



# AN UPDATE ON FELONY DISENFRANCHISEMENT IN THE COMMONWEALTH OF KENTUCKY

**JANUARY 2021**

## People Disenfranchised in KY // Percentage of the Voting Age Population, 2020

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Total disenfranchised: 197,672 // 5.92% of voting age population

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African-American disenfranchised: 38,665 // 15.10% of African-American voting age population

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Latinx disenfranchised: 3,429 // 6.23% of Latinx voting age population

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 six local chapters in Kentucky (Bell County; Hopkinsville; Murray; Lexington; Northern Kentucky; and Louisville).

### The League:

- Promotes 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.

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.

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# INTRODUCTION

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Women who struggled for decades seeking the right to register and vote formed the League of Women Voters in 1920. The League's core value is that voting is the central expression of citizenship, and every citizen of our commonwealth should be protected in the right to vote.

While Kentucky has made substantial progress with 178,397 newly enfranchised persons, the disenfranchisement of persons who have been convicted of a felony remains a significant civil rights issue in Kentucky with 197,672 still disenfranchised. This is more than were disenfranchised in 2006.

Since 2006, the League of Women Voters of Kentucky has issued Reports on disenfranchisement in Kentucky to communicate to policy makers and Kentuckians the state of disenfranchisement in Kentucky and our place in the nation.<sup>1</sup>

Today, the League issues an update of its February 2020 Report with renewed Findings and Recommendations. 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. Kentuckians support automatic restoration.

The time is now for Kentuckians to be permitted to vote on a constitutional amendment to determine whether the permanent ban on voting should be lifted.

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# FINDINGS AND RECOMMENDATIONS

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

# FINDINGS

## FINDING NO. 1

**As a result of the governor's 2019 executive order, 178,397 more Kentuckians are now eligible to register and vote.**

**2019 executive order: 178,397 and increasing.** Executive Order 2019-003 (December 12, 2019)<sup>2</sup> restored eligibility to vote to those convicted of a nonviolent felony who had completed their sentence, exclusive of any court-ordered monetary condition. This substantially decreased the number of permanently disenfranchised Kentuckians.

The 2019 executive order included significant exclusions.

The 2019 executive order has prospective and retrospective application. Therefore, over time, more persons regain their right to vote as more persons complete their sentences.

The 2019 executive order directs the Kentucky Department of Corrections to provide verification of completion of sentence.

Initially, the estimate was that 140,000 persons were benefited. The estimate now is 178,397 as of December 31, 2020.<sup>3</sup>

The statistical data<sup>4</sup> of the race and gender of the 178,397 persons whose rights were restored is as follows:

Race	Male	Female	TOTAL	Race Percentage
American Indian/Alaskan Native	110	60	170	0.10%
Asian or Pacific Islander	242	95	337	0.19%
Bi-Racial	612	273	885	0.50%
Black	27,556	7,052	34,608	19.40%
Hispanic/Latino	2,238	247	2,485	1.39%
Unknown	960	209	1,169	0.66%
White	96,988	41,755	138,743	77.77%
<b>TOTAL</b>	<b>128,706</b>	<b>49,691</b>	<b>178,397</b>	
<b>Gender Percentage</b>	<b>72,15%</b>	<b>27.85%</b>		

The number of persons disenfranchised and re-enfranchised in Kentucky changes each year based on a number of factors. The number of persons disenfranchised increases every year as there are additional persons convicted of a felony. The number of persons re-enfranchised increases based on the number of persons whose felonies are expunged, the number of persons receiving an individual grant of a partial pardon by the governor, and the number of persons pardoned by the 2019 executive order who complete their sentences.

**Individual partial executive pardons: 17,794.** Section 145 of the Kentucky Constitution<sup>5</sup> allows a person to apply to the governor individually to request that his/her right to vote be restored by the governor issuing a partial pardon by an executive order that applies to that one person. Whether the request is granted is at the total discretion of the governor. Different governors have used different criteria for exercising this constitutionally granted power.

The Kentucky Department of Corrections is required to assist persons with felony convictions in the process of applying for restoration of their voting rights. Each month they provide the names of eligible returning citizens who have requested restoration of rights for consideration of a partial pardon to the governor’s office.<sup>6</sup>

Between 1995 and 2020 17,794 gubernatorial partial pardons were granted<sup>7</sup> by five governors to individuals.

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, 2015 <sup>8</sup>
1,518	by Matt Bevin	December 8, 2015–December 10, 2019
56	by Andy Beshear	December 10, 2019 - December 31, 2020
<b>17,794</b>	<b>TOTAL</b>	December 12, 1995 - December 31, 2020

“The court terminated my probation in October, 2019 – six months early. With my sentence complete, and the governor’s Executive Order 2019-003 in force, I responded quickly to restore my right to vote. This single act carried monumental significance for me. I had spent several years of my career in political fundraising, so the thought of not being able to hold sway over those making public policy was both heartbreaking and anger-inducing. The intentional denial of a constitutionally guaranteed right, combined with the deliberate segregation of a legislatively defined population, both stand as a duplicitous affront to the idea of “re-entry,” or “re-integration.”

*Tipton Moody | Wilmore, Kentucky*

Voting Rights Restored by Executive Order 2019-003, December 2020

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## FINDING NO. 2

### Expungements that restore the right to register and vote are few in number 3,211.

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<sup>9</sup> authorized expungement for certain low-level felony offenses including drug possession and theft offenses. This was expanded to additional class D felonies with enactment of SB 57 in 2019.<sup>10</sup>

Between July 15, 2016, (the effective date of HB 40) and December 31, 2020, 3,211<sup>11</sup> persons have had their right to register and vote restored, because a felony expungement was granted by judges.

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 who have lost the right to vote.

## FINDING NO. 3

### Expungement fees are prohibitive for many and are not waivable.

The 2016 expungement law created a process that permits a defendant to file a motion with the court to have his/her conviction vacated and expunged after a five-year waiting period, a filing fee of \$500, and a \$40 certificate of eligibility fee. These \$540 fees to expunge a felony conviction in Kentucky were among the highest in the nation.

In 2019 and 2020 Kentucky further expanded restoration of voting rights for persons with felonies.<sup>12</sup> The \$540 fees were reduced to \$340<sup>13</sup>: \$40 for Certificate of Eligibility, \$50 at time of filing the petition for felony expungement, with \$250 due when expungement is granted by the court. A person is entitled to a payment plan. However, that expungement does not go into effect until fees are paid in full.

In many ways a felony conviction is an economic death sentence detrimentally affecting the ability for employment, school, and housing. Fees in the amount of \$340 are not affordable for many who have faced these lifelong economic and social consequences.

On October 11, 2019 the Kentucky Court of Appeals ruled that the felony expungement fees are not waivable even if the person is indigent.<sup>14</sup> A number of bills were filed in 2020 to address the ruling by the Court of Appeals.<sup>15</sup> The Kentucky Supreme Court has granted review of this case.

Fees that are not affordable for a person should be waived.

## FINDING NO. 4

**Despite progress, Kentucky maintains its rank at the bottom nationally for the number of citizens who remain disenfranchised (197,672), with African-Americans representing 38,665 of the total.**

In spite of the progress made with the 2019 executive order restoring the right to vote to 178,397 persons, more Kentuckians are disenfranchised in 2020 than were disenfranchised in 2006.

**Total number** An enormous number of people, 197,672, or 5.92% of Kentucky’s voting age population, remain disenfranchised because of a felony conviction. To place this in context, this number of disenfranchised citizens is greater than the population of every county in Kentucky except Jefferson and Fayette.

Kentucky Disenfranchised Population 2020	
Prison	23,209
Jail	2,354
Parole	15,003
Felony Probation	29,509
Post Sentence	127,597
<b>Total Disenfranchised</b>	<b>197,672</b>

**Overall Rate** Kentucky’s rate of disenfranchisement is 5.92%, the fourth highest rate of disenfranchisement in the nation. The average rate of disenfranchisement nationally is 2.27%. Only Mississippi (10.55%), Tennessee (9.09%), and Alabama (8.94%) disenfranchise more people.

**African-Americans** Of the 256,024 African-Americans of voting age in Kentucky, 38,665 are disenfranchised. Kentucky’s rate of disenfranchisement of African-Americans is 15.10%, the seventh highest rate of disenfranchisement of African-Americans in the nation.

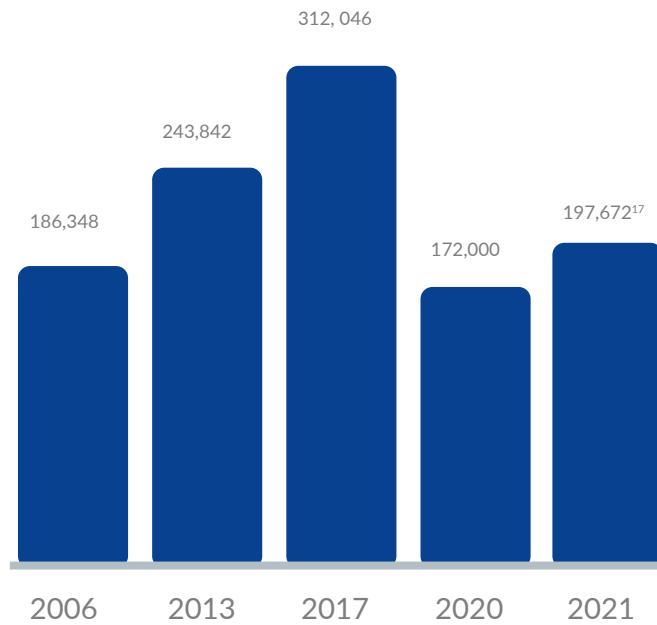


The average rate of disenfranchisement of African-Americans nationally is 6.26%. Only Wyoming (36.22%), Tennessee (21.48%), Virginia (15.94%), Mississippi (15.96%), Alabama (15.55%), and Florida (15.42%) disenfranchise more African-Americans. Kentucky is one of seven states – Alabama, Florida, Mississippi, Tennessee, Virginia, and Wyoming – where more than one in seven African Americans is disenfranchised, twice the national average for African-Americans.<sup>16</sup>

**Latinx Americans** Of the 54,997 Latinx Americans of voting age in Kentucky, 3,429 are disenfranchised. Kentucky’s rate of disenfranchisement of Latinx Americans is 6.23%, the third highest rate nationally. The average rate of disenfranchisement of Latinx Americans nationally is 2.04%. Only Tennessee (10.57%) and Arizona (7.13 %) disenfranchise a higher percentage of Latinx Americans.

**Women** Many women are disenfranchised in Kentucky. Of the 197,672 total number of people disenfranchised in Kentucky, 48,400 are women, 24.5%. Of the 197,672 total number of people disenfranchised in Kentucky, 9,470 are African-American women, 5%.

Even with the recent significant progress, the number of Kentuckians who are unable to vote because of a felony conviction is more now than in 2006.



Our Commonwealth has more work to do.

“It’s not a privilege. It’s a right. That’s what we have to get people understand. It’s our right.”

*Savvy Kareem-Abdul Shabazz | Louisville Kentucky | CEO/Founder, Life Coach...Each One...Teach One, Re-entry Fellowship*

**Voting rights restored by individual executive order, November 2020**

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## FINDING NO. 5

### Half our nation's states have changed their laws and practices over the past 25 years to expand voting rights to persons with felony convictions.

Increasingly, the national trend is toward automatic reenfranchisement, especially for those who complete their sentence. 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. The Sentencing Project has found that since 1997, 25 states, including Kentucky, have modified felony disenfranchisement provisions to expand voter eligibility.<sup>18</sup>

Iowa is one example of this trend and the reasoning supporting this progress. On August 5, 2020 Iowa Governor Kim Reynolds, through an executive order,<sup>19</sup> restored the voting rights of thousands of Iowans who had completed their felony sentences. In doing so, Governor Reynolds said, "Today we take a significant step forward in acknowledging the importance of redemption, second chances and the need to address inequalities in our justice system." The right to vote, Governor Reynolds observed, "is the cornerstone of society and the free republic in which we live. When someone serves their sentence, they should have their right to vote restored automatically. We're going to continue to advocate for a constitutional amendment and make this major milestone permanent. Getting things done involves coming to the table and I want to thank the broad and diverse coalition who has been working on this with me for years."<sup>20</sup>

Commenting on Governor Reynold's executive action, Drew Klein, Iowa State Director with Americans for Prosperity, said, "Our laws should pursue, as a primary goal, the safety of our citizens and that certainly includes a system of punishment. However, no one is kept safe by withholding the right to vote from an individual that has completed their sentence. This executive order not only restores the rights of citizenship but I hope it also elevates the responsibilities of citizenship."<sup>21</sup>

"When someone serves their sentence, they should have their right to vote restored automatically. We're going to continue to advocate for a constitutional amendment and make this major milestone permanent."

**Iowa Governor Kim Reynolds**

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## FINDING NO. 6

### **Kentucky is a national outlier with one of the most burdensome disenfranchisement policies of all 50 states.**

Despite the substantial progress in our state, Kentucky remains one of three states, along with Iowa and Virginia<sup>22</sup>, that permanently disenfranchise persons with felony convictions, even after they have completed their full sentences. Voting rights for the disenfranchised can be restored only by submitting an application to the governor requesting an executive partial pardon, or by applying for, and being granted, an expungement of the felony. The only other option is blanket pardon by executive order such as that issued in December 2019.

Kentucky's lifetime denial of voting rights is one of 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." Currently, statements of the reasons for the governor's decisions are not readily available and open to public inspection.

**Kentucky Executive Orders** In recent years a number of efforts have been made to address disenfranchisement. In 2015 Governor Steve Beshear issued an order<sup>23</sup> 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 order<sup>24</sup> and replaced it with Kentucky's prior procedure. That procedure required individuals who had completed their full sentence to submit an application detailing their convictions and sentences served.

In late 2019, Governor Andy Beshear rescinded the executive order<sup>25</sup> issued by Governor Bevin and issued Executive Order 2019-003 (December 12, 2019)<sup>26</sup> restoring eligibility to vote to those convicted of a nonviolent felony who had completed their sentence, exclusive of any court-ordered monetary condition. 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.

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With all the significant benefits of this recent executive order, its implementation has complexities. The order does not apply to federal convictions, convictions from other states, 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:

- 1 Treason
- 2 Bribery in an election
- 3 Violent offense defined in KRS 439.3401<sup>27</sup>
- 4 Homicides under KRS Chapter 507 and 507A
- 5 An assault in the second degree as defined in KRS 508.020<sup>28</sup> and assault under extreme emotional disturbance as defined in KRS 508.040<sup>29</sup>
- 6 Strangulation in the first degree under KRS 508.170<sup>30</sup> and
- 7 Human trafficking under KRS 529.100<sup>31</sup>

**Kentucky's 2020 Legislative Action** In 2020 four bills addressing restoration of voting rights were filed in the Kentucky General Assembly: two in the House and two in the Senate. Only Senate Bill 62 made progress. SB 62 was sent to the House floor where it received two readings before the Legislature adjourned early due to the COVID19 pandemic.

### Other States' Initiatives

Given the offense exclusions in the 2019 executive order Kentucky is now in a category states with similarly complicated restoration voting procedures. For states that have complicated restoration procedures, below are documented practices:<sup>32</sup>

- » **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 of Pardons and Parole 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, and, 16,022 people had their voting rights restored between 2004-2015.
- » **Louisiana:** In 2008 the state legislature passed a bill requiring the Department of Public Safety and Corrections to inform individuals who had completed their sentence of their right to vote, and to provide assistance in registering to vote.

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- » **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 in Tennessee 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.

## FINDING NO. 7

**Regular, complete information and data on voting rights restoration are not readily available to the public.**

Facts inform citizens. Data are a basis for making public policy. Information increases the value of governance in a democracy. No Kentucky government agency is regularly reporting complete information about disenfranchisement.

The Kentucky Department of Corrections has quality information about the restoration of voting rights on its web page,<sup>33</sup> including the particular process to follow as outlined in the recent executive order.<sup>34</sup> The Department of Corrections is highly responsive to questions for assistance. Importantly, the form for seeking voting rights restoration was simplified in March 2020.<sup>35</sup>

The Kentucky Administrative Office of the Courts has information on its web page about the expungement certificate of eligibility process, the \$40 fee, and frequently asked questions.<sup>36</sup> But, as of the date of this report, AOC has nothing online about the restoration of voting rights, or the particular process explained under the December 2019 executive order.<sup>37</sup>

The State Board of Elections of Kentucky has a link to the Kentucky Department of Corrections web page about restoration of voting rights pursuant to the governor's December 2019<sup>38</sup> executive order but the information is not prominent. There is no information about seeking a partial pardon from the governor.

The Kentucky County Clerk's Association web page, as of the date of this report, does not have any information about the December 2019 executive order.<sup>39</sup>

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The Office of the Secretary of State's web page, as of the date of this report, 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.<sup>40</sup>

There is diffused responsibility among Kentucky government agencies for various aspects of the data relevant to felony disenfranchisement. No state entity aggregates and regularly reports data relevant to felony disenfranchisement in Kentucky, and no entity is required to do so. The reports by the League of Women Voters of Kentucky are the only compilation of statewide information that seeks to fully report the relevant data.

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 readily available and open to public inspection.

## FINDING NO. 8

### **Kentuckians overwhelmingly favor automatic restoration of voting rights.**

Kentuckians support automatic restoration of voting rights upon completion of sentence by a 2-1 margin. This 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 66% in favor and 32% opposed, according to a December 2018 statewide poll of Kentucky voters.<sup>41</sup>

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.<sup>42</sup>

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This is consistent with public opinion surveys nationally that report eight in ten U.S. residents support voting rights restoration for citizens who have completed their sentence, and nearly two-thirds support voting rights for those on probation or parole.<sup>43</sup> National polling in the fall of 2020 indicates that there is “bipartisan majority support for restoring voting rights to people who have returned home from prison. The polling also shows that more people support than oppose abolishing felony disenfranchisement entirely.”<sup>44</sup>

## FINDING NO. 9

### Restoring voting rights promotes civic reintegration.

Voting is the central expression of citizenship. Kentucky is more resilient when all citizens exercise their right to vote. Democracy is more dynamic when more citizens participate in the most democratic act, voting.

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.<sup>45</sup>

University of Kentucky Law School Professor Joshua A. Douglas, a leading national expert on election laws and voting rights, observes that re-enfranchising persons who have completed their felony sentence “is not only good for civic engagement and the overall strength of our democratic institutions. It also helps people who have served their time reintegrate into society. There is a personal benefit for each individual who regains the right to vote and a personal toll for every citizen who remains disenfranchised. Civic engagement will help ex-felons rehabilitate themselves, likely leading to fewer future crimes.”<sup>46</sup>

In support of restoration, the American Probation and Parole Association, professionals supervising persons finishing their sentences, “advocates the restoration of voting rights upon completion of a person’s prison sentence and advocates no loss of voting rights while on community supervision.”<sup>47</sup>

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.

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# RECOMMENDATIONS

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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.

## RECOMMENDATION NO. 1

**Place a constitutional amendment on the ballot allowing Kentuckians to decide whether voting rights should be automatically restored.**

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.<sup>48</sup>

## RECOMMENDATION NO. 2

**Create a coordinated government effort that fully implements Executive Order 2019-003 restoring the right to vote, including a robust public education campaign to inform, promote, assist, and provide resources in the restoration process.**

The Board of Elections, Secretary of State's Office,<sup>49</sup> County Clerk Offices, Justice and Public Safety Cabinet, Department of Corrections<sup>50</sup> and the Administrative Office of the Courts should coordinate their work to implement the executive order. They should develop a robust public education campaign regarding Kentucky's restoration policies and should make readily available information on their web pages and through other communication methods about the process and resources available to those who desire assistance in the application process.<sup>51</sup> Individual letters should be sent to persons now eligible to vote as a result of the 2019 executive order by county election clerks. In addition to the administrative forms of assistance, the Department of Corrections is required to provide eligible applicants 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.

"First, I had to repent of the lifestyle I was living. That led to remorse for letting family and friends down. Lastly, for the last 15 years, I rebuilt the damage I had done and one of those was getting my voting rights back."

*Chris Page | Bowling Green, KY | Small business owner*

**Voting rights restored by expungement, 2011**



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## RECOMMENDATION NO. 3

**Release figures annually on the number of voting rights applications filed and the number approved.**

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, the number denied, and the number approved. The tracking and communication of these data provide important insight into the efficiency and accessibility of the restoration process.

## RECOMMENDATION NO. 4

**Provide statements of the reasons for the governor's decisions on individual applications for reinstatement of voting rights.**

The governor should provide a statement of the reasons for decisions made to approve or deny individual 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.*"

## RECOMMENDATION NO. 5

**Reduce the \$340 application fee for felony expungement and waive the fees for those unable to pay.**

State legislators should reduce the fees for expungement to make it easier for eligible applicants to apply. Legislators should make it explicit that the fee is fully or partially waivable upon a finding by a court that the person is unable to afford the fee. Legislators should also make the fees fully refundable when expungement is denied.<sup>52</sup>

I feel whole now, not only do I pay taxes, but I pay for freedom with each and every vote I cast.

*Alonzo Malone | Voting Rights Advocate | Bardstown, Kentucky*

**Voting Rights Restored in 2017**

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# CONCLUSION: THE TIME IS NOW

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The time is now to continue to build on the progress Kentucky has made in restoring the right to vote for persons who have completed their felony sentence. The time is now to bring our commonwealth into the mainstream of national public policy on this issue. Some express concern that broad re-enfranchisement will sway elections in one direction. A Kentucky-specific study found otherwise. “Clearly, political concerns about disenfranchisees having significant, sizable effects on election outcomes are unfounded.”<sup>53</sup> There is nothing to be gained by denying the right to vote to persons who have completed their sentence.

The League of Women Voters of Kentucky expressly call on the Governor, the Secretary of State, the Board of Elections, legislators, the Executive Branch, especially the Justice Cabinet Secretary and Department of Corrections Commissioner, to put Executive Order 2019-003 fully into effect.

Despite the progress made because of the 2019 Executive Order, Kentucky remains an outlier with Virginia and Iowa as one of only three states that permanently disenfranchises persons with felony convictions even after completing their full sentence. Without an executive order such as that issued in December 2019, 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. The time is long past due to reform Kentucky’s archaic process permanently.

The League of Women Voters of Kentucky renews our express call to legislators for passage of a bill to allow Kentuckians to vote on a change in Kentucky’s Constitution making restoration of the right to vote automatic upon completion of sentence.

I believe felony disenfranchisement is just wrong. People should not be punished for their lifetime and should be afforded the means to become an invested citizen.

*Debra Graner | Frankfort, KY | Voting Rights Advocate*

**Voting rights restored by Executive Order 2019-003, December 2019**

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## REFERENCES

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1. The League of Women Voters of Kentucky has published analyses of felony disenfranchisement in Kentucky since 2006. An archive of the League's Reports are found online: <https://www.lwvky.org/felony-disenfranchisement>
  2. Found at: <http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2020-MISC-2019-0003-265162.pdf>
  3. As reported by the Kentucky Department of Corrections November 2020.
  4. Data provided by the Kentucky Department of Corrections as of December 31, 2020.
  5. 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.
  6. 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 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.
  7. Data provided by the Kentucky Secretary of State Office, updated January 4, 2021.
  8. In addition, Governor Steve Beshear issued an executive order granting partial pardons of up to an estimated 140,000 persons that Governor Bevin rescinded.
  9. Found at: <https://apps.legislature.ky.gov/record/16rs/hb40.html>
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10. Found at: <https://apps.legislature.ky.gov/record/19rs/sb57.html>
  11. Data provided by the Kentucky Administrative Office of the Courts on January 8, 2021. Between July 15, 2016, (the effective date of HB 40) and December 31, 2020, 3,211 CASES had felony expungements granted resulting in 3716 felony CHARGES expunged.
  12. See Clean Slate Expungement Guidebook, found at: [Expungement Guidebook 10.07.2020.pdf \(ky.gov\)](#), and for further information, see: [Clean Slate Kentucky - Department of Public Advocacy](#)
  13. See KRS 431.073, found at: <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=49358>
  14. Jones v. Commonwealth, KY App, No. 2019-CA-000172-MR (October 11, 2019).
  15. House Bill 486 was filed by Representative George Brown on February 25, 2020 and referred to the House Judiciary Committee on February 27, 2020. It would have automatically waived the expungement fee for needy persons. It was not called for a vote. Senate Bill 272 was filed by Senator Morgan McGarvey on March 4, 2020 and assigned to Senate Judiciary Committee on March 6, 2020. It would have explicitly allowed the court to waive all fees required by this section if the court finds that the person is indigent. It was not called for a vote in Committee. Representative Charles Booker filed HB 222 on January 8, 2020. It would provide for automatic expungement of eligible misdemeanors, violations, and certain Class D felonies and have no fee for expungements of these convictions. It was assigned to House Judiciary on January 10, 2020 and never called for a vote.
  16. Chris Uggen, Ryan Larson, Sarah Shannon, and Arfleth Pulido-Nava, Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction, The Sentencing Project (October 30, 2020), found at: <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>
  17. See League of Women Voters of Kentucky Reports, found at: [Felony Disenfranchisement – League of Women Voters of Kentucky \(lwvky.org\)](#)
  18. The 25 states expanding voting rights to persons with felony convictions since 1997 include: Alabama, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, 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 Chris Uggen, Ryan Larson, Sarah Shannon, and Arleth Pulido-Nava, Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction, The Sentencing Project (October 30, 2020), found at: <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>
  19. See Iowa Executive Order Number Seven (August 5, 2020), found at: [EO7 - Voting Restoration.pdf \(iowa.gov\)](#)
  20. See statement of Governor Reynolds at: [Gov. Reynolds signs Executive Order to restore voting rights of felons who have completed their sentence | Office of the Governor of Iowa](#)
  21. *Id.*
  22. 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.
  23. Executive Order 2015-871 (November 24, 2015) found at: <http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2015-MISC-2015-0871-242277.pdf>
  24. Executive Order 2015-052 (December 22, 2015) found at: <http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2016-MISC-2015-0052-243103.pdf>
  25. Executive Order 2015-052 (December 22, 2015) found at: <http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2016-MISC-2015-0052-243103.pdf>
  26. Found at: <http://apps.sos.ky.gov/Executive/Journal/execjournalimages/2020-MISC-2019-0003-265162.pdf>
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27. 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....
28. 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.
29. 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.
30. 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.
31. 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.
32. 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/>
33. See <https://kycourts.gov/Expungement/Pages/felonyexpungement.aspx>
34. See <https://civilrightsrestoration.ky.gov/Pages/home.aspx>
35. Found at: [CPP 27-26-01 \(ky.gov\)](http://CPP 27-26-01 (ky.gov))
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36. See [Expungement Certification Process - Kentucky Court of Justice \(kycourts.gov\)](#)
37. See [Expungement Certification Process - Kentucky Court of Justice \(kycourts.gov\)](#)
38. See [Election Related Links - State Board of Elections \(ky.gov\)](#)
39. See: <https://www.kentuckycountyclerks.com/>
40. See <https://dpa.ky.gov/clientandcommunityresources/expungement/Pages/default.aspx>
41. 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  $\pm 4$  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/>
42. 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  $\pm 3.3$  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.
43. Supra note 9.
44. A national survey conducted for The Justice Collaborative Institute and Data for Progress of 1,195 likely voters, showed 62% of respondents support enfranchising anyone who has returned home from prison. This support crosses party lines, including 72% of Democrats, 57% of Republicans, and 53% of independent or third-party voters. From 10/09/2020 to 10/11/2020, Data for Progress conducted a survey of 1,195 likely voters nationally using web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, race, and voting history. The survey was conducted in English. The margin of error is  $\pm 2.8$  percentage points. The results are found at: [Voters-Support-Restoring-Voting-Rights-to-People-Released-From-Prison-.pdf \(tjcinstitute.com\)](#)
45. Christopher Uggen, Jeff Manza, Voting and subsequent crime and arrest: Evidence from a community sample, 36 Columbia Human Rights Law Review 193 (2004).
46. Joshua A. Douglas, VOTE FOR US: How to Take Back Our Elections and Change The Future of Voting (2019), p.41; "Although establishing a direct causal link is difficult, one study showed that recidivism rates, which measure how often a convict commits another crime, are lower in states that re-enfranchise felons as opposed to those that bar them from voting for life." Id. at p. 41, citing Guy Padraic Hamilton-Smith and Matt Vogel, "The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism," Berkeley La Raza Law Journal. 22 La. Raza L.J., 407, 414 (2015).
47. The September 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
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- 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](https://www.appa-net.org/eweb/Dynamicpage.aspx?webcode=IB_Resolution&wps_key=3c8f5612-9e1c-4f60-8e8b-1bf46c00138e)
48. Bills filed in the 2020 General Assembly asking Kentuckians to vote at the next general election on a 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](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 of voting rights five 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> It was referred to the State and Local Government Committee. On February 27, 2020, it passed the Senate by a vote of 29-7 with Committee Substitute (1) and floor amendment (1) which gave the General Assembly the responsibility to declare which crimes were eligible except for some crimes that were permanently excluded for automatic restoration. The House Elections, Constitutional Amendments & Intergovernmental Affairs Committee passed the measure with a Committee Substitute that provided for automatic restoration five years after completion of sentence except for election fraud convictions. It had two readings on the floor but the General Assembly adjourned early due to the pandemic and it was never voted on by the House.
- 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.
49. See Secretary of the Commonwealth of Virginia's efforts, found at: <https://www.restore.virginia.gov/>
50. 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>
51. 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>
52. 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.
53. Gennaro F. Vito, J. Eagle Shutt, Richard Tewksbury, Estimating the Impact of Kentucky's Felon Disenfranchisement Policy on 2008 Presidential and Senatorial Elections, Federal Probation, Volume 73, Number 1 (June 2009), p. 31. ("The results of this Kentucky study clearly demonstrate that full participation by felon disenfranchisees would not have altered the outcome of the 2008 senatorial and presidential election in the state. Our analysis was based upon a survey of voting preferences of a sample of Kentucky probationers and parolees. Results show that there are small but real differences that disenfranchisement can make in elections, and as others have shown, some previous elections may have had different outcomes had disenfranchised individuals been able to vote. However, while real, the effects of currently disenfranchised persons voting results in only very
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minor changes to distribution of votes. Although felon disenfranchisees would likely favor Democratic candidates more than the Kentucky official voting results indicate, this difference had no effect upon the winners of the final voting tally. Republicans McCain and McConnell would still have carried the state in 2008. Clearly, political concerns about disenfranchisees having significant, sizable effects on election outcomes are unfounded. While very close elections could be swayed by the votes of currently disenfranchised persons, this is likely to occur in only very rare instances. Therefore, there is no legitimate reason to continue to deny the vote to this population. Continuation of felon disenfranchisement sends a negative and deleterious message to citizens. It fails to recognize felons' performance in completing their sentence, including a period of supervision in the community on probation or parole.")