

The Right to Vote and Ex-Felon Disenfranchisement in Tennessee

A Report of the
Tennessee Advisory Committee to the
U.S. Commission on Civil Rights

June 2014

Letter of Transmittal

Tennessee Advisory Committee to the U.S. Commission on Civil Rights

The Tennessee Advisory Committee issues this report on voting rights and ex-felon disenfranchisement as part of its responsibility to study and report on civil rights issues in Tennessee. This report was adopted by a vote of 9 yes to 0 no at a meeting of the Committee on April 21, 2014.

Tennessee's disenfranchisement of ex-felons is one of the most restrictive in the nation. Tennessee is one of eleven states nationwide that permanently disenfranchise citizens from voting. This lifetime ban on voting means that in Tennessee ex-felons may not vote *even after* such individuals have fully completed their sentences and satisfied all related terms and conditions of such sentences. The Tennessee Advisory Committee independently estimates that in the past thirty years approximately 160,000 Tennessee citizens have been banned from exercising the right to vote following completion of all terms of their sentences. Although under current state law it is possible for certain ex-felons to have their civil rights restored, the Tennessee Advisory Committee found that the process for regaining the right to vote in Tennessee tends to be both lengthy and complicated—in some instances prohibitively so.

In addition to its lifetime ban on voting rights, Tennessee is one of five states nationwide that make persons convicted of certain offenses permanently ineligible from ever seeking to have their voting rights restored and it is one of three states nationwide that apply such permanent bar against restoration to a wide range of offenses. For these individuals, the return to society is without the opportunity or hope of ever being eligible to seek restoration of the right to vote. Of particular concern to the Committee is its finding that the Tennessee ex-felon disenfranchisement statutes tend to have a disparate impact on African Americans, who make up nearly one-half of the prison population but only approximately 17 percent of the state's population.

Finally, the Committee finds that the Tennessee law governing restoration of ex-felon voting rights is cumbersome and complicated. In the last 30 years, a series of amendments to the state's ex-felon disenfranchisement laws have established a complex statutory scheme for post-1981 convictions as new crimes were added in 1986, 1996 and 2006 for which voting rights can never be restored. Whether an individual is eligible to seek restoration depends not only upon the type of offense, but also on the particular year the person was convicted, as well as several additional requirements added in 2006.

Laws that promote the reintegration of ex-felons into society may further the important public policies of discouraging recidivism and encouraging ex-felons to become productive citizens of society—benefits that accrue to all Tennesseans. The Tennessee Advisory Committee suggests that the Tennessee General Assembly and Governor consider the experiences of other states that have ex-felon disenfranchisement statutes that are less restrictive in their application and the removal of unnecessary barriers to voting rights restoration in order to promote the reintegration of ex-felons into society after they have served their sentences.

Respectfully submitted,
Diane Di Ianni
Chair, Tennessee Advisory Committee

**Tennessee Advisory Committee to the
U.S. Commission on Civil Rights**

Chair

Diane Di Ianni
Nashville

Members of the Voting Rights Sub-Committee

J. Gregory Grisham
Collierville

Brian Fitzpatrick
Nashville

Other Members of the Committee

Tiffany Cox
Nashville

John Harris
Murfreesboro

Jean Howard-Hill
Chattanooga

Nika Jackson
Cordova

Jason (Drew) Johnson
East Point

Bernie Miller
Chattanooga

Christopher Sanders
Nashville

Gail S. Seavey
Nashville

Eliud Trevino
Nashville

CONTENTS

I. Introduction.....1

II. Ex-Felon Voting Ban in Tennessee Compared to Other States.....2

III. Ex-Felons Banned from Voting in Tennessee6

IV. Tennessee’s Ex-Felon Voting Ban Challenged in Federal Court12

V. Public Officials Offer Their Opinions Regarding Ex-Felon Voting Rights13

VI. Findings and Recommendations17

Technical Notes19

Appendix 1: Restrictions on Voting Rights for Ex-Felons in States without
Lifetime Bans.....21

Appendix 2: Restrictions on Voting Rights for Ex-Felons in States with Lifetime
Bans.....25

Appendix 3: 2006 Tennessee Public Law to Restore Voting Rights.....28

TABLES

Table 1: Restrictions on Voting Rights for Ex-Felons in States with Lifetime Bans4

Table 2: Restrictions on Voting Rights for Ex-Felons in States without Lifetime
Bans.....5

Table 3: Number of Ex-Felons in Tennessee whose voting rights have been
restored, by year: 2000 – 2012.....11

Table T1: Number of Felons Released from Tennessee Prisons for 30-Year
Period: 1981-2010.....19

Table T2: Estimate of Number of Released Felons from Tennessee Prisons Who
Have Not Returned to Prison for 30-Year Period: 1981-201020

I. INTRODUCTION

Addressing voting rights issues has been an important focus of the U. S. Commission on Civil Rights (Commission) and its state advisory committees since the Commission's establishment in 1957. Most recently, in 2001 the Commission conducted a series of hearings to examine voting irregularities in Florida during the 2000 Presidential election¹, and in 2012 the Commission issued a report regarding the impact of Voting Rights Act on re-districting.²

Tennessee is one of eleven states that permanently disenfranchises ex-felons from voting even after they have fully completed their sentences. In fact, for certain enumerated crimes, ex-felons are banned for life from seeking formal petition for re-enfranchisement. This is in contrast to voting procedures for the vast majority of states, where the right to vote is either restored upon release from incarceration or upon full completion of sentence—generally defined as including all terms of incarceration, probation and parole.

The law on restoration of voting rights in Tennessee seems to be particularly complicated. In the last 30 years, a series of amendments to the state's felon disenfranchisement state laws have established different restrictions for post-1981 convictions. In particular, new crimes were added in 1986, 1996 and 2006 for which voting rights can never be restored. Restoration therefore depends both upon the year a person was convicted as well as the type of offense.

Of particular interest to the Tennessee Advisory Committee, African-Americans seem to be adversely impacted by the Tennessee ex-felon disenfranchisement laws. African Americans comprise only about 17 percent of the general population in the state, yet they are about one-half of the prison population.³

In recent years two other state advisory committees to the Commission have examined voting rights for ex-felons. In 2009 the Florida Advisory Committee reported on the issue and noted that as African Americans make up nearly one-half of the prison population but only about 15

¹ U.S. Commission on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election* (June 2001).

² U.S. Commission on Civil Rights, *Redistricting and the 2010 Census: Enforcing Section 5 of Voting Rights Act* (September 2012).

³ The Committee did not undertake a statistical analysis of disparate impact based upon actual offenses and demographics of the state ex-felon population. Rather, its concern that the law has a disparate impact by race is based solely on the fact that African Americans make up 17 percent of the state's population and nearly half of the prison population.

percent of the state's population, the state's ex-felon voting ban has a disparate impact on minorities.⁴

The Kentucky Advisory Committee to the Commission also examined the issue of ex-felon voting rights—noting in its study that the state's lifetime voting ban for ex-felons, similar to Florida law, is established by the state's Constitution. According to the Kentucky Committee, although former felons may have their voting rights resorted through executive pardon by the Governor, the effect of the ban has a discernible adverse impact on African Americans and the clemency process has become politicized.⁵

This study by the Tennessee Advisory Committee follows from a briefing before the Committee in Nashville, on August 16, 2012, on voting rights for ex-felons.⁶ In addition to hearing that the state of Tennessee had a constitutional provision that barred persons convicted of felonies from voting, members of the Committee also heard from persons directly affected by the constitutional ban. This report is a summary statement by the Tennessee Advisory Committee on the issue of ex-felon voting rights in Tennessee. It should be noted that the Tennessee Advisory Committee did not view its charge as issuing a legal opinion as to the constitutionality of the current Tennessee law under applicable legal standards.

II. EX-FELON VOTING BAN IN TENNESSEE COMPARED TO OTHER STATES

A. Eleven States—including Tennessee—Have Lifetime Voting Bans

Absent a specific act of clemency or restoration of civil rights, eleven states including Tennessee have lifetime bans on ex-felons excluding them from exercising the right to vote and participate in the democratic process.⁷ Article I, section 5, of the Tennessee Constitution reads:⁸

⁴ Florida Advisory Committee to the U.S. Commission on Civil Rights, *Ex-Felon Voting Rights in Florida: Revised Rules of Executive Clemency That Automatically Restore Civil Rights to Level-1 Offenders is the Right Policy* (September 2009).

⁵ Kentucky Advisory Committee to the U.S. Commission on Civil Rights, *Voting Rights in Kentucky: Felons Who Have Completed All Terms of Their Sentences Should Have the Right to Vote* (September 2009).

⁶ Records of the briefing are available from the Southern Regional Office, U.S. Commission on Civil Rights.

⁷ Table 1 and Appendix 2.

⁸ Tenn. Const. art. 1, § 5.

The elections shall be free and equal, and the right of suffrage, as hereinafter declared, shall never be denied to any person entitled thereto, except upon a conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by court of competent jurisdiction.

Moreover, Tennessee, along with Alabama and Delaware, is one of only a few states in the nation that permanently ban voting rights for certain enumerated offenses.⁹ In Tennessee, not only is an ex-felon barred from voting unless he or she successfully seeks restoration, but for certain offenses there is lifetime ineligibility from ever seeking and obtaining voting rights restoration. Persons convicted of certain felony offenses including murder, rape, treason, sexual offenses involving a minor victim, voter fraud, bribery, misconduct involving public officials and employees, or interference with government operations are permanently ineligible to vote.¹⁰

Among the other states with permanent bans on ex-felons voting, in four states voting rights may only be restored through an individual petition or application. Those states are Florida, Iowa, Kentucky, and Tennessee.

Similar to Tennessee, voting rights restoration in five states is dependent on the type of conviction and/or the outcome of an individual petition or application for clemency. Those states are Alabama, Delaware, Mississippi, Nevada, and Wyoming.

In Arizona voting rights restoration is dependent on the number of convictions (more than one felony), and the right to vote can be restored through a judge if pardoned as well as by the Governor.

In Alabama, there is a permanent ban for impeachment, murder, rape, sodomy, sexual abuse, incest, sexual torture, enticing a child to enter a vehicle for immoral purposes, soliciting a child by computer, production of obscene matter involving a minor, production of obscene matter, parents or guardians permitting children to engage in obscene matter, possession of obscene matter, possession with intent to distribute child pornography, or treason. In Delaware the permanent ban is for murder, manslaughter, sex offenses, or offenses against public administration.¹¹

⁹ The other two states are Missouri and Nebraska. See Table 2, Note 1.

¹⁰ Tenn. Code Ann. § 40-20-112 and 40-29-202.

¹¹ Table 1 and Appendix 2.

Table 1: Restrictions on Voting Rights for Ex-Felons in States with Lifetime Bans¹²

Board of Parole/Probation Restores Voting Rights	Executive Pardon Restores Voting Rights	County Board of Elections Restores Voting Rights
Alabama ¹	Arizona	Delaware ¹
Tennessee ¹	Florida	
Wyoming ²	Iowa	
	Kentucky	
	Mississippi	
	Nevada	
	Tennessee ¹	
	Virginia	

Source: Tennessee Advisory Committee.

Note 1: In Alabama, Delaware, and Tennessee there is a permanent ban on voting for certain offenses.

Note 2: In Wyoming, the Board of Parole may restore voting rights only for first-offenders.

In Mississippi ex-felons are banned for life from voting, but under the state's Constitution may have their voting rights restored by executive pardon or by a vote of two-thirds of both legislative houses.¹³ In Iowa, Kentucky, Nevada and Virginia, the Governor has executive power to grant clemency.¹⁴

In Florida the Governor and Cabinet collectively comprise the Clemency Board, which has the authority to grant executive pardons.¹⁵ In Alabama and Nevada the states' correctional system has the authority to grant clemency, while in Delaware the local Board of Elections is vested with the power.¹⁶

¹² See Appendix 2 for statutory sources.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

Table 2: Restrictions on Voting Rights for Ex-Felons in States without Lifetime Bans¹⁷

No Prohibitions On Voting	Incarcerated Individuals Can Not Vote	Incarcerated Individuals and Persons on Parole Can Not Vote	Ex-Felons Prohibited from Voting Until Sentence is Fully Complete	Prohibited From Voting Until Specified Years Have Elapsed After Sentence
Maine	Hawaii	California	Alaska	Nebraska ¹
Vermont	Illinois	Colorado	Arkansas	
	Indiana	Connecticut	Georgia	
	Massachusetts	New York	Idaho	
	Michigan		Kansas	
	Montana		Louisiana	
	New Hampshire		Maryland	
	North Dakota		Minnesota	
	Ohio		Missouri ¹	
	Oregon		New Jersey	
	Pennsylvania		New Mexico	
	Rhode Island		North Carolina	
	Utah		Oklahoma	
			South Carolina	
			South Dakota	
			Texas	
			Washington	
			West Virginia	
			Wisconsin	

Source: Tennessee Advisory Committee.

Note 1: In Missouri, persons convicted of either felony or misdemeanor offenses connected with the exercise of the right of suffrage are permanently disqualified from voting. In Nebraska, persons convicted of treason are permanently disqualified from voting.

In 13 states, former felons are allowed to vote as soon as they are released from prison. In four states, California, Colorado, Connecticut, and New York, ex-felons may vote after they are no longer incarcerated but only after they have completed all terms of their parole. In 19 states there is a similar restriction, extending until all terms of the sentence including parole have been completed, e.g., restitution, community service.¹⁸

¹⁷ See Appendix 1 for statutory sources.

¹⁸ Table 2.

III. EX-FELONS BANNED FROM VOTING IN TENNESSEE

A. State Ex-Felon Disenfranchisement Rooted in 1835 Constitution

The first Constitution of the state of Tennessee was written in Knoxville during the winter of 1796, the year the state was created from the geographic area known as the Southwest Territory. Rather than being put before the state's citizens for adoption and ratification, it was approved by Congress. The first constitution embedded virtually complete control of state government to the legislative branch, thus undercutting the established principle of "balance of power" at the federal level. This fact and others led to the call for a constitutional convention to revise the state's Constitution.¹⁹

The state's second constitutional convention met in Nashville during the spring of 1834. Stemming from the convention, a new constitution was approved and ratified by a vote of the citizens in March 1835. Unlike the state's first Constitution, which was silent on voting rights for ex-felons, article I, section 5, of the new constitution introduced the state ban on voting for persons convicted of a felony.²⁰ The new constitution separately barred almost all African American citizens from voting.²¹

The 1835 Constitution would remain intact until 1870, when following the Civil War delegates met in 1869 to amend the constitution to allow for Tennessee to re-enter the Union. The state's third constitution was ratified by the people in 1870. The 1870 constitution stood unchanged until 1953, when it was first amended. Further amendments followed in 1960, 1966, 1978, 1998, and 2006.²² From 1835 through the amended constitution in 1869 and subsequent amendments, the ex-felon voting provision has remained ensconced and unchanged.

¹⁹ Tennessee Blue Book, 2011-12, p. 536.

²⁰ Although the Committee did not conduct historical research, at least one commentator noted that freed slaves could vote in Tennessee prior to the 1834 second constitutional convention. These changes were ratified in 1835, and that the period was marked by anti-Black sentiments sweeping the region following the 1831 Virginia slave rebellion. See "Introduction: *A Profile of African Americans in Tennessee History*," <http://library3.tnstate.edu/library/DIGITAL/document.htm>.

²¹ 1834 TENN. CONST., art. 4, sec. 1.

²² Tennessee Blue Book, 2011-12, p. 536.

B. Statutory History

Tennessee's constitutional ban on voting by ex-felons is implemented through statutes. Under the current statutes, a felony conviction suspends the right to vote, hold public office, serve on a jury, and possess a firearm.²³ Those state statutes allow certain felony offenders to apply to the Board of Probation and Parole for voting restoration upon completion of sentence.²⁴ All convicted felony offenders are ineligible to vote while incarcerated, on parole, or on probation. Individuals convicted of a felony since 1981 may apply to the Board of Probation and Parole to have their voting rights restored once their sentence is completed.²⁵

All court-ordered restitution must be paid, and a convicted person must also be current in child support obligations. Felons must also secure signatures to a Certification of Restoration that then must be approved by the State Election Commission (see below). Once they have met the criteria, like all other citizens, former felons must obtain a government issued ID in order to vote.

But persons convicted of certain other felony offenses including murder, rape, treason, sexual offenses involving a minor victim, voter fraud, bribery, misconduct involving public officials and employees, or interference with government operations are permanently ineligible to vote.²⁶

C. How the Current Statute Operates

In 2006, after targeted legislative advocacy and broad organizational and bipartisan support, Public Chapter 860 was enacted into law. The intent of the new legislation was to require administrators of elections to enter persons on the voter rolls upon verification of their

²³ TENN. CONST. art. 1, § 5; TENN. CODE ANN. §40-20-112 (West 2012).

²⁴ TENN. CODE ANN. § 40-29-202.

²⁵ Although the process for restoration prior to 1981 was not part of the Committee's examination, it appears that from the first enacted statutes in 1851 and 1858 through 1981, restoration of the rights of citizenship was by petition to the circuit court after 3 years from conviction (or 6 months for lesser crimes) upon a showing of good character (honesty, respectability and veracity), among other things. *See* Code 1858, §1994 (deriv. Acts 1851-1852, ch. 30, §1); Shan., §3635; Code 1932, §7183.)

²⁶ *Id.* § 40-29-204. Specifically, voting rights may not be restored if a person has been convicted of one of the following felonies (during the specified time period): (1) first-degree murder (*if convicted between July 1, 1986 and July 1, 1996 or if convicted after July 1, 2006*); (2) aggravated rape (*if convicted between July 1, 1986 and July 1, 1996 or if convicted after July 1, 2006*); (3) treason (*if convicted after July 1, 1986*); (4) voter fraud (*if convicted after July 1, 1986*); (5) any degree of murder (*if convicted after July 1, 1996*); (6) any degree of rape (*if convicted after July 1, 1996*); (7) offenses against administration of government, i.e., bribery, misconduct of a public official, and interference with government operations (*if convicted after July 1, 2006*); and (8) any sexual offense or violent sexual offenses designated as a felony where the victim was a minor (*if convicted after July 1, 2006*).

certificates of restoration, and also require the person receiving a certificate of restoration to pay all costs associated with the restoration process. An additional intent of the legislation was to encourage sentencing courts, the department of correction, and the board of probation and parole to require their officials to explain citizenship restoration procedures to non-violent offenders who are being release or discharged.²⁷

If determined to be eligible, there is then a multi-step process that the ex-felon must initiate to regain his/her right to vote. The process obligates the ex-felon to:

- (1) secure a form called a *Certificate of Restoration*;
- (2) have the *Certificate of Restoration* signed by his/her probation or parole officer, or other incarcerating or pardoning authority, certifying that all probation and parole requirements have been completed;
- (3) have the *Certificate of Restoration* signed by the Circuit or Criminal Court Clerk, or his or her agent, certifying that all court-ordered restitution has been paid in full; and
- (4) return the completed *Certificate of Restoration* to the local election commission.

After the signed and competed *Certificate of Restoration* has been presented to the local election commission, local and state election officials must take three actions on each presented and signed *Certificate of Restoration*.

- (1) The local election commission sends the *Certificate of Restoration* to the state election commission office to certify that all court-ordered child support payments are current and that the *Certificate of Restoration* has been completed correctly and fully.
- (2) The state election commission office in turn sends notice to the local election commission office certifying that the *Certificate of Restoration* has been approved or denied.
- (3) the local election commission sends a letter to the individual that informs the ex-felon that his/her *Certificate of Restoration* has been approved or denied.

When the *Certificate of Registration* is approved, the individual must return to the local election commission to complete a voter registration form.

²⁷ TN. B. Summ., 2006 Reg. Sess. S. B. 1678.

D. Criticism of the Current Statute

The restoration process has drawn criticism. Reporting on the issue, the ACLU of Tennessee charged that most election officials do not know or understand the law. Further, the multiple requirements for eligibility are extremely burdensome on the applicant and on relevant state agencies. As such, the process often acts to deter many who could be eligible to vote from doing so. In addition, the ACLU reported inconsistency on the part of state and local officials regarding the notification of individuals with felony convictions as to when they were disenfranchised as well as to when they were returned to the voting rolls.²⁸

In conducting its study, the ACLU surveyed all 95 local election commission officials to learn the level of knowledge and understanding of the requirements for registering to vote those individuals with a felony conviction. The intent of the study was to ascertain whether the staff of each election commission office understood and could explain to formerly incarcerated individuals the steps they must take to register to vote.

The survey found that local election officials, whose job it is to assist eligible individuals to register, had difficulty understanding and accurately applying the state's disenfranchisement policies. According to the ACLU, "although the State Election Commission was informed of the impending survey and every local office received written notification, there were an alarmingly high number of incorrect, inaccurate, and incomplete answers."²⁹

The Committee also heard concerns about procedural barriers to restoration from several sources, including a legislative leader³⁰, an ex-felon³¹, and an attorney with years of experience in assisting numerous eligible ex-felons in obtaining re-enfranchisement.³² Such concerns included, among others, the lack of access to court records necessary to establish compliance with restitution requirements and those relating to financial hardship in having to pay accumulated child support prior to seeking re-enfranchisement. In addition, there are a number of

²⁸ ACLU of Tennessee, *Addressing Barriers to the Ballot Box: Registering to Vote in Tennessee with a Past Felony Conviction*, Executive Summary (September 2008).

²⁹ *Ibid.*, p. 6.

³⁰ Senate Minority Leader Jim Kyle, interview in Nashville, TN, Dec. 19, 2012.

³¹ Alex Friedmann, associate director, Human Rights Defense Center, letter to Tennessee Advisory Committee, Jan. 28, 2013.

³² Charles K. Grant, interview in Nashville, TN, Jan. 29, 2013.

empirical studies that offer some support for the view that policies that facilitate the reintegration of ex-felons help reduce the rate of recidivism.³³

Addressing such concerns, the Tennessee Advisory Committee discussed the issue with Mark Goins, Elections Coordinator for the State of Tennessee. Mr. Goins noted that although there have been discussions about the Tennessee law in his office, such discussions for the most part deal with issues of legal compliance.³⁴

Mr. Goins told the Committee that the Tennessee felon voting rights law was amended in 2006 to add new categories of felony convictions that would confer lifetime ineligibility on certain felons for offenses including sexual crimes against children and government official misconduct while in office. The new law also provides some streamlining of the restoration process. He noted that after the changes to the law in 2006, more individuals seeking the restoration of their voting rights were denied—for instance in 2007 and 2008—than had been denied during earlier periods. According to data supplied by his office, more individuals also saw their voting rights restored in 2008 and 2009 than during earlier periods.

Asked about the number of people who seek restoration through his office, Mr. Goins responded that local offices see a lot of foot traffic and that in addition paperwork is forwarded by probation officers. He noted that there are two avenues through which ex-felons may have their voting rights restored. One is through the Elections Office; and a second avenue is through the court system.³⁵

He said that his agency had the highest number of requests to restore voting rights in 2008. In his opinion, this was prompted by a coordinated push by organizations to get residents registered during that year's presidential election. Although his office prepared for a similar increase in petitions for 2012 by conducting across-the-board training, the organization-backed push did not materialize during that election cycle.³⁶

³³ Manza, Jeff and Christopher Uggen in *Civil Penalty, Social Consequence* (Routledge, 2005), pp. 78 and 83 wherein the authors state that “criminologists and sociologists have long noted the rehabilitative potential for deviant decertification or reintegrative ceremony [and conclude] that although there is no systematic body of evidence, early studies suggest that facilitating civic reintegration of offenders will ultimately hasten their desistance from crime.” See also B. Miller, “Civil Death: An examination of ex-felon disenfranchisement and reintegration,” *Punishment & Society Journal*, vol. 14, no. 4 (October 2012), pp. 402-428, wherein the author finds “that for a significant number of ex-felons losing voting rights poses obstacles to successful reintegration.”

³⁴ Mark Goins, elections coordinator for the State of Tennessee, interview in Nashville, TN, Jan. 15, 2013.

³⁵ Ibid.

³⁶ Ibid.

When asked to clarify reasons that restoration applications are sometimes denied, Mr. Goins noted that there are no subjective criteria for voter restoration. Specifically, the staff in this office only see the end of the paperwork process, i.e., the Certificate of Restoration. That form is typically completed in the field by parole or probation officers or correctional facility staff.

Nevertheless and although his office does not therefore have specific information about that part of the process, Mr. Goins said he does not believe that there is any reason for concern about whether ex-felons are being properly advised about the process for restoration of voting rights. He acknowledged that while he has heard complaints about the complicated process from persons not directly affected such as persons paid per registration form, he has not heard complaints from former felons on this point. Moreover, he added that according to press reports following a 2009 review of voting records covering a period of 10 to 20 years, thousands of ineligible felons were found on the voting rolls due to inaccurate filling out of forms—although only about 20 percent had actually voted.³⁷

Table 3: Number of Ex-Felons in Tennessee whose voting rights have been restored, by year: 2000 – 2012

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Number	137	135	523	340	577	299	502	543	2,483	682	729	373	921

Source: Tennessee Election Commission

Regarding a possible disparate impact on minority voters, Mr. Goins said it is difficult to determine with accuracy. He explained that while there is an option to indicate race on voter registration forms in the State, many applicants simply choose to not provide the information. There is a similar situation with respect to restoration. The Elections Office does not know about the racial demographics of voting restoration applicants because it does not seek data on race in connection with voter rights restoration. He explained that the felon voting rights restoration form, which was updated in 2011 and again in 2012, does not have a box to indicate race. So such information on race is not collected.³⁸

E. An Estimated 160,000 Persons Disenfranchised in Tennessee

Estimates vary on the number of disenfranchised ex-felons in the state. For example, the Sentencing Project reports that as many as 247,808 ex-felons were disenfranchised in the state

³⁷ Ibid.

³⁸ Ibid.

from 1990 to 2010.³⁹ The ACLU in its report on ex-felon disenfranchisement in the state gave an estimate of 94,000 persons.⁴⁰

The Tennessee Advisory Committee independently estimates that approximately 160,000 former offenders in the state may be disenfranchised. To obtain its estimate, the Committee acquired the number of persons released from Tennessee prisons for the 30-year period, 1981—2010. The Committee then obtained recidivism rates from the Tennessee Department of Corrections. Adding the number of released ex-felons over the last 30 years and controlling for recidivism, the Tennessee Advisory Committee estimates 161,361 persons are currently disenfranchised in the state. (A detailed description of the methodology used by the Committee to obtain its estimate is set out in the Technical Notes to this report.)

IV. TENNESSEE'S EX-FELON VOTING BAN CHALLENGED IN FEDERAL COURT

Generally, the United States Constitution permits the disenfranchisement of ex-felons.⁴¹ This permission is explicitly expressed in Section 2 of the 14th Amendment and has been affirmed by the United States Supreme Court in *Richardson v. Ramirez*.⁴² Nevertheless, in its opinion in *Hunter v. Underwood*⁴³, the Supreme Court found that the Alabama Constitution's criminal disenfranchisement provision passed in 1901 was motivated by racially discriminatory intent, and as the law would not have been enacted at that time without the racially discriminatory intent it therefore violated the Equal Protection Clause. In *Hunter* (Rehnquist, J.), the Court held that irrespective of intervening events since enactment, where a law's original enactment was impermissibly motivated by a desire to discriminate on account of race and continuing racially discriminatory impact of the laws is demonstrated, equal protection is violated.⁴⁴

Convicted felons Terrence Johnson, Jim Harris, Alexander Friedmann, and Joshua Roberts brought suit in 2008 against state and local officials seeking to invalidate portions of the Tennessee Code enacted in 2006 that conditioned the restoration of their voting rights upon their

³⁹ Jeff Manza, Sarah Shannon, and Christopher Uggen, *State-Level Estimates of felon Disenfranchisement in the United States, 2010*, The Sentencing Project, July 2012, p. 14.

⁴⁰ Citing Uggen and Manza, *Locked Out: Felon Disenfranchisement and American Democracy*, pp. 248-250.

⁴¹ U.S. CONST. 14TH AMENDMENT, § 2.

⁴² 418 U.S. 24, 54 (1974).

⁴³ *Hunter v. Underwood*, 471 U.S. 222 (1985).

⁴⁴ *Id.*

payment of certain financial obligations, namely restitution and child support. The plaintiffs sought both declaratory and injunctive relief.

The court held that: (1) the ex-felon voting provision was subject to rational-basis review; (2) the provision did not create a suspect classification; (3) the provision did not violate equal protection; (4) the provision did not violate the 24th Amendment; and (5) the provision did not violate the Ex Post Facto Clause.

On appeal, the plaintiffs claimed that the district court erred in rejecting their challenges under the United States and Tennessee Constitutions. The plaintiffs argued that the district court erred by testing their equal protection challenge using the rational basis test, rather than strict scrutiny, because the re-enfranchisement statute: (1) burdens their fundamental right to vote; and (2) improperly discriminates against the indigent. Reviewing the case *de novo*, the Sixth Circuit affirmed the ruling by the district court in a two to one decision.⁴⁵

V. PUBLIC OFFICIALS OFFER THEIR OPINIONS REGARDING EX-FELON VOTING RIGHTS

The Tennessee Advisory Committee formally solicited opinions on the state's ex-felon statute from the Lieutenant Governor Ron Ramsey, Senate Minority Leader Jim Kyle, and House Minority Leader Craig Fitzhugh.⁴⁶

A. Lieutenant Governor Ron Ramsey

In speaking to the issue of ex-felon voting rights, Lt. Governor Ron Ramsey said that in his view there are certain felonies where one loses a privilege and does not get it back, but it is not something upon which he could make a blanket statement. Rather, it might be appropriate to consider the matter on a case-by-case basis for lesser felonies. For example, a person could go before a judge or parole board to get his or her right to vote restored.⁴⁷ He noted by way of example that a 1970s offense for marijuana might not be appropriate for loss of voting rights.

Asked whether in his view the public policy behind the law is to discourage crime, the Lt. Governor said he did not think that taking away people's voting rights serves as a deterrent to

⁴⁵ Terrence Johnson, Jim Harris, and Joshua Roberts, Plaintiffs—Appellants, v. Phil Bredsen, Governor of the State of Tennessee 624 F3d 742 (6th Cir., 2010). (Alexander Friedmann was not involved in the appeal.)

⁴⁶ In addition to the interviews cited in this report, during the open comment period the Committee received and considered opinion from organizations and private individuals.

⁴⁷ Ron Ramsey, Lieutenant Governor, State of Tennessee, interview in Nashville, TN, Dec. 13, 2012.

crime in any way. “When people are thinking about committing a felony, they do not stop and think about the punishment.”⁴⁸

Asked whether the reintegration of ex-felons into society has a role to play in considering the issue of voting rights restoration, the Lt. Governor generally agreed that this is a valid consideration. He emphasized, though, that any such return of voting rights should only occur in cases where the ex-felon has earned it. By way of example, he suggested that earning it might require that a person wait three or five years before getting back the right to vote. He explained that requiring ex-felons to earn back the right to vote provides the individual with an incentive to pursue rehabilitation.⁴⁹

Asked about recent changes to the law adding certain offenses that fall within the lifetime ban, (for example, certain sex crimes); the Lt. Governor stated that he did not know the reason behind it. Also asked about the justification to extend the loss of voting rights beyond the time spent in jail, the Lt. Governor said that in his opinion “it depends on what you do.” He noted, “a violent crime using a firearm is clearly one thing; but which specific felonies are or are not applicable to losing the right to vote after time spent in jail was not on [his] radar screen.”⁵⁰

Asked whether politics or race played a role behind taking away felons’ voting rights, the Lt. Governor maintained the current policy has nothing to do with party politics or race. He stressed that “the thought of either playing a role had never entered [his] mind” Essentially, when all is said and done, the rationale for the current Tennessee law is simply punishment.⁵¹

B. Senate Minority Leader, Jim Kyle

Senate Minority Leader Jim Kyle was informed that the Committee was examining whether the current ex-felon statute in Tennessee unfairly denies the right to vote on the basis of race, color, religion, gender, national origin or disability. Senator Kyle was asked about recently sponsored bills that carried permanent lifetime voting bans for certain felonies.⁵²

Senator Kyle explained that all bills relating to voting laws must go through the Senate and House committees on State and Local Government. As to recent legislation adding certain crimes

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Senator Jim Kyle, interview in Nashville, TN, Dec. 19, 2012.

to the permanent disenfranchisement list, he surmised that someone had asked the chairs of these committees to sponsor the bills and noted that such a request might well have come from the District Attorney General's Conference, the association of District Attorney Offices throughout the State of Tennessee. The Senator also added that he was "not familiar with any debate on the bills," nor did he "know what problem the bills were trying to fix." He surmised that, if asked, his legislative colleagues likely would take the position that "some crimes are lifetime events and they should have a lifetime reminder that what they did is wrong, and we should not pretend otherwise." He referred to it as "a question of policy." As to his personal view on the subject, the Senator indicated that he did not have a view.⁵³

Asked about disproportionate impact of the ex-felon voting ban on African American males in Tennessee, Senator Kyle said he recognized that fact, and he later noted that no one in the legislature ever would say that the issue of the ex-felon voting rights ban was one of race. He said that, more than race, it is a cultural discrimination or bias that is in play based on such things as socioeconomic factors and the rural-urban divide. To that, he added that the Tennessee Advisory Committee should think more about the barriers making it difficult to vote rather than the disproportionate number of people being affected. He later referred to available statistics on disenfranchisement, stating that in Tennessee 16 percent of the population is African American, while African Americans comprise 40 percent of those Tennesseans who are not allowed to vote. He noted that there is a disparity as to who is in prison as well.

The Senator said that in his view the fact that there is statistical evidence that the ex-felon provision has a disproportionate impact on minority voters would likely not be persuasive in the Tennessee legislature. He emphasized instead that the more important question to consider with respect to voting should be the "extraordinary walls" that get created "to prohibit people from obtaining voting restoration." Sen. Kyle noted that wealthy people always will be in a position to have their rights restored, and he stressed that the question that should be getting attention is the procedural issue as to getting voting rights restored.⁵⁴ To this, he recounted an instance of a person in Shelby County who attempted to register to vote while ineligible. That person was actually prosecuted, even though there was a real question about whether the person had knowledge of the ineligibility.⁵⁵

Asked whether the reintegration of ex-felons into society has a role to play in considering the issue of voting rights restoration, Senator Kyle stated that he understood the position. He stressed that his focus is on the "mechanism to rehabilitation." In other words, he believes that the focus

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

should be on finding an economical way or method for the restoration of rights. He suggested that groups and citizens concerned about this issue should look at other states to determine what they do, i.e., what kinds of persons do other states allow to seek rehabilitation and what are some of the efficient and appropriate ways other states have developed to allow people to restore their rights. He noted that “in Memphis there is much discussion of the issue because the law probably affects more people there than elsewhere in the state.”⁵⁶

When asked about the policy reasons to extend the loss of voting rights beyond the time served in jail, Senator Kyle explained that “most Tennessee legislators do not believe [felons] have served their time.” Rather, he added, they believe that felons are simply “let out early due to space constraints.” He indicated that if someone has only served 30 or 40 percent of their sentence, those in the Tennessee legislature “don’t think they’ve done their time.” Taking away voting continues the punishment.⁵⁷

C. House Minority Leader, Craig Fitzhugh

At the outset of the interview, House Minority Leader Craig Fitzhugh informed members of the Tennessee Advisory Committee that there had been a recent change in Tennessee law regarding expunging certain criminal records in order to enhance the ex-prisoner’s ability to obtain gainful employment, thereby facilitating and promoting the successful reintegration of released inmates into society as law-abiding and productive citizens. Asked for his views on the subject, Representative Fitzhugh stated that in his view once a person has served his sentence, paid restitution, completed any period of parole, etc., at that point the individual has “paid for his crime” and should be provided with a process by which to have his voting rights restored. He expressed his agreement with the sentiment, “if society is willing to put you back into society, why not let you vote.”⁵⁸

Asked his position on the current status of ex-felon voting rights in the state, Representative Fitzhugh said that in his view there should be—as a general rule—no impediments to restoration of voting rights once a person has paid his or her debt to society and has shown that they wish to be reintegrated into society. He added, however, that he understood there might be exceptional circumstances. For example, there might be repeat offenders who, as a practical matter due to repeat convictions, have imposed on them what is tantamount to a lifetime ban.⁵⁹

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Representative Craig Fitzhugh, interview in Nashville, TN, Dec. 6, 2012.

⁵⁹ Ibid.

Asked about voter fraud and whether it rose to the sort of crime that should be distinguished as appropriate for permanent disenfranchisement, Representative Fitzhugh first noted that the term “voter fraud is a broadly construed term these days.” To some, the term might encompass such disparate conduct as an individual showing up at the wrong polling place without proper ID. To another, the term might only apply to the serious matter of someone seeking to fraudulently change the outcome of an election. Therefore, it was his opinion that, instead of making distinctions between types of crimes, he would rather treat crimes of similar severity the same. And the severity of the crime would be determined by the category of crime; for example a Class A felony would be treated as any other Class A felony.⁶⁰

Asked about initiatives to reform or amend ex-felon voting laws in the state, Representative Fitzhugh stated that he did not believe there would be any changes [reform] in this area of the law in Tennessee in the coming legislative sessions.⁶¹

When asked about the ex-felon voting ban issue as it relates to race, Representative Fitzhugh said that in his view race was a factor. He indicated that he thought it was a fair assessment to link ex-felon disenfranchisement with political efforts tending toward voter suppression, and he agreed as well with the view that voting on “tough on crime bills” tends to be bi-partisan in nature. The Leader concluded by emphasizing his views that once one has paid his or her debt to society, he or she should be able to vote, a basic right, and that barring persons from voting treats them as “second class citizens.” People “should not have to jump through hoops” to be able to exercise their right to vote, he added.⁶²

VI. FINDINGS AND RECOMMENDATIONS

The following findings and recommendations made through the U.S. Commission on Civil Rights to state and local officials are submitted in accordance with the provisions of Section 703.2(e) of the Commission’s regulations calling upon Advisory Committees to “initiate and forward advice and recommendations to the Commission upon matters which the State Committee has studied.”⁶³

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ The findings and recommendation were adopted by a vote of 9 yes and 0 no at a meeting of the Tennessee Advisory Committee in Nashville, TN, on April 21, 2014. Members Nika Jackson, Jason Johnson, and Mary Howard-Hill were not present at the meeting.

Findings

1. Current Tennessee disenfranchisement law is one of the most restrictive in the United States. Tennessee is one of eleven states with a lifetime ban, one of five states that make certain ex-felons permanently ineligible from ever seeking restoration of voting rights, and one of three states that apply this permanent ineligibility to multiple offenses.
2. Since 1981 there have been several amendments to the Tennessee disenfranchisement statute that have tended to expand the scope of ex-felon disenfranchisement. These amendments have been supported by law makers from both major political parties.
3. While reportedly there is evidence that in the early 20th Century felon disenfranchisement laws were motivated by a desire to keep African Americans from voting, the Committee is not in a position to make any findings regarding motivation for the several recent changes to the ex-felon disenfranchisement statutes. The Committee only notes that while considerations of race, socio-economic status, and the rural-urban cultural divide were mentioned, the more common suggestion was that such laws seek to impose additional punishment for committee crimes. Any consideration of motive would need further study, and as such is not part of this report
4. The Committee finds evidence of disparate impact on African Americans as a result of the state's ex-felon voting rights ban. As African Americans make up nearly one-half of the prison population but only about 17 percent of the state's population, the operation of the Tennessee statute tends to have a disproportionate impact on African Americans vis-à-vis other races.
5. The Committee also learned of concerns regarding procedural and other obstacles to re-enfranchisement, including, among others, the lack of access to court records necessary to establish compliance with restitution requirements and those relating to financial hardship in having to pay accumulated child support prior to seeking re-enfranchisement.

Recommendation

The Committee suggests that the Tennessee General Assembly and Governor consider the experiences of other states that have ex-felon disenfranchise statutes that are less restrictive in their application and remove unnecessary barriers to voting rights restoration in order to promote the reintegration of ex-felons into society after they have served their sentences.

Laws that promote the reintegration of ex-felons into society may further the important public policy of discouraging recidivism and of encouraging ex-felons to become productive citizens of society—benefits that accrue to all Tennesseans.

TECHNICAL NOTES

The Tennessee Advisory Committee's estimate for the number of persons disenfranchised as a result of the state's ban on ex-felon voting was computed in the following manner.

1. The Tennessee Advisory Committee obtained the number of persons released from Tennessee prisons for the 30-year period, 1981—2010. Those numbers are shown in Table T1.

Table T1: Number of Felons Released from Tennessee Prisons for 30-Year Period: 1981-2010

1980-81	2,869	1986-87	5,663	1992-93	9,285	1998-99	12,683	2004-05	13,043
1981-82	3,213	1987-88	6,342	1993-94	8,559	1999-00	12,595	2005-06	14,289
1982-83	3,599	1988-89	7,103	1994-95	9,298	2000-01	12,508	2006-07	14,349
1983-84	4,031	1989-90	7,956	1995-96	11,039	2001-02	13,144	2007-08	15,567
1984-85	4,514	1990-91	8,175	1996-97	12,870	2002-03	12,568	2008-09	15,430
1985-86	5,056	1991-92	9,146	1997-98	12,624	2003-04	12,953	2009-10	15,144

Source: Tennessee Advisory Committee from Tennessee Department of Corrections data.

2. The Tennessee Advisory Committee obtained from the Department of Corrections the recidivism rates for felons released between 2001 and 2007. The 4+ year, 5-year recidivism rates from 2001 to 2004 are: 2001, 57.4; 2002, 55.9; 2003, 54.5; 2004, 51.3. The recidivism rates for the 3-year period 2005 to 2007 are; 2005, 46.4; 2006, 39.8; 2007, 25.5. The rates from 2005 to 2007 are declining because they only capture recidivism rates for 1, 2, and 3 years out of prison. As a result, as 2010 is 4+ years for 2005, 2006, and 2007 are estimated at 0.5; the recidivism rate for 2008 at 46.4; for 2009 at 39.6; and for 2010 at 25.5. Using the 4+ recidivism rate between 2001 and 2004 as a high estimate, an estimated recidivism rate of 0.5 was used as an estimated recidivism rate for the years 1991 – 2000. To account for double counting, an estimated recidivism rate of 0.3 was used for the years 1981-1990.
3. The recidivism rate was multiplied against the release rate to determine an estimate for each year of the number of released felons who did not return to prison. Those numbers are shown in Table T2.

Table T2: Estimate of Number of Released Felons from Tennessee Prisons Who Have Not Returned to Prison for 30-Year Period: 1981-2010

1980-81	2,008	1986-87	3,964	1992-93	4,643	1998-99	6,342	2004-05	6,352
1981-82	2,249	1987-88	4,440	1993-94	4,280	1999-00	6,298	2005-06	7,145
1982-83	2,519	1988-89	4,972	1994-95	4,649	2000-01	6,254	2006-07	7,175
1983-84	2,821	1989-90	5,569	1995-96	5,520	2001-02	5,599	2007-08	8,344
1984-85	3,160	1990-91	4,088	1996-97	6,435	2002-03	5,542	2008-09	9,320
1985-86	3,539	1991-92	4,573	1997-98	6,312	2003-04	5,894	2009-10	11,358

Source: Tennessee Advisory Committee from Tennessee Department of Corrections data.

4. The estimated number of released felons from Tennessee prisons who did not return to prison over the 30-year period, 1981—2010, were summed. That total is 161,361, and is the Committee’s estimate of persons currently disenfranchised in the state.⁶⁴

⁶⁴ Other estimates on the number of ex-felons disenfranchised in the state vary. For example, as previously reported *supra* notes 19 and 20 other estimates range from 94,000 to 247,000 as to the number of persons disenfranchised in the state.

APPENDIX 1: RESTRICTIONS ON VOTING RIGHTS FOR EX-FELONS IN STATES WITHOUT LIFETIME BANS

No Prohibitions on Voting⁶⁵

<i>Maine</i>	ME. REV. STAT ANN tit 21(A) § 112(14) Persons incarcerated in correctional facilities. Maine's statute restricting voter eligibility of convicted felons was repealed by the legislature in 1975. <i>See</i> ME. REV. STAT. ANN. tit. 21, § 247 (2011).
<i>Vermont</i>	17 V.S.A. § 2121. Eligibility of voters. VT. STAT. ANN. tit. 28, § 807 (2012).

Incarcerated Individuals Can Not Vote⁶⁶

<i>Hawaii</i>	Haw. Const. art. 2, § 2.
<i>Illinois</i>	Ill. Const. art. III, § 2; 10 Ill. Comp. Stat. Ann. 5/3.5 (West 2012); 730 Ill. Comp. Stat. Ann. 5/5-5-5(c) (West 2012).
<i>Indiana</i>	Ind. Const. art. 2, § 8; Ind. Code §§ 3-7-13-4 to -6 (2012).
<i>Massachusetts</i>	Mass. Const. art III; MASS. GEN. LAWS ANN. ch. 51, § 1 (West 2012).
<i>Michigan</i>	Convicted felony and misdemeanor offenders are disqualified from voting while confined in jail or prison. MICH. CONST. ART 2, § 2; MICH. COMP. LAWS § 168.758b (2012).
<i>Montana</i>	Mont. Const. art. IV, § 2; MONT. CODE ANN. § 13-2-402. Reasons for cancellation. (voter registration).
<i>New Hampshire</i>	N.H. Rev. Stat. Ann. §§ 607-A:2(I)(a), 654.5 (2012).
<i>North Dakota</i>	N.D. Const. art II, § 2; N.D. Cent. Code Ann. §§ 12.1-33-01, -03 (West 2012).
<i>Ohio</i>	Ohio Const. art. 5, § 4; Ohio Rev. Code Ann. § 2961.01(A) (West 2012).
<i>Oregon</i>	Or. Const. art II, § 3; Or. Rev. Stat. § 137.281 (2012).
<i>Pennsylvania</i>	The Pennsylvania Elections Statute provides that a convicted felony offender who has been confined in a penal institution for within the last five years is not

⁶⁵ As reported in Table 1.

⁶⁶ *Ibid.*

eligible to register to vote. 25 PA. CONS. STAT. § 1301(a) (2012). However, in *Mixon v. Com.*, 759 A.2d 442 (Pa. Commw. Ct. 2000), *aff'd*, 783 A.2d 763 (Pa. 2001), this provision was ruled unconstitutional. The court held that there was no rational basis for precluding these offenders from registering to vote when those who were legally registered prior to incarceration could vote upon their release. *Id.* at 451. Accordingly, only convicted felony offenders who are incarcerated on the date of a primary or general election are precluded from voting. See PENN. DEP'T OF STATE, VOTING RIGHTS OF CONVICTED FELONS, CONVICTED MISDEMEANANTS AND PRETRIAL DETAINEES 2, available at http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_160329_77_3092_0_0_18/Convicted_felon_brochure.pdf.

- Rhode Island* R.I. Const. art 2, § 1; R.I. Gen. Laws Ann. § 17-9.2-3 (West 2012).
- Utah* Utah Const. art IV, § 6; Utah Code Ann. §§ 20A-2-101(2)(b), -101.3, -101.5 (West 2012).

Incarcerated Individuals and Persons on Parole Can Not Vote⁶⁷

- California* Cal. Const. art. II, § 4; Cal. Elec. Code §§ 2201, 2212 (West 2012).
- Colorado* Colo. Const. art. 7, § 10; Col. Rev. Stat. § 1-2-103(4) (2012).
- Connecticut* Conn. Gen. Stat. Ann. § 9-45 (2012).
- New York* N.Y. Const. art. II, § 3; N.Y. Elec. Law §§ 5-106(2) – (5) (McKinney 2012).

Ex-Felons Prohibited from Voting until Sentence Is Complete⁶⁸

- Alaska* Alaska Const. art. 5, § 2; Alaska Stat. §§ 12.55.185(18), 15.05.030(a), 33.30.241 (2012).
- Arkansas* Ark. Const. art. 51, § 11(a)(4).
- Georgia* Ga. Const. art. II, § 1 para. (III)(a); Ga. Code § 21-2-216 (2012).
- Idaho* Idaho Const. art. VI, § 3; Idaho Code Ann. § 18-310 (West 2012).
- Kansas* Kansas Const. art. 5, § 2; Kan. Stat. Ann. §21-6613 (West 2012).
- Louisiana* La Const. art. I, § 10; La Rev. Stat. Ann. § 18:102 (2012).

⁶⁷ Ibid.

⁶⁸ Ibid.

- Maryland* Md. Const. art I, § 4; Md. Code Ann., Elec. Law § 3-102(b)(1) (West 2013).
- Minnesota* Minn. Const. art. VII, § 1; Minn. Stat. §§ 609.165(1), 201.014(2) (2013).
- Missouri* Convicted felony offenders are disqualified from voting while imprisoned or on probation or parole. MO. REV. STAT. § 115.133 (2011). Convicted misdemeanants are disqualified from voting only while imprisoned. *Id.* Those convicted of either felony or misdemeanor offenses “connected with the exercise of the right of suffrage” are permanently disqualified from voting. MO. CONST. art VIII, § 2.
- Nebraska* A convicted felon’s right to vote is restored automatically two years after completion of sentence, including period of parole and probation, for all convictions except treason. NEB. CONST. art. VI, § 2; Neb. Rev. Stat. §§ 29-112, 32-313 (2012).⁶⁹
- New Jersey* N.J. Const. art II, § 1(7); N.J. Stat. Ann. §§ 2C:51-3(a), 19:4-1(8) (2012). If disqualification from voting was imposed by the court as part of the punishment for a criminal violation of election laws, the right to vote can only be restored by pardon. *Id.* § 19:4-1(6), (7).
- New Mexico* N.M. Const. art. VII, § 1; N.M. Stat. Ann. § 31-13-1 (2012).
- North Carolina* N.C. Const. art. VI, § 2(3); N.C. Gen. Stat. §§ 13-1, 165-55(a)(2) (2012).
- Oklahoma* Okla. Stat. tit. 26, § 4-101(1) (2012).
- South Carolina* S.C. Const. art II, § 7; Imprisonment results in disqualification even if conviction is for a misdemeanor offense. S.C. CODE ANN. §§ 7-5-120(B)(2), (3) (2011).
- South Dakota* On March 19, 2012, South Dakota enacted H.B. 1247, which removes voting rights from convicted felons until completion of sentence. H.B. 1247, 87th Leg. Assemb., (S.D. 2012). This legislation amended the state’s statutes on Registration of Voters, which previously precluded from voting only those felony offenders currently incarcerated or on parole. S.D. CODIFIED LAWS § 12-4-18 (2011).

⁶⁹ Nebraska permanently denies the right to vote for persons convicted of treason. For persons convicted of other crimes, the right to vote is restored automatically two years after completion of sentence, including period of parole and probation.

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- Texas* Tex. Const. art. 6, § 1(3); Tex. Elec. Code Ann. § 11.002(4) (West 2013).
- Washington* Felony offenders must re-register to vote after completing all requirements of their sentence including period of probation and parole. WASH. CONST. art. VI, § 3. The right to vote is provisionally restored when the offender is discharged from the authority of the Department of Corrections, but may be revoked if the sentencing court determines that they have willfully failed to meet any legal financial obligations resulting from conviction. WASH. REV. CODE ANN. §§ 29A.08.520(1), (2) (West 2013).
- West Virginia* W. Va. Const. art. IV, § 1; W. Va. Code § 3-2-2(b) (2012).
- Wisconsin* Wis. Stat. § 6.03(1)(b) (2012).

APPENDIX 2: RESTRICTIONS ON VOTING RIGHTS FOR EX-FELONS IN STATES WITH LIFETIME BANS⁷⁰

- Alabama A person convicted of a “felony of moral turpitude” is disqualified from voting until his/her civil and political rights are restored. Ala. Const. art. VIII, § 177. Upon completion of sentence, a disqualified person may apply to the Board of Pardons and Paroles for a Certificate of Eligibility to Register to Vote, Ala. Code § 17-3-31 (2012), so long as he/she was not convicted of impeachment, murder, rape, sodomy, sexual abuse, incest, sexual torture, enticing a child to enter a vehicle for immoral purposes, soliciting a child by computer, production of obscene matter involving a minor, production of obscene matter, parents or guardians permitting children to engage in obscene matter, possession of obscene matter, possession with intent to distribute child pornography, or treason. *Id.* § 15-22-36.1(g).
- Arizona Ariz. Const. art. VII, § 2(c); Ariz. Rev. Stat. Ann. §§ 13-904(A)(1), 16-101(5) (2012). Voting rights for first-time felony offenders are automatically restored upon completion of sentence, as well as payment of any monetary fines or restitution. Ariz. Rev. Stat. Ann. § 13-912. All other offenders may apply for restoration of rights with the sentencing or discharging superior court judge. *Id.* § 13-905. The governor has the authority to grant pardons, except for convictions of treason or impeachment, but his authority may be restricted by statute. Ariz. Const. art. V, § 5; Ariz. Rev. Stat. Ann. § 31-443. Pardons must first be recommended by the Board of Executive Clemency. *Id.* § 31-402(A). The governor is required to publish reasons for each pardon and must report to the legislature at the beginning of each regular session. *Id.* §§ 31-445, 31-446.
- Delaware A convicted felon’s right to vote may be restored five years after completion of sentence and period of probation and parole upon application to the County Board of Elections. Del. Const. art. V, § 2; Del. Code Ann. tit. 15, § 6103-05 (West 2012). This provision does not apply to certain serious offenses including murder, manslaughter, sex offenses, or offenses against public administration. Del. Const. art. V, § 2.
- Florida Fla. Const. art. VI, § 4(a); *Id.* at art. IV, § 8(a); Fla. Stat. §§ 98.075, 944.292(a) (2012). The power to grant a pardon or restore civil rights following felony convictions for offenses other than treason or impeachment is vested in the

⁷⁰ As reported in Table 1.

- Governor, and requires approval of two members of the Cabinet. Fla. Stat. §§ 940.01, -05.
- Iowa Iowa Const. art. II, § 5; *Id.* at art. IV § 16; Iowa Code Ann. §§ 48A.6, 914.2 (West 2012). Executive pardon by the Governor restores voting rights of an ex-felon.
- Kentucky Ky. Const. §§ 77, 145(1). Executive pardon by the Governor restores voting rights of an ex-felon.
- Mississippi Disqualification from voting occurs only upon conviction by a state court of certain identified felonies including murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement or bigamy, Miss. Const. art. 12, § 241, as well as armed robbery, extortion, felony bad check, felony shoplifting, larceny, receiving stolen property, robbery, timber larceny, unlawful taking of a motor vehicle, statutory rape, and carjacking, *see* Op. Miss. Att’y. Gen. No. 2004-0171 (Karrem, Apr. 23, 2004). Voter eligibility may be regained by executive pardon, Miss. Code Ann. § 47-7-41 (West 2012), or by a two-thirds vote of both houses, Miss. Const. art. 12, § 253. Individuals disqualified from voting in the state remain eligible to vote in federal elections. *Id.* § 241.
- Nevada Nev. Const. art. 2, § 1. The right to vote is automatically restored to first-time offenders charged with most non-violent felonies following completion of sentence. Nev. Rev. Stat. §§ 155, 213.157 (2012). For all other offenders, the right to vote may only be restored by executive pardon. *Id.* § 213.090.
- Tennessee Tenn. Const. art. 1, § 5; Tenn. Code. Ann. §40-20-112 (West 2013). Convicted felony offenders may apply to the Board of Probation and Parole for voting restoration upon completion of sentence, Tenn. Code. Ann. § 40-29-202. Persons convicted of certain felony offenses including murder, rape, treason, sexual offenses involving a minor victim, voter fraud, bribery, misconduct involving public officials and employees, or interference with government operations are permanently ineligible to vote. *Id.* § 40-29-204.
- Virginia Va. Const. art. II, § 1; *Id.* at art. V, § 12; Va. Code Ann. §§ 53.1-229, -231 (West 2013). Persons convicted of most non-violent felonies may apply to the governor for a pardon or restoration of voting rights two years after completion of sentence and payment of any monetary fines and restitution. See Sec’y of the Commonwealth, *Non-Violent Offenders Application for Restoration of Civil Rights*, available at <https://solutions.virginia.gov/RestorationOfRights> (last visited June 22, 2012). Persons convicted of violent offenses, drug manufacturing or distribution offenses, offenses against minors, or election law offenses must wait five years to apply for restoration of rights. See Sec’y of the Commonwealth, *Five Year Application for Restoration of Civil Rights*, available at

<https://commonwealth.virginia.gov/media/2598/application-for-restoration-of-rights.pdf> (last visited June 22, 2012).

Also see: Governor McDonnell announced on May 29, 2013 a transition from an application process to an Automatic Restoration Process for Non-violent Felons effective on July 15, 2013, at <https://commonwealth.virginia.gov/judicial-system/restoration-of-rights/>.

Wyoming

First-time non-violent felony offenders may apply to the Board of Parole for a certificate restoring voting rights five years after completion of sentence including period of probation. All others must apply to the governor for either a pardon or a restoration of rights. Wyo. Const. art. 6, § 6; Wyo. Stat. Ann. § 7-13-105 (2012)

APPENDIX 3: 2006 TENNESSEE PUBLIC LAW TO RESTORE VOTING RIGHTS⁷¹

2006 Tennessee Laws Pub. Ch. 860 (S.B. 1678)

TENNESSEE 2006 SESSION LAWS
2006 SESSION OF THE 104th GENERAL ASSEMBLY
CRIMINAL PROCEDURE—CITIZENS AND CITIZENSHIP—RESTORATION

By Cohen, Kilby, Bowers, Harper

Substituted for: H.B. No. 1722

By Larry Turner, Marrero, Ulysses Jones, Cooper, Henri Brooks, Favors, Shaw, Langster, Tidwell, Briley, Brown, Pruitt, Towns, Miller

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 29, relative to restoration of citizenship.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:
SECTION 1. Tennessee Code Annotated, Title 40, Chapter 29, is amended by adding the following new Part 2:

<< TN ST § 40–29–201 >>

§ 40–29–201.

- (a) The provisions and procedures of this part shall apply to and govern restoration of the right of suffrage in this state to any person who has been disqualified from exercising such right by reason of a conviction in any state or federal court of an infamous crime.
- (b) This part shall apply to any person convicted of an infamous crime after May 18, 1981.
- (c) This part shall apply only to restoration of the right of suffrage. For restoration of all other rights of citizenship forfeited as the result of a conviction for an infamous crime, the provisions of Part 1 of this chapter shall apply.

<< TN ST § 40–29–202 >>

§ 40–29–202.

- (a) A person rendered infamous and deprived of the right of suffrage by the judgment of any state or federal court is eligible to apply for a voter registration card and have the right of suffrage restored upon:
 - (1) Receiving a pardon, except where such pardon contains special conditions pertaining to the right of suffrage;
 - (2) The discharge from custody by reason of service or expiration of the maximum sentence imposed by the court for any such infamous crime; or
 - (3) Being granted a certificate of final discharge from supervision by the board of probation and parole pursuant to § 40–28–105, or any equivalent discharge by another state, the federal government, or county correction authority.
- (b) Notwithstanding the provisions of subsection (a), a person shall not be eligible to apply for a voter registration card and have the right of suffrage restored unless such person has paid all restitution to the victim or victims of the offense ordered by the court as part of the sentence.
- (c) Notwithstanding the provisions of subsection (a), a person shall not be eligible to apply for a voter registration card and have the right of suffrage restored unless such person is current in all child support obligations.

⁷¹ Pub. Ch. 860, S.B. No. 1678.

<< TN ST § 40-29-203 >>

§ 40-29-203.

(a) A person eligible to apply for a voter registration card and have the right of suffrage restored pursuant to § 40-29-202 may request, and then shall be issued, a certificate of voting rights restoration upon a form prescribed by the coordinator of elections, by:

- (1) The pardoning authority;
- (2) The warden or an agent or officer of the incarcerating authority; or
- (3) A parole officer or another agent or officer of the supervising authority.

(b)(1) Any authority issuing a certificate of voting rights restoration pursuant to subsection (a) shall forward a copy of such certificate to the coordinator of elections.

(2) The issuing authority shall also supply the person being released with a written statement explaining the purpose and effect of the certificate of voting rights restoration and explaining the procedure by which such person can use the certificate to apply for and receive a voter registration card and thereby become eligible to vote.

(c) A certificate of voting rights restoration issued pursuant to subsection (a) shall be sufficient proof that the person named on the certificate is no longer disqualified from voting by reason of having been convicted of an infamous crime.

(d) Any person issued a certificate of voting rights restoration pursuant to this section shall submit such certificate to the administrator of elections of the county in which the person is eligible to vote. The administrator of elections shall send the certificate to the coordinator of elections who shall verify that the certificate was issued in compliance with this section. Upon determining that the certificate complies with the provisions of this section, the coordinator shall notify the appropriate administrator of elections and, after determining that such person is qualified to vote in that county by using the same verification procedure used for any applicant, the administrator shall grant the application for a voter registration card. The administrator shall issue a voter registration card and such card shall be mailed to the applicant in the same manner as provided for any newly issued card.

<< TN ST § 40-29-204 >>

§ 40-29-204.

Notwithstanding the provisions of this part, the following persons shall never be eligible to register and vote in this state:

- (1) Those convicted after July 1, 1986, of the offenses of voter fraud, treason, murder in the first degree, or aggravated rape.
- (2) Those convicted after July 1, 1996, but before July 1, 2006 of any of the offenses set out in subdivision (1) or any other degree of murder or rape.
- (3) Those convicted on or after July 1, 2006 of:
 - (A) Any of the offenses set out in subdivision (1) or (2);
 - (B) Any other violation of Title 39, Chapter 16, Parts 1, 4 or 5 designated as a felony; or
 - (C) Any sexual offense set out in § 40-39-202(17) or violent sexual offense set out in § 40-39-202(25) that is designated as a felony and where the victim of such offense was a minor.

<< TN ST § 40-29-205 >>

§ 40-29-205.

The coordinator of elections shall prepare a certificate of voting rights restoration form and the written statement explaining such form and the procedure by which a person can apply for a voter registration card and become eligible to vote as required by this part. The coordinator shall be responsible for printing and distributing a sufficient number of such forms to the Department of Correction, the board of probation and parole and any other authority that may discharge a person to whom the provisions of this part apply.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. For the purpose of the coordinator of elections preparing, printing and distributing the documents required by this act, it shall take effect upon becoming a law, the public welfare requiring it.⁷²

⁷² *Id.*

**Tennessee Advisory Committee to the
United States Commission on Civil Rights**



U.S. Commission Contact

USCCR Contact

Peter Minarik, Ph.D.
Regional Director, Southern Regional Office
U.S. Commission on Civil Rights
61 Forsyth St., SW, Suite 16T126
Atlanta, GA 30303
(404) 562-7000

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