



RESEARCH AND ADVOCACY FOR REFORM



# **A Decade of Reform:**

## **Felony Disenfranchisement Policy in the United States**

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The Sentencing Project works for a fair and effective criminal justice system by promoting reforms in sentencing law and practice and alternatives to incarceration. To these ends, it seeks to recast the public debate on crime and punishment.

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## A DECADE OF REFORM: FELONY DISENFRANCHISEMENT POLICY IN THE UNITED STATES

Over the course of its history, the United States has progressed from a country in which only a narrow group of property-owning white males were permitted to vote to a democracy that continues to strive for universal suffrage. Through litigation and legislation, as well as the tireless work of many advocates, the United States has made great strides to extend the vote to an expanding proportion of its population. Arguments that once seemed to be compelling justifications for limiting the franchise appear now as relics of an antiquated, exclusionary past.

Despite these reforms, widely considered to be benchmarks by which we judge this nation's pursuit of a "more perfect union," there remain 5.3 million Americans prohibited from voting due to prior criminal behavior. In 48 states and the District of Columbia, persons in prison for a felony conviction are denied the right to vote. Additionally, in 36 of these states, persons under parole supervision and/or sentenced to felony probation are stripped of their voting rights. And in 11 states, a felony conviction can result in a lifetime ban from voting. The consequence of this policy has been to deny the right to vote to 1 in 41 Americans of voting age. Nationally, 1 in 8 African American males is prohibited from voting, reaching as high as 1 in 4 in some states. These policies serve not only as a reminder of this country's legacy of electoral exclusionism, most evident in the post-Reconstruction era South, but continue to exacerbate racial inequalities in political participation that undermine democratic principles of equality in representation.

Despite the extensive reach of disenfranchisement policies (there is some type of provision in every state except Maine and Vermont), there is growing momentum for reform. Since 1997, 16 states have implemented policy reforms that have reduced the restrictiveness of felony disenfranchisement laws (see page 3). These include three states that eliminated lifetime disenfranchisement provisions, four additional states that scaled back their lifetime disenfranchisement laws to apply to a narrower category of individuals, four states that simplified the restoration process for persons who have completed sentence, and two states that reformed interagency data sharing procedures to address issues of accuracy in compiling the lists of persons to be removed or restored to voting eligibility.

In just seven of these states, reforms resulted in the restoration of the right to vote to an estimated 621,400 residents. With each passing legislative session more reform bills are introduced, while state agencies are increasingly modifying the protocol by which they administer disenfranchisement provisions. With the majority of the public supporting reform, it is likely that additional states will be reconsidering disenfranchisement laws in upcoming legislative sessions.

Despite these developments, the number of people who cannot vote due to a felony conviction continues to rise. The implications of this expansion in the numbers of disenfranchised Americans have been particularly acute in communities of color. Moreover, in an era when a record number of Americans are being released from prison to the community, this exclusionary practice of denying the vote is difficult to reconcile with the increased need for reentry based services and the struggle to ease this critical transition. This suggests that any reason for optimism on the policy front should be tempered by the reality that United States disenfranchisement laws remain some of the most restrictive in the world. Thus, continued momentum to expand voting rights is essential; otherwise, the United States' commitment to universal suffrage remains illusory.

Highlights of this report include:

- Since 1997, 16 states have implemented reforms to their felony disenfranchisement policies
- These reforms have resulted in the restoration of voting rights to an estimated 621,400 persons
- By 2004, the total number of people disenfranchised due to a felony conviction had risen to 5.3 million
- Among those disenfranchised, 74% are currently living in the community
- In 2004, 1 in 12 African Americans was disenfranchised because of a felony conviction, a rate nearly five times that of non-African Americans
- Voting is linked with reduced recidivism; one study shows that 27 percent of non-voters were rearrested, compared with 12 percent of voters

### A Decade of Felony Disenfranchisement Policy Reform, 1997-2006

STATE	YEAR	REFORM
ALABAMA	2003	Streamlined restoration for most persons upon completion of sentence
CONNECTICUT	2001	Restored voting rights to persons on felony probation
CONNECTICUT	2006	Repealed requirement to present proof of restoration in order to register
DELAWARE	2000	Repealed lifetime disenfranchisement, replaced with five-year waiting period for persons convicted of most offenses
FLORIDA	2004	Simplified clemency process
FLORIDA	2006	Adopted requirement for county jail officials to assist with rights restoration
HAWAII	2006	Codified data sharing procedures regarding removal and restoration process
IOWA	2005	Eliminated lifetime disenfranchisement law
MARYLAND	2002	Repealed lifetime disenfranchisement for persons convicted of two non-violent offenses, replaced with three-year waiting period
NEBRASKA	2005	Repealed lifetime disenfranchisement, replaced with two-year waiting period
NEVADA	2001	Repealed five-year waiting period to restore rights
NEVADA	2003	Restored voting rights to persons convicted of first-time non-violent offense
NEW MEXICO	2001	Repealed lifetime disenfranchisement law
NEW MEXICO	2005	Codified data sharing procedures, certificate of completion provided after sentence
RHODE ISLAND	2006	Ballot initiative for 2006 election to amend constitution to restore voting rights to persons on parole and probation
TENNESSEE	2006	Streamlined restoration process for most persons upon completion of sentence
TEXAS	1997	Repealed two-year waiting period to restore rights
UTAH	2006	Clarified state law pertaining to federal and out-of-state convictions
VIRGINIA	2000	Required notification of rights and restoration process by Department of Corrections
VIRGINIA	2002	Streamlined restoration process
WYOMING	2003	Restored voting rights to persons convicted of first-time non-violent offense

## **STATE - BASED POLICY REFORM**

### *ALABAMA – Streamlined Restoration Process*

In 2000, there were 212,650 Alabama residents disenfranchised due to a felony conviction, with nearly 150,000 of these individuals having completed all obligations of their sentence.<sup>1</sup> According to Alabama law, any person convicted of “a felony involving moral turpitude” loses the right to vote, which can only be restored through a pardon granted by the Board of Pardons and Parole. This burdensome path of restoration resulted in substantial backlogs and delayed applications.

In 2003, the Alabama legislature passed HB3, which was signed into law by Governor Riley as Act 2003-415. The bill expanded the state’s capacity to review applications and provided for an expedited restoration process. First, the new law created additional board member positions to fill panels specifically intended to evaluate applications for rights restoration. Secondly, the law created a streamlined process by which anyone (except those persons convicted of certain violent offenses) can apply for a Certificate of Eligibility to Register to Vote immediately upon completion of sentence. This certificate will be granted by the Board if it is demonstrated that the applicant has completed all obligations of sentence. Finally, the law requires the Board to issue a Certificate within 50 days of the application, or to issue an explanation for a denial within 45 days.

As a result of the change in the law, there has been a substantial increase in the number of persons having their rights restored. In 2004, approximately 2,000 restorations were granted. This figure increased to 3,589 in 2005 as more individuals applied, reflecting heightened awareness among Alabama residents. Despite the expansion of the Board size and the expedited process, the demand by individuals to restore their voting rights has continued to overwhelm the Board’s capacity to review the volume of applications. A recent survey indicated 200

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<sup>1</sup> Disenfranchisement estimates in this report from: Uggen, C. and Manza, J. (2002). “Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States,” *American Sociological Review*, Vol. 67, December, 777-803; Manza, J. and Uggen, C. (2006). *Locked Out: Felon Disenfranchisement and American Democracy*. New York: Oxford University Press.

applications for restoration are filed each month in Alabama, but that 82% are not reviewed within the statutorily prescribed timeframe.<sup>2</sup> This has resulted in many Alabamans remaining disenfranchised despite being eligible to vote under the criteria defined in the 2003 law. Meanwhile, the number of individuals disenfranchised in the state continues to grow, with the overall number of people disenfranchised increasing 18%, to 250,000 by 2004. Among individuals who have completed sentence, the total figure has increased 20% during the same time frame, to 179,000.

*CONNECTICUT – Expanded Voting Rights to Persons on Probation; Repealed Proof of Eligibility Requirement*

In 2001, the Connecticut General Assembly passed legislation repealing the state's prohibition against voting for persons on probation for a felony conviction.<sup>3</sup> This reform, spearheaded by the efforts of a diverse partnership comprised of more than 40 organizations, restored the right to vote to 33,000 citizens.<sup>4</sup> However, a 2004 survey of people in Connecticut with a felony conviction revealed that 41% of respondents still believed that a sentence to felony probation resulted in the loss of voting rights.<sup>5</sup> Although Connecticut has a statutory requirement that corrections officials must inform individuals of their voting rights status and must also provide the Secretary of State with a list of those who have completed sentence, it is evident that there remains confusion among many affected individuals about the current policy.

In 2006, the state legislature took a pivotal step to ease the process of rights restoration by repealing the requirement that persons seeking to register to vote must provide "written or other satisfactory proof" of eligibility to be an elector.<sup>6</sup> While not directly expanding the public education capacity of the state, this reform eliminates the burden of proof on the applicant and removes potential complications

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<sup>2</sup> *Voting Rights Denied in Alabama*, The Alabama Alliance to Restore the Vote and the Brennan Center for Justice at NYU School of Law, January 17, 2006. Available online: <[http://www.brennancenter.org/programs/downloads/AL\\_BPP\\_Report\\_2.2.06\\_FINAL\\_-\\_not\\_embargoed.pdf](http://www.brennancenter.org/programs/downloads/AL_BPP_Report_2.2.06_FINAL_-_not_embargoed.pdf)>

<sup>3</sup> HB 5042 (Conn., 2001).

<sup>4</sup> Ugen, C., Manza, J., Thompson, M., and Wakefield, S., *Impact of Recent Legal Changes in Felon Voting Rights in Five States*. Prepared for The National Symposium on Felony Disenfranchisement, September 30-October 1, 2002.

<sup>5</sup> Drucker, E. and Barreras, R., *Studies of Voting Behavior and Felony Disenfranchisement Among Individuals in the Criminal Justice System in New York, Connecticut, and Ohio*, The Sentencing Project, September 2005.

<sup>6</sup> Substitute SB 66 (Conn., 2006).

that may arise in securing “satisfactory proof.” In many cases, persons who have completed a term of supervision are not provided any of the requisite documentation at release. This may require contacting agency officials to obtain the necessary paperwork, thereby delaying one’s opportunity to register. For people with older convictions, it can be difficult to find a representative who can locate the archived discharge documents. The end result of this legislation is a simplified process of registration and an increased likelihood that eligible residents with a felony conviction will be able to take advantage of their right to vote.

#### *DELAWARE – Repealed Lifetime Voting Prohibition*

In 2000, Delaware amended its constitution to allow for the restoration of voting rights upon the completion of sentence.<sup>7</sup> Prior to this amendment, state policy imposed a blanket lifetime prohibition against voting for all persons convicted of a felony. This reform requires that anyone seeking to restore their right to vote must wait five years after completion of sentence before applying to the Board of Elections. Persons convicted of certain serious felony offenses (murder, manslaughter, sex offenses or violations of the public trust) are not eligible to register under this process and are still obligated to seek a pardon. In addition, any outstanding fines or required restitution must be satisfied in advance of applying for restoration. The impact of this change was to restore the right to vote to 6,400 individuals, or nearly one-third of the state’s disenfranchised population.<sup>8</sup>

#### *FLORIDA – Simplified Clemency Process*

Beginning in October 2004, the *Miami Herald* presented a series of groundbreaking investigative articles highlighting the fundamental breakdown in Florida’s clemency process.<sup>9</sup> The articles documented the backlog in the system, in which the labor-intensive nature of the process, including a required hearing before the governor and other members of the Clemency Board, had resulted in a waiting-list of tens of

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<sup>7</sup> HB 136 & SB 350 (Del., 2000).

<sup>8</sup> Uggen, Manza, Thompson and Wakefield.

<sup>9</sup> Debbie Cenziper and Jason Grotto, “Clemency Proving Elusive for Florida’s Ex-Cons,” *The Miami Herald*, October 31, 2004; Debbie Cenziper and Jason Grotto, “The Long Road to Clemency,” *The Miami Herald*, November 7, 2004; Debbie Cenziper and Jason Grotto, “For Felons, Time in County Jails Carries Price: Life Without Rights,” *The Miami Herald*, November 14, 2004; Debbie Cenziper and Jason Grotto, “Violent Felons’ Rights Restored While Lesser Offenders Waited,” *The Miami Herald*, November 21, 2004.



thousands of applicants. The series also shined a spotlight on the arbitrary nature of the restoration process, in which many applicants who seemingly met the criteria for restoration were rejected without any explanation. Many other individuals had filed the necessary paperwork in order to have their rights restored, but had yet to receive any response from the Board. In short, the picture of Florida's clemency process was one of disorganization that was breaking down under the pressures of onerous and unnecessarily serpentine requirements for restoration.

This series once again drew attention to problematic elections issues in Florida, a state still reeling from the controversy of the 2000 election as well as a flawed voter purge in the summer of 2004 in which thousands of eligible individuals had been erroneously removed from the voter rolls.

In the wake of these articles and the renewed attention to voting irregularities in Florida, Governor Jeb Bush declared his support for reform to the clemency process. In a matter of weeks his office announced modifications to the Rules of Executive Clemency, specifically Rule 9A. The result of the changes to Rule 9A, which addresses the criteria for restoration of civil rights without a hearing, was to increase the number of individuals eligible for restoration through an expedited process. These changes included permitting individuals convicted of a non-violent offense to apply to have their rights restored without having to go through a hearing as long as they have remained crime-free for five years. Persons convicted of all other offenses must wait 15 years after the completion of sentence to be eligible for expedited restoration. While these developments represented a step for reform, the current restoration process in Florida still presents substantial obstacles to individuals seeking to regain their right to vote. Despite the changes to Rule 9A, it is estimated that more than 900,000 persons in Florida remain disenfranchised despite having completed sentence. This figure continues to grow exponentially despite the Clemency Board having restored rights to nearly 60,000 people since 1999. While the intention of this reform may have been to alleviate some of the pressure on the clemency process in Florida, it is evident that more substantial reform to disenfranchisement laws is necessary to foster any sustainable change.

An additional step to assist in the process of rights restoration was taken by the Florida House of Representatives in 2006 when it passed legislation requiring

county detention facilities to provide a rights restoration application form to all impacted individuals at least two weeks before release.<sup>10</sup> In light of the complex and confusing process of restoration in Florida, the provision of restoration applications for individuals upon release from custody is an important step to help ensure that all interested parties are fully informed of their rights and the means by which they can regain their voting eligibility.

#### *HAWAII – Improved Data Sharing Procedures*

While there are more than 5 million Americans legally disenfranchised (*de jure* disenfranchisement), there are countless others who do not exercise their right to register to vote as a result of confusion regarding their eligibility or how to navigate the process of registration (*de facto* disenfranchisement). One sizeable component of the *de facto* disenfranchised population consists of those persons who erroneously remain on the ineligible list despite having met all state requirements for restoration. A frequent cause of these inaccuracies in the voter rolls is a lack of effective interagency data sharing. Because so many agencies may play a role in implementing disenfranchisement policy (Secretary of State, Department of Correction, paroling and probation authorities, local elections agencies, sentencing courts) this exacerbates these difficulties and increases the likelihood that eligible persons will be incorrectly prevented from registering.

In 2006, the Hawaii legislature passed SB 2430 to overcome this obstacle to restoration by reforming the manner in which agencies share data and codifying the requisite procedure. In Hawaii, the right to vote is lost by currently incarcerated persons and is automatically restored upon release from prison. As a result of this new legislation, upon sentencing, the clerk of the court must transmit the name, date of birth, address, and social security number of the convicted person to the county of his or her residence within twenty days. This requirement of multiple points of identifying data is crucial because many states lack a systematic process by which they can ensure that the person being removed from the voter roll is indeed being identified correctly. Relying upon unique identifiers, and not simply name and date of birth, will likely decrease the potential for false identification.

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<sup>10</sup> HB 55 (Fla., 2006).

In addition, the law requires the paroling authority to notify the county of residence within twenty days of an individual being granted parole (eligible to vote) or being revoked from parole (ineligible to vote). As with the sentencing procedure, the same personal information is required to be shared by the parole agency. This will provide a much needed safeguard to ensure that the database accurately reflects any change in voter eligibility status.

#### *IOWA – Eliminated Lifetime Voting Prohibition*

While the majority of states with the most restrictive disenfranchisement laws are located in the South, Iowa is an exception. With a constitutional provision permanently disenfranchising any person convicted of an “infamous crime,” Iowa had one of the largest populations of disenfranchised persons who had completed sentence, with nearly 100,000 residents ineligible to vote in 2004. The only mechanism for restoration was a gubernatorial pardon. This process, frequently involving the submission of materials to the Board of Parole in order to obtain a recommendation for restoration to the governor, was difficult and could extend for a lengthy period of time. As a result, only a fraction of applicants had their rights restored each year. A recent survey revealed that between 1999 and 2004, only 2,210 restorations were granted, representing slightly more than 2% of all disenfranchised persons who had completed sentence.

Any change to Iowa’s disenfranchisement laws requires a modification to the state constitution, but because of the manner in which pardon power is centralized within the executive branch in Iowa, there are steps that the governor can take unilaterally to expedite the pardon process. This is the path that Governor Tom Vilsack followed on July 4, 2005 when he issued Executive Order Number 42, which defined a process by which all persons would have their right to vote restored upon completion of sentence. In essence, Iowa now has an automatic review process for voting rights restoration that is triggered each month when the Department of Corrections submits a list of persons completing sentence to the governor’s office. The result of this executive order has been to reduce the number of persons disenfranchised in Iowa by 81%, or an estimated 100,000 persons.

*MARYLAND – Repealed Lifetime Voting Prohibition for Persons Convicted of Two Non-Violent Offenses*

The disenfranchisement laws in Maryland are among the most complex in the United States. Persons convicted of a felony and sentenced to probation or prison, or currently serving parole, lose the right to vote until the completion of sentence. For persons with a first-time felony conviction, the right to vote is restored automatically upon completion of sentence and the satisfaction of any fines or restitution. Prior to 2002, all other persons were permanently disenfranchised and could only regain voting rights by securing a gubernatorial pardon.

In 2002, Maryland modified the restoration process for persons convicted of two or more non-violent crimes.<sup>11</sup> The reform allowed all persons convicted of a second non-violent offense to register to vote three years after the completion of sentence. The new law does not affect the restoration procedure for persons convicted of a violent offense. The result of this bill has been the restoration of voting rights for more than 46,000 residents.<sup>12</sup>

Despite the success of this legislation in opening up access to the ballot box, practical obstacles remain that suppress likely voter registration. A 2004 survey of Maryland voter removal and restoration practices concluded that the state failed to maintain a statewide database of eligible and ineligible individuals, a shortcoming that is exacerbated by the state's complicated disenfranchisement laws.<sup>13</sup> In addition, the criminal status information that is shared for the purpose of determining voter eligibility requires only a person's name and address be included, which increases the likelihood of false identification. Finally, there is no protocol by which persons are notified when the three-year waiting period has expired rendering them eligible to vote. This results in confusion about eligibility and likely depresses voter registration.

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<sup>11</sup> SB184/HB535 (Md., 2002).

<sup>12</sup> Uggen, Manza, Thompson and Wakefield.

<sup>13</sup> Ispahani, L. and Williams, N., *Purged! How Flawed and Inconsistent Voting Systems Could Deprive Millions of Americans of the Right to Vote*, American Civil Liberties Union and Demos, October 2004.

*NEBRASKA – Repealed Lifetime Voting Prohibition*

Like Iowa, Nebraska is a non-southern state that had one of the more restrictive disenfranchisement laws in the country. All felony convictions resulted in the permanent loss of voting rights. The only means of restoration was to wait 10 years after the completion of sentence and then apply for a pardon from the Board of Pardons. Statistics indicate that few Nebraska residents availed themselves of the pardon option, with only 343 restorations granted between 1993 and 2004.

In the wake of the controversy surrounding the 2000 election, the Nebraska Legislature created an Election Task Force in 2001 to examine voting procedures in the state and make recommendations for necessary reform. In 2004, the Vote Nebraska Initiative issued a final report which included 16 recommendations for changes to Nebraska electoral procedures. Recommendation 10 called for “[l]egislation or a constitutional amendment [to be] introduced allowing for the automatic restoration of voting rights to a person who has been convicted of a felony crime immediately upon completion of his/her sentence.”

In the legislative session that followed the issuance of these recommendations, State Senator and Initiative member DiAnna Schimek introduced LB 53 to repeal the lifetime disenfranchisement provision and automatically restore the right to vote to all persons upon the completion of sentence. The bill was subsequently amended to add a two-year waiting period between the completion of sentence and automatic restoration. Support for the bill was substantial enough that the legislature was able to override a gubernatorial veto and pass the reform into law in March 2005. The result has been the return of the right to vote to more than 50,000 Nebraskans.

*NEVADA – Eliminated Waiting Period for Restoration; Repealed Lifetime Voting Prohibition for First-Time, Non-Violent Convictions*

Prior to 2001, Nevada law denied the right to vote to persons convicted of a felony and sentenced to probation, prison, or currently serving parole. This prohibition extended beyond the completion of sentence, and restoration of civil rights was only possible through a petition to the Board of Pardons Commissioners or the court (in the case of probation). Persons sentenced to probation were required to wait six

months after the completion of sentence before applying for restoration, while all others were mandated to wait five years.

In 2001, the Nevada Assembly passed the first of two important reforms to state disenfranchisement laws. Assembly Bill 328 eliminates the five-year waiting period required before applying for restoration. In addition, it permits persons discharged from probation to file directly with the Division of Parole and Probation, rather than going through the court system. This alleviates the need to petition the court and file the requisite legal documents demonstrating completion of sentence.

In 2003, the Assembly passed a second disenfranchisement reform bill that automatically restored the right to vote to persons convicted of a first-time, non-violent offense upon the completion of sentence.<sup>14</sup> This law eliminates the burdensome process of applying for restoration that had been previously required by immediately restoring the right to vote after sentence.

*NEW MEXICO – Repealed Lifetime Voting Prohibition; Notification of Completion of Sentence, Data Sharing*

Prior to 2001, all persons convicted of a felony and sentenced to probation or prison, or currently serving parole, were prohibited from voting. This ban continued after the completion of sentence, and persons seeking to restore their right to vote needed to petition the governor for a pardon. In 2001, the New Mexico legislature repealed the state's lifetime prohibition against voting for persons convicted of a felony and restored the right to vote to nearly 69,000 residents.<sup>15</sup> This reform contributed to a 77% decrease in the number of New Mexicans disenfranchised between the repeal and 2004.

In 2005, the New Mexico legislature took an additional step to mitigate the impact of felony disenfranchisement by implementing a notification process by which the Department of Corrections is required to issue a certificate of completion of

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<sup>14</sup> AB 55 (Nev., 2003).

<sup>15</sup> SB 204 (N.M., 2001). Number of rights restored from Uggen, Manza, Thompson and Wakefield

sentence to an individual upon satisfaction of all obligations, while also notifying the Secretary of State when an individual has completed sentence.<sup>16</sup>

This development addresses a widespread problem that has been identified in a number of states. A survey of voter removal and restoration practices in 15 states discovered that most states maintain inaccurate voter eligibility databases, likely due to the absence of any standardized criteria governing interagency sharing of data.<sup>17</sup> This legislation establishes a process by which relevant criminal justice status information will be exchanged between agencies in an efficient manner, hopefully lessening the occurrence of erroneous denials of registration.

#### *RHODE ISLAND – Initiative to Restore Voting Rights After Release from Prison*

Rhode Island is the only state in New England in which all persons serving a felony sentence, including those in prison or on probation or parole, are prohibited from voting. In fact, Maine and Vermont permit all persons (including people in prison) to vote, while only Connecticut denies the right to vote to persons on parole. Thus, the restrictiveness of the Rhode Island law is unique in the region. In response to this, the state legislature has taken steps to reform the policy by approving the placement of an initiative on the November 2006 ballot. Rhode Island residents will have the opportunity to modify the state constitution by repealing the ban on voting for persons currently serving a sentence for felony probation or parole.

If this amendment passes, it is estimated that more than 15,000 Rhode Island residents will have their right to vote restored. An April 2006 state survey revealed that two-thirds of respondents supported the restoration of voting rights to persons upon release from prison.

#### *TENNESSEE – Streamlined Restoration Process*

The laws in Tennessee regarding voting eligibility for persons convicted of a felony offense were the most confusing in the country. Depending on the date of conviction, the range of voting eligibility ran the gamut from no prohibition against

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<sup>16</sup> HB 64 (N.M., 2006).

<sup>17</sup> Ispahani and Williams.

voting to lifetime prohibition. Due to the piecemeal construction of the state's disenfranchisement laws over time, an individual convicted of a crime after 1981 was treated differently for the purposes of restoration than someone convicted before 1981. In addition, changes in 1986 and 1996 modified restoration eligibility based on the types of offenses for which an individual was convicted.

As a result of this “crazy quilt” of laws, very few people have been able to have their right to vote restored in Tennessee. Between 2001 and 2004, only 393 restorations were granted. The process was confusing and arduous, with the necessary steps dictated by the year of conviction and type of offense. Some individuals were permitted to apply for restoration in their circuit court or court of conviction; others needed to contact the Board of Probation and Parole in order to obtain a Certificate of Restoration of Voting Rights. There were still others for whom a gubernatorial pardon was the only means of restoration available.

In 2006, the Tennessee legislature approved legislation that dramatically simplified the process of restoration by creating a unified system in which all persons convicted since 1981 (with the exception of certain serious felony offenses) can apply to the Board of Probation and Parole for a Certificate of Restoration which declares their eligibility to register to vote.<sup>18</sup> This legislative change will ease the restoration process for the vast majority of the 94,000 individuals in Tennessee who have completed sentence, yet are prohibited from voting. The Tennessee chapters of the American Civil Liberties Union and the National Association for the Advancement of Colored People have conducted public education events throughout the state and are publicizing the reform in order to ensure that all interested parties are aware of the criteria in order to obtain a Certificate of Restoration.

#### *TEXAS – Repealed Two-Year Waiting Period to Restore Rights*

In 1983, Texas amended its disenfranchisement law to restore the right to vote five years after the completion of sentence. Prior to that reform, a felony conviction resulted in lifetime disenfranchisement. Two years later, in 1985, the law was modified again. This time the post-sentence waiting period was reduced from five

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<sup>18</sup> HB 1722/SB 1678 (Tenn., 2006).



years to two years. Finally, in 1997, the post-sentence waiting period was repealed entirely with the passage of House Bill 1001, signed by Governor George W. Bush. The current law denies the right to vote to persons on probation, in prison, or under parole supervision. The right to vote is automatically restored upon final discharge from sentence. The elimination of the two-year waiting period resulted in the restoration of voting rights to 317,000 persons who would have remained disenfranchised in the absence of this reform.<sup>19</sup>

*UTAH – Clarified Law Regarding Out-of-State and Federal Convictions*

Until 1998, Utah was one of four states in which a felony conviction did not result in the loss of voting rights for persons in prison. However, the state constitution was amended by public referendum that year to prohibit persons in prison from voting, resulting in the disenfranchisement of more than 5,000 Utah residents. A quirk in the new law led to a legal purgatory for persons residing in Utah who had been convicted in the federal system or an out-of-state court. The law stated that a “‘convicted felon’ means a person convicted of a felony in a Utah state court.” Thus, for those persons convicted in a federal or out-of-state court and sentenced to prison, their right to vote would not automatically be restored at release. Although the restoration of rights from a federal conviction is generally governed by state law, this seemingly specific exception in the language of the Utah law created a situation in which someone convicted in a federal court would conceivably have to seek a presidential pardon in order to alleviate civil disabilities.

In 2006, the Utah General Assembly corrected this gap in the law by identifying a “convicted felon” as a person convicted in “any state or federal court of the United States.” This clarification guarantees that the proper legal mechanism exists to ensure that the right to vote is automatically restored for all persons in Utah upon release from prison.

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<sup>19</sup> Uggen, Manza, Thompson and Wakefield.

*VIRGINIA – Required Notification of Rights; Streamlined Restoration Process*

Virginia remains one of three states that disenfranchise all persons convicted of a felony for life. However, recent developments in the legislature and executive have eased the process of restoration. In 2000, the General Assembly took the first step by passing a reform bill, HB 1080, which requires the Department of Corrections to provide information to persons under its jurisdiction about the loss of voting rights and the process of restoration. Two years later, this process of restoration was dramatically restructured for some categories of offenses to simplify the burdensome process of petitioning the governor.

Upon taking office in 2002, Governor Mark Warner streamlined the process of applying for a gubernatorial restoration of rights, reducing the necessary paperwork from 13 pages to 1 page for most non-violent offenders. The waiting period before applying to the governor's office was also reduced for these individuals from between 5 and 7 years to 3 years. In addition, the prior requirement of three reference letters was rescinded. For all remaining persons (violent, drug sale, and electoral offenses), a five-year waiting period is still required, as is the extended application process.

In addition to these changes in process, the administration of Governor Warner demonstrated an increased commitment to restoring the rights of Virginia citizens. In the wake of these reforms, Governor Warner restored the voting rights of 3,414 Virginians during his four-year term, exceeding the combined total of all governors between 1982 and 2002.

*WYOMING – Restored Voting Rights for First-Time, Non-Violent Felony Convictions*

Prior to 2003, a felony conviction in the state of Wyoming resulted in a lifetime prohibition against voting. An individual seeking to restore voting rights needed to petition the governor for a pardon or restoration of rights. In 2003, the Wyoming legislature passed SF 65, which eased the process of restoration for certain categories of convictions. Under the current law, persons convicted for a first-time, non-violent offense may apply to the Board of Parole to have their right to vote restored five years after the completion of sentence. Persons convicted of any other offense must wait five years before applying to the governor for restoration.

## **FELONY DISENFRANCHISEMENT: 1997-2006**

A survey of the landscape of disenfranchisement policy reveals continuing momentum for reform that began in 1997 with the Texas legislature and Governor George W. Bush repealing the two-year post-sentence waiting period required before regaining eligibility to vote. Since then, 16 states (including Texas) have taken steps to reform disenfranchisement laws or modify elements of the restoration process. The resulting impact on the number of eligible voters in many states has been substantial, with an estimated 621,400 people regaining the right to vote in just the following seven states:

- Texas's repeal of the two-year waiting period before regaining eligibility to vote restored rights to an estimated 317,000 persons
- Delaware's repeal of lifetime disenfranchisement for most categories of individuals convicted of a felony restored the right to vote to 6,400 persons
- New Mexico's repeal of its lifetime disenfranchisement provision restored the right to vote to more than 69,000 individuals
- Connecticut's repeal of its ban against voting for probationers extended the right to vote to more than 33,000 residents
- Maryland's repeal of its lifetime prohibition against voting for persons with two non-violent convictions resulted in restored voting rights for more than 46,000 residents
- Nebraska's reform to its disenfranchisement law regarding persons who have completed sentence will result in the return of the right to vote to more than 50,000 residents
- Governor Tom Vilsack's executive order in Iowa restored voting rights to nearly 100,000 state residents

In addition to these developments, procedural changes in states such as Florida, Tennessee, and Alabama have eased the process of restoration to such a degree that there are likely hundreds of thousands of additional residents who are now eligible to take advantage of these expedited processes.

## **IMPLICATIONS OF FELONY DISENFRANCHISEMENT**

Despite the momentum for reform over the last decade, the number of persons who have lost their right to vote has continued to climb. In 2000, 4.7 million Americans (2.28%) were prohibited from voting due to a felony conviction. This number increased to 5.3 million by 2004. The growth was even starker among individuals who had completed their sentence. Among those who are disenfranchised, 74% are currently living in the community. These people are working, raising a family, own homes, and pay taxes, but are prohibited from having input about the direction of policy in their community and their country.

The impact of disenfranchisement policies is experienced most acutely in the African American community. In 2004, 1 in 12 African Americans was prohibited from voting due to a felony conviction, a rate nearly five times that of non-African Americans. The African American disenfranchisement rate is more than 10 times the non-African American disenfranchisement rate in nine states. In Connecticut, Pennsylvania, and Illinois, the African American rate is more than 17 times higher.

The continued increase in the number of ineligible voters, coupled with the concentrated racial and geographic impact of the policy, has far-reaching consequences for American democracy. These include:

### *Public Safety and Reentry*

The more than 600,000 persons who return to the community from prison each year face seemingly insurmountable odds in the struggle to reintegrate into society. Research has demonstrated that successful reentry is linked to the provision of assistance in locating housing, employment, and other necessary services. The importance of transition assistance was underscored by President George W. Bush in his 2004 State of the Union address, when he committed federal resources to expand the availability of reentry aid.

While these services assist in overcoming practical obstacles, symbolic barriers to reintegration such as felony disenfranchisement, also have a quantifiable impact on

public safety. Voting is a clear indication of a person's commitment to democratic ideals and is an important expressive activity that demonstrates one's membership in society. To deny that right is incongruous with the principles of reentry and sends a counterintuitive message to people who have been released from prison. Beyond the symbolic impact, there are tangible consequences in the realm of public safety. A study of voters and non-voters revealed that persons who voted were less than half as likely to be re-arrested after release from supervision as persons who did not vote.<sup>20</sup> Between 1997 and 2000, 27 percent of nonvoters in the study were rearrested, compared with only 12 percent of people who voted. This should come as little surprise, as the desire to vote is an affirmation of the institutions of American democracy and demonstrates support for the importance of political expression. In a country where voter turnout is already low, policies should be implemented with the intent of fostering, not diminishing, interest in electoral participation.

#### *Vote Dilution in the African American Community*

In light of the racially disparate impact of disenfranchisement laws, any policy linking voting eligibility to a past criminal record will exacerbate entrenched electoral inequalities. There are currently 12 states in which more than 10% of African Americans are disenfranchised due to a felony conviction. In all of these states, the impact is likely to be concentrated in a relative handful of disadvantaged communities.

This narrow distribution results in a dilution of the political voice of these communities, not only as a result of the numbers of disenfranchised persons, but also due to the expected reduction in political participation among eligible voters in these neighborhoods. Suppressed overall registration rates have been observed in communities with high rates of disenfranchisement, suggesting that *eligible* voters are also failing to register. This amplifies the impact of disenfranchisement and results in even more significant racial inequalities. Consequently, this reduction in political participation further depresses civic responsiveness to community needs, as these neighborhoods become increasingly alienated from their representatives.

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<sup>20</sup> Uggen, C. and Manza, J. (2004) "Voting and Subsequent Crime and Arrest: Evidence from a Community Sample," *Columbia Human Rights Law Review*, Vol. 36, No. 1, 193-215, 213.

## PROSPECTS FOR REFORM

The rules governing electoral participation are controlled by the states, and as a result, the nation's voting laws are a veritable "crazy quilt" of different regulations. Nowhere is this more evident than when examining laws governing felony disenfranchisement. In many states, these laws have existed for more than a century and their legacy can often be traced to Jim Crow policies designed to silence the political voice of newly emancipated slaves. Over time, virtually all of the efforts to limit political participation have slowly been repealed in the name of equality and universal suffrage. This has resulted in the extension of the vote to people who do not own property, African Americans, and women. Nonetheless, felony disenfranchisement remains an enduring barrier to electoral participation that has yet to fully succumb to this movement for reform.

However, the developments witnessed in 16 states since 1997 send a message that the country is building on the momentum of enacting less restrictive disenfranchisement laws that has been the norm since the 1950s.<sup>21</sup> With the beginning of each legislative session come a host of new disenfranchisement reform bills, running the gamut from wholesale law change to more modest reforms to the procedures which govern the removal and restoration of voting rights. Although there are efforts in some states to make disenfranchisement provisions more restrictive,<sup>22</sup> the legislative landscape is dominated by the introduction of reform measures. In the 2006 session, 73 disenfranchisement-related bills were introduced in 22 states and only 11 were classified as seeking to implement more restrictive law. Of the 11 regressive bills, only one was passed into law.<sup>23</sup>

As the issue gains increasing national attention and more people become aware of the laws in their state, the public has indicated support for reform. Eight in 10 Americans believe that persons who have completed their sentence should have their

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<sup>21</sup> For a discussion of changes in felony disenfranchisement law, see Uggen, C. and Manza, J., *Summary of Changes to State Felon Disenfranchisement Law 1865-2003*, April 2003. Available: <<http://www.sentencingproject.org/pdfs/UggenManzaSummary.pdf>>

<sup>22</sup> For an example of a bill seeking to implement a more restrictive disenfranchisement policy, see HB 1318 (Penn., 2006). The bill would have disenfranchised persons serving parole, but this provision was struck from the larger legislation which sought to implement a voter ID system in the state. The entire bill was eventually vetoed by Governor Edward Rendell.

<sup>23</sup> SB 612 (Wisc., 2006); creating a database for the purpose of removal and restoration; lacks sufficient safeguards to ensure accuracy

right to vote restored and nearly two-thirds support voting rights for persons on felony probation and parole.<sup>24</sup> Thus, 36 states have felony disenfranchisement laws that are more restrictive than prevailing public sentiment.

Moreover, there is a growing chorus of organizations and high-profile individuals from both sides of the political aisle who are calling for reform. In July 2006, the United Nations Human Rights Committee, when evaluating the United States' compliance with the International Covenant on Civil and Political Rights, called for the extension of voting rights to persons upon release from prison. Domestically, the Commission on Federal Election Reform, co-chaired by former President Jimmy Carter and former Secretary of State James A. Baker, III, recommended the restoration of voting rights to persons upon completion of sentence and called upon states to take steps to maintain an accurate voter registration database.<sup>25</sup> Diverse organizations, such as the American Bar Association and the American Correctional Association, have also adopted statements calling for reform to disenfranchisement laws. At the individual level, high-profile politicians, such as Republican Senator Arlen Specter and former Republican Vice-Presidential candidate Jack Kemp, have publicly recognized the need for reform.

The foundation for reform of disenfranchisement laws remains in place, with the public and domestic and international organizations recognizing the need for change. Rhode Island may be next, with a ballot initiative determining the state's disenfranchisement law going before the public in November 2006. In the upcoming state legislative sessions beginning in January 2007, a number of additional states appear poised to continue this movement. There is every reason to expect that this pressure for reform will remain a mainstay on legislative calendars across the country for the foreseeable future.

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<sup>24</sup> Manza, J., Brooks, C., and Uggen, C., *Public Attitudes Towards Felon Disenfranchisement in the United States*. Available online: <<http://www.sentencingproject.org/pdfs/ManzaBrooksUggenSummary.pdf>>

<sup>25</sup> Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform, September 2005. Available online: <<http://www.american.edu/ia/cfer/>>

SELECTED PUBLICATIONS ON FELONY DISENFRANCHISEMENT AVAILABLE  
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[\*Barred for Life: Voting Rights Restoration in Permanent Disenfranchisement States\*](#)

[\*Disenfranchisement of Felons: The Modern Day Voting Rights Challenge\*](#)

[\*Felony Disenfranchisement Laws in the United States\*](#)

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