



FELONY DISENFRANCHISEMENT IN THE COMMONWEALTH OF KENTUCKY

AN UPDATE OF THE LEAGUE OF WOMEN VOTERS OF KENTUCKY

February 2020

The League of Women Voters of Kentucky, a nonpartisan public policy organization, is part of the League of Women Voters of the United States and includes 5 local chapters in Kentucky (Bell County/SE Kentucky; Hopkinsville; Murray; Lexington; and Louisville).

The League:

- *Promotes informed and active participation of citizens in government*
- *Works to increase understanding of major public policy issues*
- *Influences public policy through education and advocacy*

As a nonprofit, nonpartisan organization, the League does not support or oppose candidates for political parties. Membership is open to anyone 16 years of age or older.

INTRODUCTION

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.

The League believes citizens who have made a mistake by being convicted of a felony should have the right to vote automatically reinstated once they have completed their full sentence. Our society is stronger when all of our citizens vote.

Since 2006, the League of Women Voters of Kentucky has issued Reports on disenfranchisement in Kentucky.¹ Today the League issues an update of its January 2019 Report with renewed Findings and Recommendations.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

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

FINDINGS

- The number of Kentuckians disenfranchised because of felony convictions has substantially decreased from 312,046 reported in the League's 2019 Report.
- Between July 15, 2016, and December 31, 2019, 2,547 persons have had their right to vote restored because a felony expungement was granted by judges.
- Between 1995 and 2019, 17,738 gubernatorial partial pardons have been granted by 4 governors.
- Up to 140,000 persons had their right to vote restored as the result of the recent Executive Order.
- Since 1995, up to an estimated total of 160,285 persons have had their right to vote restored as a result of gubernatorial partial pardons, expungements by courts, executive order by the governor.
- However, as many as 172,000 are still disenfranchised because of a felony conviction.
- Despite this substantial progress, Kentucky remains an outlier on felon disenfranchisement as it is one of only three states along with Virginia and Iowa that permanently disenfranchises persons with felony convictions from voting even after they have completed their full sentences.
- Kentucky's lifetime denial of voting rights is among the most burdensome felony policies on disenfranchisement 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 have not been 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.
- In 2019, felony expungements were further expanded.
- The \$540 fees to expunge a felony conviction in Kentucky, which was one of the highest in the nation, have been reduced to \$340.
- Increasingly, the national trend is towards automatic enfranchisement especially for those who complete their sentence.
- Kentuckians support automatic restoration of voting rights upon completion of sentence by a 2-1 margin.
- Disqualification from voting lessens community participation.

RECOMMENDATIONS

Kentucky should improve its disenfranchisement policies and practices by taking these actions:

- Place a constitutional amendment on the ballot to restore voting rights to felons once their sentence has been fully completed.
- Conduct a robust statewide public information campaign about the restoration processes, the Executive Order, partial pardons, expungement.

¹ The League of Women Voters of Kentucky has published analyses of felony disenfranchisement in Kentucky since 2006. An archive the League's Reports are found online: <https://www.lwvky.org/felony-disenfranchisement>

- Increase assistance to individuals eligible to have their voting rights restored by having probation and parole officers affirmatively engage persons who have completed their sentences and are now eligible under the recent Executive Order.
- Release voting restoration application and approval figures annually.
- Make public a statement of the reasons for the governor’s decisions on applications for reinstatement of voting rights.
- Reduce the \$340 fees for expungement of a felony.

KENTUCKY DISENFRANCHISEMENT POLICY IS AN OUTLIER

Kentucky remains one of three states² that permanently disenfranchise persons with felony convictions from voting even after they have completed their full sentences. Voting rights for the disenfranchised 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.

MORE KENTUCKIANS ARE ABLE TO VOTE: 160,285

The League’s 2019 Report found that the number of Kentuckians disenfranchised because of felony convictions increased to 312,046 from 186,348 as found in the League’s 2006 Report. Since our 2019 Report many more have been convicted of a felony and become ineligible to vote.

2019 Executive Order: up to 140,000 The recent Executive Order 2019-003 (December 12, 2019),³ with some significant exclusions, restored eligibility to vote to those convicted of a felony who had completed their sentence, exclusive of any court-ordered monetary condition. According to the Executive Order, this substantially decreased the number of permanently disenfranchised by as many as 140,000. The Executive Order has prospective and retrospective application. The Executive Order directs the Kentucky Department of Corrections to provide verification of completion of sentence.

Expungement 2,547 Kentucky provided for felony expungement with automatic restoration of voting rights upon expungement in 2016 with enactment of HB 40⁴ for certain of the lowest-level felonies after five years of completion of sentence. This was expanded to additional class D felonies with enactment of SB 57.⁵ The current process to seek to expunge an eligible felony has fees totaling \$340.⁶

Between July 15, 2016, (the effective date of HB 40) and December 31, 2019, 2,547⁷ felony expungements were granted by judges. The Kentucky Administrative Office of the Courts has provided the following data for felony expungements since 2016.

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 Found at: <http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2020-MISC-2019-0003-265162.pdf>

⁴ Found at: <https://apps.legislature.ky.gov/record/16rs/hb40.html>

⁵ Found at: <https://apps.legislature.ky.gov/record/19rs/sb57.html>

⁶ See 431.073 found at: <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=49358>

⁷ The Kentucky Administrative Office of the Courts has provided the following data for felony expungements since 2016. AOC has conditioned this report of the numbers. The important thing to keep in mind there is that the division is between the new and the old expungement process, and that does not completely line up with the distinction between felonies and misdemeanors (details are available in the methodology documentation). Using the documents alone, it is not necessarily possible to cleanly distinguish between felony and misdemeanor cases or charges, nor is it possible to be 100% sure that the original codes have not been used in the HB40 process or vice versa.

Specified Expungement Documents Filed 7/1/2016 - 12/31/2019

Expungement Petition Documents

Jurisdiction	Year of Document Filing Date	Quarter of Document Filing Date	2016 HB40 Expungements		Other Expungements		
			Cases	Doc's	Cases	Doc's	
CIRCUIT	2016	Q3	465	478	226	239	
		Q4	227	233	206	215	
		Total	681	711	428	454	
	2017	Q1	192	196	236	253	
		Q2	194	201	311	333	
		Q3	163	164	242	251	
		Q4	154	159	294	316	
		Total	693	720	1,054	1,153	
	2018	Q1	145	150	278	297	
		Q2	173	175	286	308	
		Q3	130	133	262	282	
		Q4	101	106	233	247	
		Total	543	564	1,039	1,134	
	2019	Q1	95	96	221	236	
		Q2	125	126	253	265	
		Q3	266	274	445	466	
		Q4	272	275	362	375	
		Total	749	771	1,258	1,342	
	Total			2,547	2,766	3,581	4,083

While expungement as a method of restoration of voting rights is an important vehicle for the individuals who have their felony expunged, it has assisted only a small fraction of the persons who have fully completed sentencing and lost the right to vote.

Individual partial executive pardons: 17,738 Section 145 of the Kentucky Constitution⁸ allows a person to apply to the governor to request that the right to vote be restored by the governor issuing a partial pardon by an executive order. Whether the request is granted is in the total discretion of the governor. Different governors have used different criteria for exercising this power.

The Kentucky Department of Corrections is required to assist offenders in the process of applying for restoration of their voting rights and monthly provide to the governor's office eligible felony offenders who have requested restoration of rights for consideration of a partial pardon.⁹

⁸ Kentucky Section 145 states: "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. 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." Text as Ratified on: November 8, 1955. History: 1955 amendment was proposed by 1954 Ky. Acts ch. 2, sec.1; original version ratified August 3, 1891, and revised September 28, 1891.

⁹ KRS 196.045 states, "Administrative regulations for restoration of civil rights to eligible felony offenders. (1) The Department of Corrections shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement a simplified process for the restoration of civil rights to eligible felony offenders. As part of this simplified process, the Department of Corrections shall: (a) Inform eligible offenders about the process for

The KY Secretary of State's Office indicates that 17,738 persons received an executive partial pardon since December 1995:

5,613 by Paul Patton, December 12, 1995–December 9, 2003

1,098 by Ernie Fletcher, December 9, 2003–December 11, 2007

9,509 by Steve Beshear, December 11, 2007–December 8, 2015¹⁰

1,518 by Matt Bevin, December 8, 2015–December 10, 2019.

17,738 Total, December 12, 1995 - December 10, 2019

Many remain disenfranchised

The League estimates that over 170,000 remain disenfranchised because of a felony conviction.

RESTORATION PRACTICE AND INFORMATION

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.

Executive Orders

In recent years, a number of efforts have been made to address disenfranchisement. In 2015 then-Governor Steve Beshear issued an order¹¹ 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.

In late 2015 Governor Matt Bevin rescinded Governor Steve Beshear's order¹² 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.

In late 2019, Governor Andy Beshear rescinded the Executive Order¹³ issued by Governor Bevin and issued Executive Order 2019-003 (December 12, 2019)¹⁴ restoring eligibility to vote to those convicted of

restoration of civil rights and provide a standard form which individuals may sign upon their release to formally request that the Department of Corrections initiate the process; (b) Generate a list on a monthly basis of eligible offenders who have been released by the Department of Corrections or discharged by the Parole Board and who have requested that their civil rights be restored; (c) Conduct an investigation and compile the necessary information to ensure that all restitution has been paid and that there are no outstanding warrants, charges, or indictments; (d) Provide notice to the Commonwealth's attorney in the county of commitment and to the Commonwealth's attorney in the offender's county of residence, setting out in the notification the criminal case number and charges for which the offender was convicted; and (e) Forward information on a monthly basis of eligible felony offenders who have requested restoration of rights to the Office of the Governor for consideration of a partial pardon. (2) As used in this section, "eligible felony offender" means a person convicted of one (1) or more felonies who: (a) Has reached the maximum expiration of his or her sentence or has received final discharge from the Parole Board; (b) Does not have any pending warrants, charges, or indictments; and (c) Had paid full restitution as ordered by the court or the Parole Board. (3) As used in this section, "civil rights" means the ability to vote, serve on a jury, obtain a professional or vocational license, and hold an elective office. It does not include the right to bear arms. (4) Any eligible offender not provided for under subsection (2) of this section may submit an application directly to the Department of Corrections to initiate the process outlined in subsection (1) of this section."

Effective: June 21, 2001 History: Created 2001 Ky. Acts ch. 115, sec. 1, effective June 21, 2001.

¹⁰ In addition, Governor Steve Beshear issued as Executive Order granting partial pardons of up to an estimated 140,000 persons that was rescinded by Governor Bevin.

¹¹ Executive Order 2015-871 (November 24, 2015) found at:

<http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2015-MISC-2015-0871-242277.pdf>

¹² Executive Order 2015-052 (December 22, 2015) found at:

<http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2016-MISC-2015-0052-243103.pdf>

a felony who had completed their sentence, exclusive of any court-ordered monetary condition. This substantially decreased the number of permanently disenfranchised by as many as 140,000. It has prospective and retrospective application. It directs the Kentucky Department of Corrections to “take all reasonable steps necessary to effectuate compliance with the mandates and criteria of the Order and to provide verification of those persons who meet the criteria in the Executive Order to election officials. Any eligible person can request verification from Corrections. It further instructs the Kentucky Justice and Safety Cabinet and all other state agencies to comply with the Order.

With all of the significant benefits of this recent Executive Order, its implementation has complexities. The Order does not apply to federal convictions or convictions from other jurisdictions or to those who have pending criminal charges. The Order does not require eligible Kentuckians to pay fees or fines to be eligible to restore their voting rights, but it does not discharge them of responsibilities to pay court-ordered restitution or fines. The Order does not apply to those convicted of the following offenses:

- Treason
- Bribery in an election
- Violent offense defined in KRS 439.340¹⁵
- Homicides under KRS Chapter 507 and 507A
- An assault in the second degree as defined in KRS 508.020¹⁶ and assault under extreme emotional disturbance as defined in KRS 508.040¹⁷
- Strangulation in the first degree under KRS 508.170¹⁸

¹³ Executive Order 2015-052 (December 22, 2015) found at:

<http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2016-MISC-2015-0052-243103.pdf>

¹⁴ Found at: <http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2020-MISC-2019-0003-265162.pdf>

¹⁵ 439.3401 Parole for violent offenders -- Applicability of section to victim of domestic violence or abuse -- Time of offense -- Prohibition against award of credit. (1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of: (a) A capital offense; (b) A Class A felony; (c) A Class B felony involving the death of the victim or serious physical injury to a victim; (d) An offense described in KRS 507.040 or 507.050 where the offense involves the killing of a peace officer, firefighter, or emergency medical services personnel while the peace officer, firefighter, or emergency medical services personnel was acting in the line of duty; (e) A Class B felony involving criminal attempt to commit murder under KRS 506.010 if the victim of the offense is a clearly identifiable peace officer, firefighter, or emergency medical services personnel acting in the line of duty, regardless of whether an injury results; (f) The commission or attempted commission of a felony sexual offense described in KRS Chapter 510; (g) Use of a minor in a sexual performance as described in KRS 531.310; (h) Promoting a sexual performance by a minor as described in KRS 531.320; (i) Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a); (j) Human trafficking under KRS 529.100 involving commercial sexual activity where the victim is a minor; (k) Criminal abuse in the first degree as described in KRS 508.100; (l) Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060; (m) Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or (n) Robbery in the first degree....

¹⁶ 508.020 Assault in the second degree. (1) A person is guilty of assault in the second degree when: (a) He intentionally causes serious physical injury to another person; or (b) He intentionally causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or (c) He wantonly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument. (2) Assault in the second degree is a Class C felony.

¹⁷ 508.040 Assault under extreme emotional disturbance. (1) In any prosecution under KRS 508.010, 508.020 or 508.030 in which intentionally causing physical injury or serious physical injury is an element of the offense, the defendant may establish in mitigation that he acted under the influence of extreme emotional disturbance, as defined in subsection (1)(a) of KRS 507.020. (2) An assault committed under the influence of extreme emotional disturbance is: (a) A Class D felony when it would constitute an assault in the first degree or an assault in the second degree if not committed under the influence of an extreme emotional disturbance; or (b) A Class B misdemeanor when it would constitute an assault in the fourth degree if not committed under the influence of an extreme emotional disturbance.

¹⁸ KRS 508.170 Strangulation in the first degree. (1) A person is guilty of strangulation in the first degree when the person, without consent, intentionally impedes the normal breathing or circulation of the blood of another person by: (a) Applying pressure on the throat or neck of the other person; or (b) Blocking the nose or mouth of the other person. (2) Strangulation in the first degree is a Class C felony.

- Human trafficking under KRS 529.100¹⁹

Other States Initiatives

Given these offense exclusions, Kentucky is now in a category of Mississippi and Alabama with similar complicated restoration voting schemes.

For states that have complicated restoration schemes, below are documented practices:²⁰

- Alabama: In 2003, the Legislature passed Act 2003-415 to streamline the application process for a Certificate of Eligibility to Register to Vote for people convicted of a nonviolent offense who had completed the terms of their sentence. The Board is required to issue a Certificate within 50 days of application, or to issue an explanation for denial within 45 days. Within its first year of passage, the number of voting rights restorations increased 79 percent,¹⁾ and between 2004-2015, 16,022 people had their voting rights restored.
- Louisiana: In 2008, the state Legislature passed a bill requiring the Department of Public Safety and Corrections to inform individuals who have completed their sentence of their right to vote and to provide assistance in registering to vote.
- New Mexico: In order to make the restoration procedure easier, in 2005 the legislature implemented a notification process by which the Department of Corrections is required to issue a certificate of completion of sentence to an individual upon satisfaction of all obligations. The Department of Corrections is also required to notify the Secretary of State when such persons become eligible to vote.
- Tennessee: In 2006, Tennessee passed legislation that simplified the nation's most complex and confusing disenfranchisement laws. Prior to 2006, eligibility and the process of restoration varied significantly based on the type of offense and the date of conviction. Under the new law, persons convicted of certain felonies after 1981 can apply for voting rights restoration directly with the Board of Probation and Parole upon sentence completion. However, the new law requires that all outstanding legal financial obligations, including child support, must be paid before voting rights will be restored.

Public information

The Kentucky Department of Corrections has information about the restoration of voting rights on its web page²¹ but does not yet have information about the particular process under the recent Executive Order.²²

The Administrative Office of the Courts has information on its web page about the expungement certificate of eligibility process, the \$40 fee and frequently asked questions²³ but nothing about the restoration of voting rights or the particular process under the recent Executive Order.²⁴

The Secretary of State Office's web page does not have any information about the restoration of voting rights or expungements. Other than having the recent Executive Order in the Executive Journal on its web page there is no other information about the Order's implementation.

The Kentucky Department of Public Advocacy has practical, step by step information about the expungement process on its web page with a link to the helpful Clean Slate web page.²⁵

¹⁹ KRS 529.100 Human trafficking. (1) A person is guilty of human trafficking when the person intentionally subjects one (1) or more persons to human trafficking. (2) (a) Human trafficking is a Class C felony unless it involves serious physical injury to a trafficked person, in which case it is a Class B felony. (b) If the victim of human trafficking is under eighteen (18) years of age, the penalty for the offense shall be one (1) level higher than the level otherwise specified in this section.

²⁰ See Morgan McLeod *Expanding the Vote: Two Decades of Felony Disenfranchisement Reforms* (October 17, 2018), found at: <https://www.sentencingproject.org/publications/expanding-vote-two-decades-felony-disenfranchisement-reforms/>

²¹ See <https://kycourts.gov/Expungement/Pages/felonyexpungement.aspx>

²² See <https://corrections.ky.gov/Probation-and-Parole/Pages/CivilRights.aspx>

²³ See <https://kycourts.gov/Expungement/Pages/faqs.aspx>

²⁴ See <https://kycourts.gov/Expungement/Pages/process.aspx>

²⁵ See <https://dpa.ky.gov/clientandcommunityresources/expungement/Pages/default.aspx>

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,²⁶ including Kentucky, have modified felony disenfranchisement provisions to expand voter eligibility.²⁷

Expungement

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.

In 2019, Kentucky further expanded restoration of voting rights for persons with felonies.²⁸

- The \$540 fees have been reduced to \$340, \$40 for Certificate of Eligibility, \$50 at time of filing the petition for felony expungement, \$250 due when expungement is granted by the court and a person is entitled to a payment plan however that expungement does not go into effect until fees are paid in full.
- Possession of Drug Paraphernalia, 2nd or Subsequent Offense was added to the listed Class-D felonies that are eligible for expungement.
- Additional Class D felonies now eligible are: a felony prior to January 1, 1975 that carried less than a 5-year prison sentence; all other Class-D felonies except Felony Driving Under the Influence (KRS 189A.010), Felony Assault in the 4th Degree (KRS 508.032), Impersonating a Peace Officer (KRS 519.055), Abuse of Public Office, Sexual Based Offenses, Offense Against a Child, Serious Bodily Injury or Death.
- A person who received a Class-D felony expungement prior to July 1, 2019 may be eligible for an additional Class-D felony expungement after July 1, 2019 if you have not yet received an expungement for a Class-D felony, generally only one petition for expungement of Class-D felonies can be granted.

Fees not waivable

On October 11, 2019, the Kentucky Court of Appeals ruled that the felony expungement fees are not waivable even if the person is indigent.²⁹

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.³⁰ The

²⁶ 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. See Morgan McLeod, *Expanding the Vote: Two Decades of Felony Disenfranchisement Reforms* (2018) found at: <https://www.sentencingproject.org/publications/expanding-vote-two-decades-felony-disenfranchisement-reforms/>

²⁷ 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/>

²⁸ See Kentucky Department of Public Advocacy's *JULY 2019 EXPUNGEMENT UPDATE*, found at: <https://dpa.ky.gov/clientandcommunityresources/expungement/Documents/2019%20Law%20Update%201-pager%202019-07-31%20Edit.pdf>

²⁹ *Jones v. Commonwealth*, KY App, No. 2019-CA-000172-MR (October 11, 2019).

³⁰ 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,

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.³¹

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.³²

RESTORATION PROMOTES COMMUNITY PARTICIPATION

Beyond promoting participation in voting, there are sound policy reasons for changes in Kentucky's restoration of voting rights laws. The restoration of voting rights promotes rehabilitation and reintegration into the community.³³ 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."³⁴

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

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/>

³¹ *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.

³² *Supra* note 9.

³³ 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.

³⁴ 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

in the community and have completed their full sentence should have their voting rights restored automatically.³⁵

- 2) **Implement the Executive Order restoring the right to vote.** Conduct a robust statewide public information campaign specifically to educate the 140,000 who have had their right to vote restored and those who have authority to assist in registering those individuals, send individual letters to persons now eligible to vote as a result of the 2019 Executive Order; educate county election clerks on the registration of those 140,000.
- 3) **Increase Assistance for the Restoration Processes:** 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.
- 4) **Increase Public Education about the Restoration Process and Available Resources:** The Secretary of State’s Office, Justice and Public Safety Cabinet, Department of Corrections³⁶ and the Administrative Office of the Courts should implement public education campaigns regarding Kentucky’s restoration policies and should make readily available information about the process and resources available to those who desire assistance in the application process.³⁷
- 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.
- 6) **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.”
- 7) **Reduce the \$340 Application Fees for Expungement of Felony Records:** State legislators should reduce the fees for expungement to make it easier for eligible applicants to apply. They should make

³⁵ **Pending legislation.** Bills filed in the 2020 General Assembly as of date of publication of this Report asking Kentuckians to vote at the next general election on change to Section 145 of the KY Constitution providing for automatic restoration of the right to vote are:

HB 6, Charles Booker. https://apps.legislature.ky.gov/recorddocuments/bill/20RS/hb6/orig_bill.pdf

Provides restoration upon completion of sentence. Referred to Elections, Const. Amendment Committee.

HB 119, George Brown, Jr. <https://apps.legislature.ky.gov/record/20rs/hb119.html> Provides restoration upon completion of the sentence except for people convicted of intentional homicides, and certain sexual offenses. Referred to Elections, Const. Amendment Committee.

SB 48, Gerald Neal. <https://apps.legislature.ky.gov/record/20rs/sb48.html> Provides restoration if the person is not incarcerated but allows the General Assembly to designate particular felonies that would disqualify convicted persons from voting. Referred to State and Local Government Committee

SB 62, Jimmy Higdon. Provides restoration 5 years after the person completes their sentence, and if the person has not been convicted of a sex offense, a violent offense, or an offense against a child.

<https://apps.legislature.ky.gov/record/20rs/sb62.html> Referred to State and Local Government Committee.

HB 222, Charles Booker. Requires automatic expungement of certain Class D felonies.

<https://apps.legislature.ky.gov/record/20rs/hb222.html> Referred to Judiciary Committee.

³⁶ The Kentucky Department of Corrections has information and an application on the restoration of civil rights at:

<https://corrections.ky.gov/Probation-and-Parole/Pages/CivilRights.aspx>

³⁷ 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>

it explicit that the fee is fully or partially waivable upon a finding of indigence. They should also make the fees fully refundable when expungement is denied. ³⁸

CONCLUSION

The time is now to build on the progress Kentucky has made in restoring the right to vote and bring our Commonwealth into the mainstream national public policy on automatic restoration of voting rights for persons who have completed their felony sentence.

Despite this progress, Kentucky remains an outlier as 1 of 3 states along with Virginia and Iowa that permanently disenfranchises persons with felony convictions from voting even after completing their full sentence. Voting rights can be restored in Kentucky only by applying to the governor and receiving an executive partial pardon or by applying for and being granted an expungement of the felony.

We expressly call on the Governor, the Executive Branch especially the Justice Cabinet Secretary and Department of Corrections Commissioner, the Secretary of State, Legislators, to implement expeditiously the 2019 Executive Order.

We renew our call to legislators for passage of bill to allow people to vote on change in Kentucky Constitution making restoration of the right to vote automatic upon completion of sentence.

³⁸ KRS 431.073 states “(10) The filing fee for an application to have judgment vacated and records expunged shall be fifty dollars (\$50), which shall be deposited into a trust and agency account for deputy clerks and shall not be refundable. (11) (a) Upon the issuance of an order vacating and expunging a conviction pursuant to this section, the applicant shall be charged an expungement fee of two hundred fifty dollars (\$250), which may be payable by an installment plan in accordance with KRS 534.020.