

FELONY DISENFRANCHISEMENT IN THE COMMONWEALTH OF KENTUCKY

A REPORT OF THE LEAGUE OF WOMEN VOTERS OF KENTUCKY February 2017



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.

KENTUCKY DISENFRANCHISEMENT POLICY

Kentucky is one of just four permanent disenfranchisement states (along with Florida, Iowa and Virginia) that bar all persons with felony convictions from voting even after they have completed their full sentences. Voting rights can be restored only by submitting an application to the Governor and receiving an executive pardon.

With an estimated 312,046 persons barred from voting in Kentucky, the state has the third highest disenfranchisement rate in the country (behind only Florida and Mississippi).¹ The proportion of the population ineligible to vote because of a felony conviction – 9.1%, or one out of every 11 residents – is more than three times the national average of 2.47%, or one in 40.²

REPORT FINDINGS

- 1) Kentucky is one of only four states 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 11 Kentucky residents is disenfranchised, a rate more than three times the national average.
- 3) Kentucky has the highest African American disenfranchisement rate in the country with one of every four (26.2%) African Americans ineligible to vote. This rate is more than triple the national rate for African Americans.
- 4) Over three-fourths (78%) of people ineligible to vote because of felony convictions have completed their sentence.
- 5) Changes in 2001 simplified the restoration process and resulted in a rise in the number of applications and an increased number of persons granted their voting rights. The state subsequently imposed stringent restoration requirements in 2004 that were in place for a number of years. From 2008 through 2015, approximately 10,479 persons had their voting rights restored due to various changes in policy and practice.
- 6) Gov. Steve Beshear issued Executive Order 2015-871 on November 24, 2015 automatically restoring voting rights to persons with non-violent felony convictions who had completed their sentences. Gov. Matt Bevin rescinded Gov. Beshear's executive order upon taking office, issuing Executive Order 2015-052 on December 22, 2015.
- 7) During 2016, lawmakers expanded the state's expungement policy with the passage of House Bill 40. The measure authorizes certain Class D, low-level felony offenses, to be sealed or expunged through a process that permits a defendant to file a motion to have his or her conviction vacated and expunged after a 5-year waiting period and a fee of \$500. HB 40 also expanded voting rights to those who have had their felony records expunged. Voting rights were restored to something less than 389 persons in the first six months after HB 40 became effective.

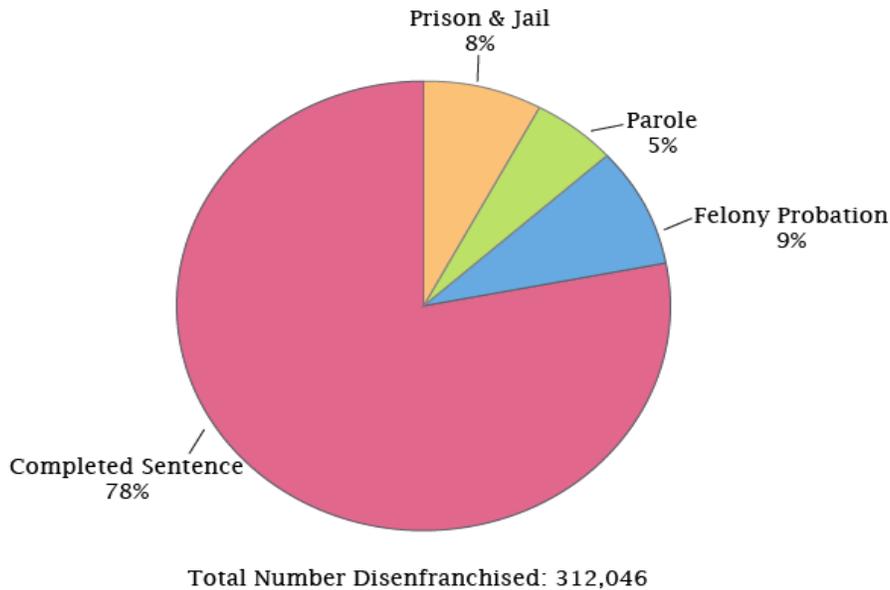
¹ C. Uggen, R. Larson and S. Shannon (2016). *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016*. Washington, DC: The Sentencing Project.

² Ibid.

WHO IS DISENFRANCHISED IN KENTUCKY?

Overall, 92% of the disenfranchised population is not in prison or jail, but living in the community. Of the total number of persons disenfranchised in Kentucky, most – 78% – have completed their sentence.³

FIGURE #1



Prison & Jail	25,007
Parole	16,729
Felony Probation	27,323
Completed Sentence	242,987
Total Number Disenfranchised	312,046

RACIAL IMPACT

Kentucky possesses the highest African American disenfranchisement rate in the country. While whites comprise 87.8% of the state’s population and African Americans make up 7.8%,⁴ 21% of the Kentucky prison population is African American.⁵ Furthermore, Kentucky’s prison incarceration rate for African Americans is 1,411 per 100,000 residents – a rate that is more than three times the incarceration rate for whites (431 per 100,000 residents).⁶

³ Ibid.

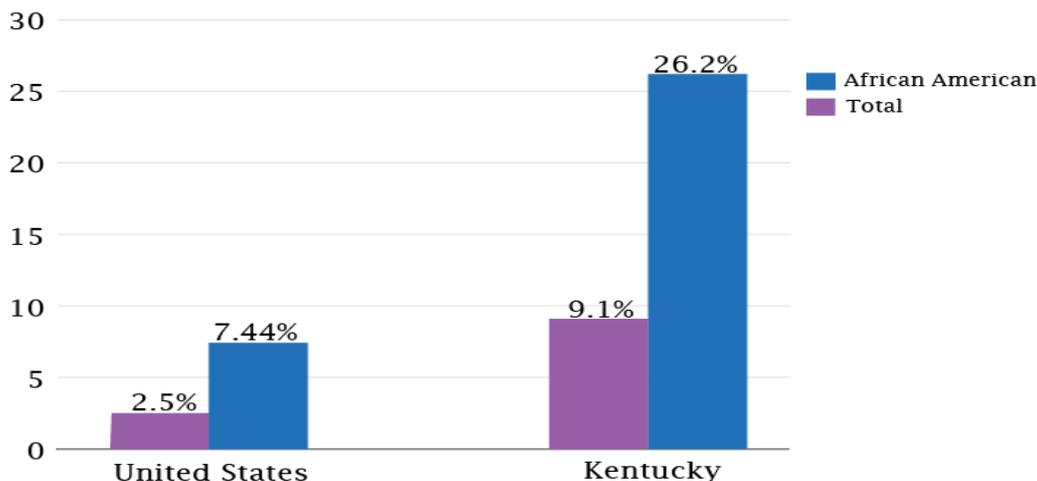
⁴ U.S Census 2010 Demographic Profile Highlights of Kentucky (2010). Available: <http://factfinder.census.gov>; accessed on November 9, 2016.

⁵ Kentucky Department of Corrections Inmate Profile (November 2016).

⁶ A. Nellis (2016). *The Color of Justice: Racial and Ethnic Disparity in State Prisons*. Washington, DC: The Sentencing Project. Table 1.

Kentucky's high rate of incarceration of African Americans, in turn, results in its high rate of disenfranchisement. Consequently, one of every four African American adults in Kentucky cannot vote. This rate (26.2%) is more than triple the national African American disenfranchisement rate of 7.44%.⁷

FIGURE #2
Disenfranchisement Rates: U.S. and Kentucky



RESTORATION POLICY

Kentucky's lifetime denial of voting rights is among the most burdensome felony disenfranchisement policies in the nation. The Kentucky Constitution grants the power to restore voting rights at the discretion of the Governor. In recent years a number of efforts have been made to address disenfranchisement

In 2015 then-Gov. Steve Beshear issued an order that restored voting rights to individuals with non-violent felony convictions who had completed their sentences and met other criteria. That order also established a process by which qualifying citizens' voting rights would be restored as they completed their sentences. But in late 2015 Gov. Bevin rescinded that order and replaced it with Kentucky's prior procedure. That procedure requires individuals who have completed their full sentence to submit an application detailing their convictions and sentences served.

Gov. Bevin did not issue any restoration orders during his first year in office. Gov. Beshear had issued more than 9,500 restoration orders during his tenure while his Republican predecessor, Gov. Ernie Fletcher, authorized restoration orders for more than 1,100 persons.⁸

⁷ *Supra* note 1.

⁸ Loftus, T. (2016). Bevin talks voting rights, hasn't restored any. Louisville, KY.: *Courier Journal*. Retrieved from: <http://www.courier-journal.com/story/news/politics/ky-governor/2016/10/07/bevin-talks-voting-rights-hasnt-restored-any/91684800/>

STATE CHANGES IN DISENFRANCHISEMENT POLICY

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 people with felony convictions. Since 1997, 23 states, including Kentucky, have modified felony disenfranchisement provisions to expand voter eligibility.⁹

In 2016, Kentucky expanded voting rights by allowing persons with certain Class D felony convictions to have those convictions vacated and expunged. House Bill 40 authorizes expungement for certain low level felony offenses including drug possession and theft offenses. The measure creates a process that permits a defendant to file a motion to have his or her conviction vacated and expunged after a 5-year waiting period and a fee of \$500. Records in the custody of any other agency or official, including law enforcement records, will be expunged. HB 40 also expanded voting rights to persons who had their felony records expunged. The exact number of former felons whose voting rights have been restored because of HB 40 is unknown. Between July 16 when HB 40 went into effect and December 16, 2016, 389 requests for expungement of felony convictions were granted. This number does not account for the number of applicants who may have applied to have more than one felony expunged and because of collection and reporting processes, this number may include duplications. In any case, the number of former felons who may now vote because of HB 40 is something less than 389 people.¹⁰

Other states like Nebraska, Delaware, Maryland, and Virginia also expanded voting rights. In 2005, Nebraska ended permanent disenfranchisement for people with felony convictions who had completed their sentence, replacing it with a two-year waiting period. Delaware now allows for individuals convicted of most felonies to have their voting rights restored upon completion of sentence, while convictions for certain other offenses requires a five-year waiting period before rights restoration. In 2016 the Maryland legislature voted to override the Governor's veto of a measure to allow individuals on felony probation and parole to vote, effectively re-enfranchising 40,000 individuals. As of November 2016, Virginia Gov. Terry McAuliffe used his executive authority to restore voting rights to an estimated 70,000 individuals who had completed their sentence.

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.¹¹

Beyond promoting voting, there are sound policy reasons for changes in Kentucky's laws. The restoration of voting rights promotes rehabilitation and reintegration into the community.

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.

⁹ Ibid.

¹⁰ Report of the KY Administrative Office of the Courts, The Department of Information and Technology Services Research and Statistics, Specified Expungement Documents Filed 7/15/2016 - 12/16/2016 Statewide (January 13, 2017)

¹¹ Porter, N. (2010). Expanding the vote: State felony disenfranchisement reform, 1997-2010. Washington, D.C.: The Sentencing Project. Retrieved from http://www.sentencingproject.org/doc/publications/publications/vr_ExpandingtheVoteFinalAddendum.pdf

- 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 or not people who live in the community and have completed their full sentence should have their voting rights restored automatically.
- 2) **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 the completion of their sentence. It is crucial that applicants have access to resources and organizations that can provide assistance in the application process.
- 3) **Increase Public Education about the 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.
- 4) **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.
- 5) **Reduce the \$500 Application Fee for Expungement of Felony Records:** State legislators should reduce the application fee for expungement to make it easier for eligible applicants to apply and make it explicit that the fee is fully or partially waivable upon a finding of indigence. They should also make the fee refundable when expungement is denied.

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 their 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, states we "[s]upport 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.