

FELONY DISENFRANCHISEMENT IN THE COMMONWEALTH OF KENTUCKY

A REPORT OF THE LEAGUE OF WOMEN VOTERS OF KENTUCKY

January 2019



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.

INTRODUCTION

The League of Women Voters of Kentucky has issued previous Reports on disenfranchisement in Kentucky¹ and today issues an update of the current Kentucky situation with renewed recommendations.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

After study and consultation, the League of Women Voters of Kentucky makes the following Findings and Recommendations.

FINDINGS

- Kentucky remains an outlier on felon disenfranchisement as it is one of only three states that permanently disenfranchises persons with felony convictions from voting even after they have completed their full sentences.
- The number of Kentuckians disenfranchised because of felony convictions has increased 67% from 186,348 reported in the League's 2006 Report to 312,046 in the League's 2019 Report.
- The number of persons convicted of felonies who have fully completed sentencing has nearly doubled from 128,775 in the League's 2006 Report to 242,987 in the League's 2019 Report, an 88.6% increase.
- 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.
- Kentucky possesses the highest African American disenfranchisement rate in the country, 1 in 4 or 26.2%.
- Kentucky's lifetime denial of voting rights is among the most burdensome felony disenfranchisement policies in the nation.
- Although required by Section 77 of the Kentucky Constitution, statements of the reasons for the governor's decisions to approve or deny restoration applications are not currently available and open to public inspection.
- In 2016, Kentucky expanded voting rights by allowing persons with certain Class D felony convictions to have those convictions vacated and expunged.
- The \$500 filing fee to expunge a felony conviction in Kentucky is one of the highest in the nation.
- Between July 15, 2016, and December 31, 2018, 2,032 felony expungements were granted by judges. This is less than 1% of the 242,987 persons who have fully completed sentencing and lost the right to vote.
- Increasingly the national trend is towards automatic enfranchisement especially for those who complete their sentence.
- Kentuckians by a 2-1 margin support automatic restoration of voting rights upon completion of sentence.
- Disqualification from voting lessens community participation.

RECOMMENDATIONS

Kentucky should reform its disenfranchisement policies and practices by implementing these recommendations.

¹ The League of Women Voters of Kentucky has published analyses on felon disenfranchisement and Kentucky since 2006. An archive the League's reports can be found online: <https://lwvky.org/publications/publications/>

- Place a constitutional amendment on the ballot to restore voting rights to felons once sentencing has been fully completed
- Increase public education about the restoration process and available resources
- Increase assistance to individuals eligible to have their voting rights restored
- Release voting restoration application and approval figures annually
- Comply with the Kentucky Constitution and make public a statement of the reasons for the governor’s decisions on applications for reinstatement of voting rights
- Reduce the \$500 application fee for expungement of felony records
- Expand felony expungement

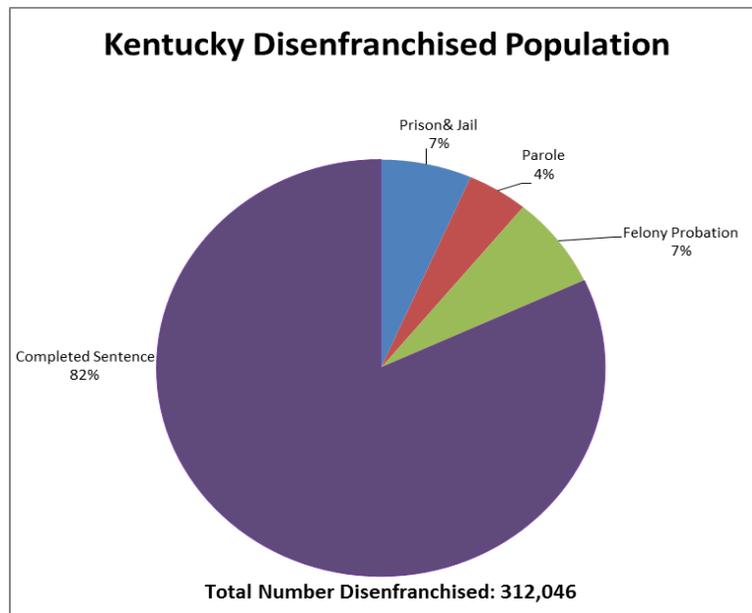
KENTUCKY DISENFRANCHISEMENT POLICY

Kentucky is one of three states² that permanently disenfranchise 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 partial pardon or by applying for and being granted an expungement of the felony.

With an estimated 312,046 persons barred from voting in Kentucky, the state has one of the highest disenfranchisement rates in the country. The proportion of Kentucky’s 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 40.³

WHO IS DISENFRANCHISED IN KENTUCKY?

Overall, 92% of the disenfranchised population are not in prison or jail, but living in the community. Of the total number of persons disenfranchised in Kentucky, most – 78% or 242,987– have completed their sentence.⁴



² Virginia and Iowa permanently disenfranchise persons with felonies absent pardons. In Virginia, persons with felony convictions are permanently banned from voting, but recently governors have automatically restored voting rights on a case-by-case basis. By referendum, Florida restored voting rights to persons with felony convictions after completion of sentencing with the exception of those persons with homicides or felony sex offense convictions.

³ Ibid.

⁴ Ibid.

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

CHANGE OVER TIME

The number of Kentuckians disenfranchised because of felony convictions is growing: 312,046 in the League’s 2019 Report up from 186,348 in the League’s 2006 Report. The total number banned from voting continued to rise with the expansion of Kentucky’s correctional population and persons sentenced to felony convictions. Offenses resulting in felony conviction history range from homicide to certain low-level drug and property offenses. In addition to felony disenfranchisement, residents with a felony conviction history may face other lifelong consequences including employment and housing restrictions.

In recent years, approximately 2,032 expungements were approved following the passage of HB 40 in 2016 while 11,500 partial pardons were issued by the last three governors resulting in a total 13,500 persons whose voting rights have been restored since 2003. However, the number of persons who have completed their sentence but remain disenfranchised has increased from 128,775 in the 2006 Report to 242,987 in the 2019 Report, an increase of 114,212 or 88.6%.⁵

RACIAL IMPACT

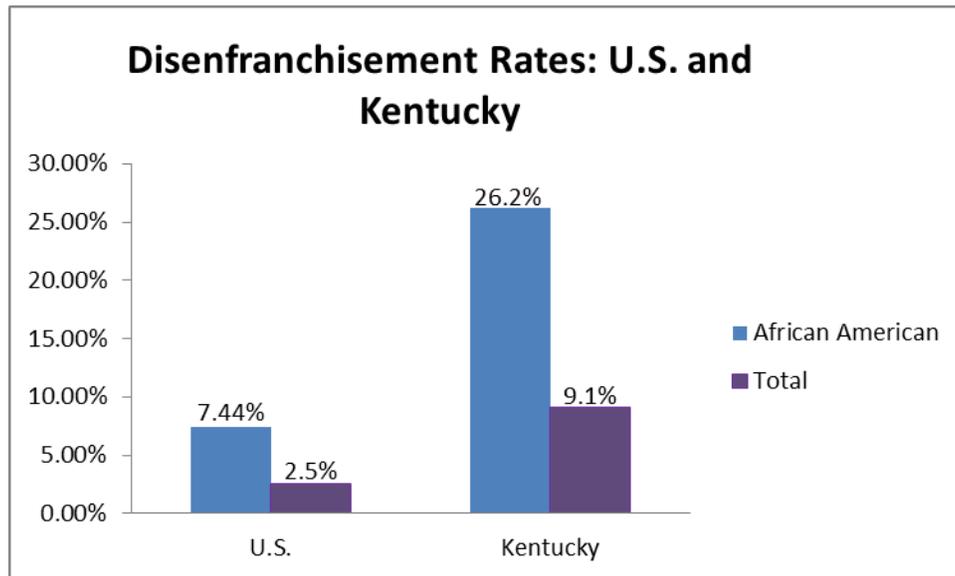
Kentucky possesses the highest African American disenfranchisement rate in the country. While whites comprise 87.3% of the state’s population and African Americans make up 8%,⁶ 21% of the Kentucky prison population is African American.⁷ As of 2016, Kentucky had the highest disenfranchisement rate for African Americans; one in every 4 or 26.2% of persons banned from voting was black. 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).⁸

⁵ *Supra* note 1.

⁶ 2013-2017 American Community Survey 5-Year Estimates: Kentucky (2017). Available: <http://factfinder.census.gov>; accessed on January 3, 2019.

⁷ Kentucky Department of Corrections Inmate Profile (December 2018).

⁸ A. Nellis (2016). *The Color of Justice: Racial and Ethnic Disparity in State Prisons*. Washington, DC: The Sentencing Project. Table 1.



RESTORATION PRACTICE

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. Section 77 of the Kentucky Constitution states that the governor "shall have power to remit fines and forfeitures, commute sentences, grant reprieves and pardons, except in case of impeachment, and he shall file with each application therefor a statement of the reasons for his decision thereon, which application and statement shall always be open to public inspection." Statements of the reasons for the governor's decisions are not currently available and open to public inspection.

In recent years, a number of efforts have been made to address disenfranchisement. In 2015 then-Governor Steve Beshear issued an order that restored voting rights to individuals with nonviolent 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 Governor Matt 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.

As of September 2018, Governor Bevin had issued 981 restoration orders.⁹ Governor Beshear had issued more than 9,500 restoration orders during his 8-year tenure while his Republican predecessor, Governor Ernie Fletcher, authorized restoration orders for more than 1,100 persons during his 4-year term.¹⁰

⁹ For the period December 5, 2015-September 1, 2018, the Kentucky Department of Corrections reported sending 1,765 applications to the governor's office. For the same period, the Kentucky Secretary of State's office reported receiving 981 executive orders for restoration. Governor Bevin signed additional restoration orders in December 2018, but that data was not available in time for this report.

¹⁰ 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-restoredany/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 states¹¹, including Kentucky, have modified felony disenfranchisement provisions to expand voter eligibility.¹²

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 authorized expungement for certain low-level felony offenses including drug possession and theft offenses. The measure created a process that permits a defendant to file a motion with the court to have his or her conviction vacated and expunged after a 5-year waiting period and a filing fee of \$500 and a \$40 certificate of eligibility fee.

These \$540 fees to expunge a felony conviction in Kentucky are among the highest in the nation.

Since July 15, 2016 when HB 40 went into effect and December 31, 2018, there have been 2,032 felony expungements granted by judges.¹³

Other states like Alabama, Nebraska, Delaware, Louisiana, 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 2-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 5-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.¹⁴
- As of November 2016, Virginia Governor Terry McAuliffe used his executive authority to restore voting rights to an estimated 156,000 individuals¹⁵ who had completed their sentence.
- In 2016, Alabama eased the rights restoration process after completion of sentence for persons not convicted of a crime of "moral turpitude." In 2017, Alabama lawmakers

¹¹ The 23 states expanding voting rights to persons with felony convictions since 1997 include: Alabama, California, Connecticut, Delaware, Florida, Hawaii, Iowa, Kentucky, Louisiana, Maryland, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming.

¹² McLeod, M. (2018). Expanding the Vote: Two Decades of Felony Disenfranchisement Reforms, 1997-2018. Washington, D.C.: The Sentencing Project. Retrieved from <https://www.sentencingproject.org/publications/expanding-vote-two-decades-felony-disenfranchisement-reforms/>

¹³ Report of the Kentucky Administrative Office of the Courts, The Department of Information and Technology Services Research and Statistics, Specified Expungement Documents Filed July 15, 2016 – December 31, 2018 Statewide (January 3, 2019). During this period, 192 requests for felony expungements were denied by judges.

¹⁴ Ford, M. (2016). Restoring Voting Rights for Felons in Maryland.: The Atlantic. Retrieved from:

<https://www.theatlantic.com/politics/archive/2016/02/maryland-felon-voting/462000/>

¹⁵ Vozzella, L. (2017). Va. Gov. McAuliffe says he has broken U.S. record for restoring voting rights.: Washington Post. Retrieved from: https://www.washingtonpost.com/local/virginia-politics/va-gov-mcauliffe-says-he-has-broken-us-record-for-restoring-voting-rights/2017/04/27/55b5591a-2b8b-11e7-be51b3fc6ff7faee_story.html?utm_term=.853efc3acdbc

clarified the longstanding provision that disenfranchised persons convicted of crimes of “moral turpitude”¹⁶ by establishing a list of 50 specific felonies considered to involve moral turpitude. Previously all felonies were interpreted to be crimes of moral turpitude.

- During 2018, Louisiana lawmakers restored voting rights to persons under community supervision on parole or probation who had no new convictions in the previous five years.
- In 2018, Florida residents approved a ballot measure entitled Amendment 4, with 64% support. Persons with felony convictions now automatically have the right to vote once they complete their prison, probation or parole sentence; persons convicted of homicide and sex offenses are excluded from the measure. This measure expanded voting rights to as many as 1.4 million Floridians with a felony conviction.

PUBLIC SUPPORTS AUTOMATIC RESTORATION OF VOTING RIGHTS

A majority of Kentuckians, across political affiliation, gender and age categories, support the automatic restoration of voting rights for persons who complete their felony sentence. Overall support is 2-1 with 66% in favor and 32% opposed, according to a December 2018 statewide poll of Kentucky voters.¹⁷

The polling indicates that the highest support for automatic restoration is from those 18-34 years of age with approval at 83% and disapproval at 16%.

Kentucky male voters support automatic restoration with 63% approving and 36% not approving. Kentucky women voters support restoration by a larger majority with 69% approving and 29% not approving.

The number of people in Kentucky who support automatic restoration of voting rights upon completion of sentence is increasing. The current 66% approval of automatic restoration by Kentucky voters has increased from the 56% approval in a 2006 poll of Kentucky voters conducted by the UK Survey Research Center.¹⁸

¹⁶ Moral turpitude is a legal concept that refers to "an act or behavior that gravely violates the sentiment or accepted standard of the community."

¹⁷ The Question asked was: “When a person in Kentucky is convicted of a felony they automatically lose the right to vote. Do you think a person who has completed all terms of their felony sentence, including probation or parole, should or should not have their right to vote restored automatically?” 66% agreed, 32% disagreed and 2% had no opinion. This poll was conducted by Mason-Dixon Polling & Strategy, Inc. of Jacksonville, Florida from December 12 through December 15, 2018. A total of 625 registered Kentucky voters were interviewed statewide by telephone. Those interviewed were randomly selected from a phone-matched Kentucky voter registration list that included both land-line and cell phone numbers. Quotas were assigned to reflect voter registration by county. The margin for error, according to standards customarily used by statisticians, is no more than ± 4 percentage points. This means that there is a 95 percent probability that the "true" figure would fall within that range if all voters were surveyed. The margin for error is higher for any subgroup, such as a gender or party grouping. Report available at <https://lwvky.org/publications/publications/>

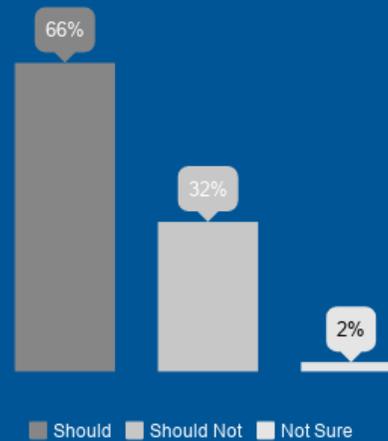
¹⁸ *The Summer 2006 Kentucky Survey* was conducted by the UK Survey Research Center. It surveyed 901 Kentuckians 18 years of age or older from August 14- September 6, 2006, and had a margin of error of ± 3.3 percentage points at the 95 percent confidence level. 56.0% were in favor of automatic restoration 40.4% were not in favor of automatic restoration.

Majority of Kentucky Voters Support Automatic Restoration of Voting Rights

A majority of Kentuckians, across political affiliation, gender and all ages, support the automatic restoration of voting rights for persons who complete their felony sentence.

Overall support is 2-1 with 66% in favor and 32% opposed.

Overall State Results



Results by Party Registration

Democrat



Should (76%) Should Not (22%)
Not Sure (2%)

Republican



Should (53%) Should Not (46%)
Not Sure (1%)

Independent



Should (68%) Should Not (30%)
Not Sure (2%)

Source: Mason-Dixon Kentucky Poll, December 2018

Voters were asked:

When a person in Kentucky is convicted of a felony they automatically lose the right to vote. Do you think a person who has completed all terms of their felony sentence, including probation or parole, should or should not have their right to vote restored automatically?

This is consistent with public opinion surveys nationally that report 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.¹⁹

RESTORATION PROMOTES COMMUNITY PARTICIPATION

Beyond promoting participation in voting, there are sound policy reasons for changes in Kentucky's laws. The restoration of voting rights promotes rehabilitation and reintegration into the community.²⁰ In support of this, the American Probation and Parole Association, professionals supervising persons finishing their sentences, "advocates the restoration of voting rights upon completion of an offender's prison sentence and advocates no loss of voting rights while on community supervision."²¹

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, the League makes the following recommendations.

- 1) **Place a Constitutional Amendment on the Ballot:** State legislators should place a constitutional amendment on the ballot that would 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 also 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 should notify individuals of the resources available to those who desire assistance in the application process.²² Increased publicity and public outreach would enable individuals seeking to restore their voting rights greater access to available assistance and needed resources.

¹⁹ *Supra* note 9.

²⁰ Uggen, C. & Manza, J. (2004). Voting and subsequent crime and arrest: Evidence from a community sample. *Columbia Human Rights Law Review*, 36 (1), 193-215.

²¹ The 2007 American Probation and Parole Association Resolution states in full: WHEREAS, many citizens who have been convicted of felonies and have completed their sentences, including community supervision, do not have the right to vote; WHEREAS, many states have some restrictions on voting privileges for felons; WHEREAS, the loss of the right to vote is not based on a need to protect the integrity of the electoral process and the justice system; WHEREAS, disenfranchisement of felons is disproportionately affecting an increasingly large segment of the population and their families; WHEREAS, disenfranchisement laws work against the successful reentry of offenders. NOW THEREFORE BE IT RESOLVED, that the American Probation and Parole Association advocates the restoration of voting rights upon completion of an offender's prison sentence and advocates no loss of voting rights while on community supervision. The APPA resolution can be found at: https://www.appa-net.org/eweb/Dynamicpage.aspx?webcode=IB_Resolution&wps_key=3c8f5612-9e1c-4f60-8e8b-1bf46c00138e

²² The Kentucky Administrative Office of the Courts has information on the Kentucky expungement process at: <https://courts.ky.gov/expungement/Pages/default.aspx> Additionally, information on the Kentucky expungement process is found at: <http://www.cleanslatekentucky.com/instructions.html>

- 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) **Provide a Statement of the Reasons for the Governor's Decisions on Applications for Reinstatement of Voting Rights:** The governor should provide a statement of the reasons for decisions made to approve or deny applications for reinstatement of voting rights. These reasons should be provided and readily available and open to public inspection pursuant to Section 77 of the Kentucky Constitution. That Section states, the governor "shall have power to remit fines and forfeitures, commute sentences, grant reprieves and pardons, except in case of impeachment, and he shall file with each application therefor a statement of the reasons for his decision thereon, which application and statement shall always be open to public inspection."
- 6) **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. They should make it explicit that the fee is fully or partially waivable upon a finding of indigence. They should also make the fee fully refundable when expungement is denied.²³
- 7) **Expand Felony Expungement:** Currently, only certain Class D felonies are eligible to be expunged. The availability of felony expungement with restoration of voting rights for persons who have demonstrated through the passage of time that they have reformed the behavior that led to a past criminal conviction should be expanded to all Class D felony offenses.

CONCLUSION

The League was created by women who struggled many years seeking the right to vote. The League has a longstanding belief that voting is a fundamental expression of citizenship and every citizen of our Commonwealth should be protected in the right to vote.

We believe citizens who have made a mistake should have that right reinstated once they have completed their full sentence. Our society is stronger when all of our citizens vote.

²³ The statute provides for refunding of \$450 of the \$500 fee if the application is denied. KRS 431.073 (9) states, "The filing fee for an application to have judgment vacated and records expunged shall be five hundred dollars (\$500). The first fifty dollars (\$50) of each fee collected pursuant to this subsection shall be deposited into a trust and agency account for deputy clerks and shall not be refundable."