 2004.<sup>11</sup>

The table below illustrates the decline in both the number of applications and the number of approvals for restoration of voting rights following Governor Fletcher’s 2004 restoration policy.

**FIGURE #3**

Fiscal Year July 1 – June 30	Number of Applications	Number Approved	Percentage Approved
2002-2003	1266	1231	97.2%
2003-2004	1171	626	53.4%
2004-2005	941	464	49.3%
July 2005 - March 2006	583	164	28.1%

A 2006 report by The Sentencing Project surveyed persons with felony convictions in Kentucky and concluded that despite their strong desire to vote, the obstacles created in the state’s restoration process, primarily the submission of a written statement, would likely prevent over half of the respondents from applying for restoration.<sup>12</sup> The study suggested that this was due to the fact that many of the respondents did not have the skills or resources necessary for completion of the lengthy application process.<sup>13</sup> Thirty percent

<sup>8</sup> See Cheves, John. “Legislators View Data on Felons’ Rights,” *Herald-Leader* (KY), November 3, 2005.

<sup>9</sup> Some applications approved during the fiscal year may have been submitted prior to that year.

<sup>10</sup> Voting Rights Coalition, “Promoting the Hallmark of Democracy: The Right to Vote,” citing data from the Department of Corrections.

<sup>11</sup> *Supra* note 11.

<sup>12</sup> See Wahler, Elizabeth. *Losing the Right to Vote: Perceptions of Permanent Disenfranchisement and the Civil Rights Restoration Application Process in the State of Kentucky*. The Sentencing Project, April 2006. Available: <http://www.sentencingproject.org/pdfs/ky-losingtherighttovote.pdf>, accessed June 15, 2006.

<sup>13</sup> *Ibid.*

of respondents did not have a high school diploma or GED and 83% had little or no experience in writing formal written statements.<sup>14</sup>

According to the 2010 Sentencing Project report, there has been some improvement in the restoration of voting rights since the 2008 intervention of Governor Beshear. In the period 2008-2010 the number of restorations increased to 4,260 (5.77%). There were 73,770 felons released during the 2008-2010 period, but 180,984 disenfranchised ex-felons.

#### **SUPPORT FOR LEGISLATIVE AND CONSTITUTIONAL CHANGES**

In February 2006, four proposed constitutional amendments (HB 480, HB 647, SB 184, SB 251) would have placed the question of whether voting rights should be automatically restored after a person completes his or her sentence before voters. Despite significant support for HB 480, including bipartisan endorsements by 18 co-sponsors, the measure was unsuccessful in Kentucky's General Assembly.

In other states, lawmakers have been successful in changing permanent disenfranchisement laws like the one in Kentucky. In 2005, Nebraska ended permanent disenfranchisement for people with felony convictions who had completed their sentence. In 2012 Delaware legislators approved eliminating the five year waiting period, although the bill will need to be approved for a second time in the 2013 session.

National polling conducted on the issue of felony disenfranchisement finds that about 80% of respondents believe that people convicted of a crime who have served their entire sentence and are now living in the community should have the right to vote.<sup>15</sup> This majority of respondents felt people should not be permanently denied the right to vote because of a felony conviction.

Beyond promoting voting, there are sound policy reasons for changes in Kentucky's laws. Various writers have explored the impact of permanent disenfranchisement on both the ex-felons and their communities. In the words of University of Missouri legal scholar S. David Mitchell, "by alienating ex-felons and treating them as non-citizens, felon disenfranchisement laws merely contribute to the difficult process of reintegration for the ex-felon." Mitchell notes that the impact extends beyond the individual. "When ex-felons are denied the right to vote, communities lose voting power. The loss of such power denies the community from having its full voice at the ballot box when trying to mobilize their power and resources to encourage a positive action or prevent an adverse one by politicians."<sup>16</sup> We would point out that in Kentucky, the African American community has lost substantial voting power.

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<sup>14</sup> Ibid.

<sup>15</sup> J. Manza, C. Brooks and C. Uggen. *Public Attitudes Toward Felon Disenfranchisement in the United States*. Public Opinion Quarterly, Vol. 68, No. 2. American Association for Public Opinion Research, 2004.

<sup>16</sup> S. David Mitchell. *The New Invisible Man: Felon Disenfranchisement Laws Harm Communities*. Bad Subjects, Issue #71, December, 2004. <http://bad.eserver.org/issues/2004/71/mitchell.html>

## **RECOMMENDATIONS**

The League of Women Voters of Kentucky works to improve voter participation and to reduce restrictions on voting. In order to advance voter participation and reduce voter restrictions in Kentucky, the following recommendations should be implemented.

- 1) **Place a Constitutional Amendment on the Ballot:** State legislators should place a constitutional amendment on the ballot and allow Kentucky voters to decide whether people who live in the community and have completed their full sentence should have their voting rights restored automatically.
- 2) **Reexamine and Improve the Current Application and Restoration Process:** The process and statute, KRS 196.045, should be improved to require informing all eligible offenders, including state prisoners in local jails, about the process for restoration of civil rights and to require initiating the process unless otherwise instructed by the eligible offender.
- 3) **Increase Assistance for Restoration Process:** In addition to the administrative forms of assistance the Department of Corrections is required to provide, eligible applicants should have access to technical assistance three months prior to completion of sentence. It is crucial that applicants have access to resources and organizations that can provide assistance in the written aspects of the application process.
- 4) **Increase Public Education about Restoration Process and Available Resources:** The Secretary of State's Office, the Department of Corrections and the Administrative Office of the Courts should implement public education campaigns regarding Kentucky's restoration policies and notify individuals of the resources available to those who desire assistance in the application process. Increased publicity and public outreach would enable individuals seeking to restore their voting rights greater access to the assistance and resources they need.
- 5) **Release Voting Restoration Application and Approval Figures Annually:** The Department of Corrections, the Secretary of State's Office and the Governor's Office should provide annual updates to the public indicating the number of people applying for restoration of their voting rights and the number denied and approved. The tracking of this data provides important insight into the efficiency and accessibility of the restoration process.

## **CONCLUSION**

Voting is the most fundamental expression of citizenship. The expansion of the franchise to include all Americans regardless of race, ethnicity or sex is one of the great successes in the evolution of American democracy. Breaking down barriers to citizen voter participation from literacy tests to the poll tax has been a constant battle for those of us who believe that every citizen should be able to exercise their right to vote.

The League of Women Voters of Kentucky believes that every citizen of our Commonwealth should be protected in the right to vote. We seek to boost citizen participation in our nation's democracy through voting, including felons who have completed their sentence. Our position, taken after deliberation and consensus from local Leagues across the state, is that we (LWVKY) **"Support restoration of voting rights for convicted felons upon completion of their sentence or discharge from parole."**

In light of the significant findings we have made in this Report, it is especially important in Kentucky to improve the restoration process for persons convicted of a felony so that restoration becomes simplified and automatic upon completion of sentence.