

## CONSENSUS QUESTIONS

### Restoration of Civil Rights of Felons in Virginia Study

1. **Should the restoration of civil rights be automatically granted to felons?**

YES       NO

**If yes should it be restored:**

- A. Immediately upon release from incarceration  
 B. Immediately upon completion of probation or parole  
 C. Upon fulfillment of all legal obligations, including payments of fees, fines, court ordered restitution, and A and B listed above.

2. **Should the procedures for the Restoration of Civil Rights be the same for all felons?**

YES       NO

**If no, which of the following should have more stringent procedure:**

- A. Non-violent offenses  
 B. Violent offenses  
 C. Drug distribution offenses  
 D. Drug manufacture offenses  
 E. Election Law offenses

3. **Should the current process be made:**

- **easier to understand**                       YES       NO
- **more accessible,**                               YES       NO
- **more transparent and fair?**               YES       NO

**If yes, in what ways?**

### Some Helpful Thoughts to Aid in Answering Questions 1 and Others:

[Ed Note: Study material follows on pages EF-1 through EF-5]

If you believe that a felon should ALWAYS have to apply to have his/her civil rights restored, then you would answer no and go on to the next question. You would believe that the restoration of rights should never be automatic.

If you believe that at some point, a felon's civil rights should be restored without the felon's having to apply to have his/her rights restored, then you would answer yes. You would believe that at some point, the civil rights should be restored automatically -- without needing to apply.

Regardless of how you answer the first part of question one, you need to respond to the second part. Presumably whether or not you believe application must be made, you would want to define at what point rights should be restored.

In addition, if you wish to review the materials posted on the members-only state-League web site that were prepared for the September 15, 2007 Fall Workshop, please call the LWVFA office for information on accessing the website if you need it. It contains information on the "National Position of Voting Rights" and "U.S. History of Felon Voting / Disenfranchisement" prepared by Thea and Vanessa Johnson.

# Restoration of Civil Rights of Felons in Virginia - Part II

Compiled by Mary Grace Lintz

Unless otherwise noted, the information found in this study is from the League of Women Voters of Virginia (LWV-VA) and was compiled by Mary Grace Lintz. Sources and other facts can be found on the members' only portion of LWV-VA's website. The following LWVFA members served on the LWV-VA Felons Rights Study Committee: Edith Appel, Lorraine and John Hart, Thea and Vanessa Johnson, Judy Leader, Margo Sterling and Leslie Vandivere.

## Background

At the 2007 convention, the League of Women Voters of Virginia (LWV-VA) delegates approved a "Study of the Restoration of Civil Rights of Felons in Virginia." Those rights are to register to vote, hold public office, serve on a jury and serve as a notary public. Civil rights must be restored before applications to carry or own a firearm or to seek a pardon can be made. Since it is often the right to vote that is of most direct interest, we have focused on this aspect.

A state-wide committee was formed to prepare information. During 2007-2008, ten local Leagues conducted interviews of probation officers, Circuit Court personnel, voting registrars, organizations that help felons get civil rights restored as well as felons and their families. In May of this year LWVFA began studying voting rights for felons in response to member interest in having two meetings on a subject when consensus is being taken.

We are now ready to consider the three consensus questions posed by LWV-VA which are published in the newsletter part of this *Fairfax VOTER*. Basic information needed to respond to these questions is in your May, 2008 *Voter*. That study, written by Lois Page, includes the LWVUS position on voting rights. **Please review the May study and bring that VOTER to your unit meetings.** The information this month is supplemental to the original study material.

## A Brief Re-cap

- In Virginia, only the Governor can restore voting rights and it would take an amendment to Virginia's constitution to allow a different method of restoring voting rights.
- Nearly 300,000 Virginia citizens, approximately

4-5% citizens age 18 or older are unable to vote because of a felony conviction despite having completed their sentences and been released from probation or parole. About half of these citizens are African-Americans.

- In 2002 Governor Warner established a modified system of restoring rights for non-violent felons reducing the application from 15 pages to one page and the waiting period to apply from 5 years to 3 years. Persons convicted of a violent felony, drug manufacture/distribution or an election law violation must wait 5 years, complete a longer application form and provide 3 letters of recommendation.
- All felons wanting civil and voting rights restored must finish their sentence, complete any probation or parole, pay all fines and court costs, have no pending charges and have no DUI violations for the last 5 years.
- Applications may be obtained from voter registrars, probation and parole offices or the Secretary of the Commonwealth, Restoration of Rights Director.

## Highlights from Local League Interviews

Interviews by Local Leagues discovered that, in general, most interviewees whose jobs included restoration of voting rights knew what their position required. However, their helpfulness varied greatly, probably depending upon their philosophy.

Interestingly, people in contact with felons during arrest, trial and sentencing (prosecutors, judges and many lawyers) often know little about the procedures for getting civil rights restored. A probation officer is best able to help prepare the application. Several localities have organizations using volunteers as coaches or mentors to help felons reenter society.

**Probation/parole officers**, if asked, provide the needed forms and can help felons obtain the information needed. On the long form, the probation officer must write a letter outlining the period of supervision and send a confidential pre-sentencing report, if one exists, directly to the Secretary of the Commonwealth.

**Voter registrars** provide information to felons who ask by

giving them the long or short form, the web address and/or the mailing address of the Secretary of the Commonwealth. Some registrars were particularly helpful.

**Circuit Courts** provide information no longer available from probation offices, where it is purged after 5 years. A new law requires circuit courts to help felons complete the application process. The Governor has 90 days to approve or deny these applications. Some Circuit Court Clerks are not well informed.

**Felons Opinions** In addition to the interviews, several Leagues spoke with felons and found that most had not tried to get their civil rights restored, nor had anyone encouraged them to do so. Only two persons knew someone who had had their rights restored and one of those was in Texas!

Working with Offender Aid and Restoration of Fairfax, LWVFA collected completed questionnaires from 35 felons. The questions, answers and comments they made are listed in the box below.

**Poignant last words from other felons:**

“Before going to prison, I never felt that my one vote could make a difference. But over the years I have learned that voting is about more than a single person’s vote. It is about participation in the political process no matter what race or socio-economic class you belong to. For the previously incarcerated, it is about making the walk back into society.” Paul Robinson.

“Without a vote, a voice, I am a ghost inhabiting a citizen’s space.” Joe Loya

<u>Questions:</u>	<u>Yes</u>	<u>No</u>	<u>No Answer</u>
1. Did anyone or any organization give you support when you left jail or complete probation?	7	23	5
2. Does the state government give you any support?	4	30	1
3. Have you tried to get your civil rights restored? Do you know how to?	3	31	1
4. Has anyone encouraged you to or discouraged you from applying for civil rights restitution?	4	30	1
5. Is getting your civil rights restored important to you?	18	6	11
6. Please say why.	(See responses below.)		
7. Have you or anyone you know had their civil rights restored?	1	20	14
8. Can you share your story?	(None did.)		
9. Do you think civil rights should be automatically restored?	32	1	2
10. Do you know of groups or individuals who help people with the restoration of their civil rights?	4	30	1
11. Do you know of persons who have had their civil rights restored who might be willing to talk to us?	2	2	12
12. What comments do you have about the present system and how could the present system be improved?	(See responses below)		

**Comments from questions 5 & 6:**

“I would like to feel like this is not being held against me for the rest of my life.”

“Knowing I have the right to vote is important because it helps having a chance in the community.” “I want to vote.” “Yes, I have kids to take care of.” “I would like to be able to vote to voice my opinion.” “I would like my vote to count.” “I would love to vote.” “Yes, my say has value.”

“I feel people have an automatic prejudice against felons, when in fact plenty of people commit felonies everyday and might not even know it.” “I don’t know what it means to have our civil rights restored.”

“No, I have many more important issues.”

**Comments from question 12:**

“The present system is strict and has no help for the mistake made once in a lifetime.”

“I feel once a person finishes their sentence their civil rights should be restored or at least considered because that person would have paid their debt to society.”

## Current Information About Restoration of Voting Rights

On Friday, October 3, 2008, Gary Emerling from the *Washington Times* wrote an article focusing on Virginia's and other states' restoration of voting rights parts of which are excerpted below.

"Virginia Gov. Tim Kaine has granted voting rights to nearly 1,500 felons this year, bumping up the voter rolls ahead of next month's presidential election and putting himself on pace to exceed the record-setting pattern of his predecessor.

During his four years as governor, Mark Warner, a Democrat now running for the U.S. Senate, restored voting rights to 3,414 ex-convicts in Virginia. That exceeded the combined total for all Virginia governors during the previous 20 years, according to the Sentencing Project, a Washington-based advocacy group.

Mr. Kaine, a Democrat in the third year of his term, had restored voting rights to 2,633 people with felony convictions as of Monday, including 1,445 this year." [editor's note: Monday would have been September 29, 2008]

The article notes that "Mr. Hickey [editor's note: a spokesman for Gov. Kaine] said the secretary of the commonwealth announced earlier this year, as a "heads-up," that felons in Virginia eligible for restoration must have their applications submitted by Aug. 1 in order to have their rights restored by Monday's voter registration deadline. [editor's note: Monday referred to was October 8, 2008]

The application-review process normally takes at least six months, according to the secretary's Web site [www.soc.state.va.us](http://www.soc.state.va.us). Felons who met the Aug. 1 deadline could see that process shortened to two months."...

About 115,000 Florida residents had their voting rights restored as of July after state rules were changed under Gov. Charlie Crist, a Republican.

The Maryland General Assembly last year repealed its layered disenfranchisement law. The state now restores voting rights for all

felons on completion of their sentences, and more than 52,000 people were granted voting rights as a result of the change."

As noted below, Kentucky and Virginia are the only states that deny voting rights to all felons unless their rights are restored by the governor. In updating information for this study, we note that Kentucky's Governor Steve Beshear removed some hurdles from the application process. Felons who have completed all sentencing requirements (including parole or probation) may apply to have their civil rights restored by completing a one page form. They no longer have to pay a fee, write an essay or get three recommendations. Also only one notification to prosecutors, rather than two, is required. Like Virginia, civil rights proponents in Kentucky have not been able to get a constitutional amendment passed which would relax the current ban on voting rights for felons.

## Criminal Disenfranchisement Laws Across the United States

The map on the following page graphically shows the variations in treatment of voting rights for felons. Explanations below group the states within a series of six basic modes.

**Permanent disenfranchisement for all people with felony convictions, unless government approves individual rights restoration:** Kentucky, Virginia

**Permanent disenfranchisement for at least some people with criminal convictions, unless government approves individual rights restoration**

**Alabama:** People with certain felony convictions involving moral turpitude can apply to have their voting rights restored upon completion of sentence and payment of fines and fees; people convicted of some specific crimes are permanently barred from voting.

**Arizona:** People convicted of one felony can have their voting rights restored upon completion of sentence, including all prison, parole, and probation terms and payment of legal financial obligations. People convicted of two or more felonies are permanently barred from voting unless pardoned or restored by a judge.

**Delaware:** People with felony convictions can have their voting rights restored five years after completion of sentence and payment of fines and fees. People who are convicted of certain disqualifying felonies are permanently disenfranchised.



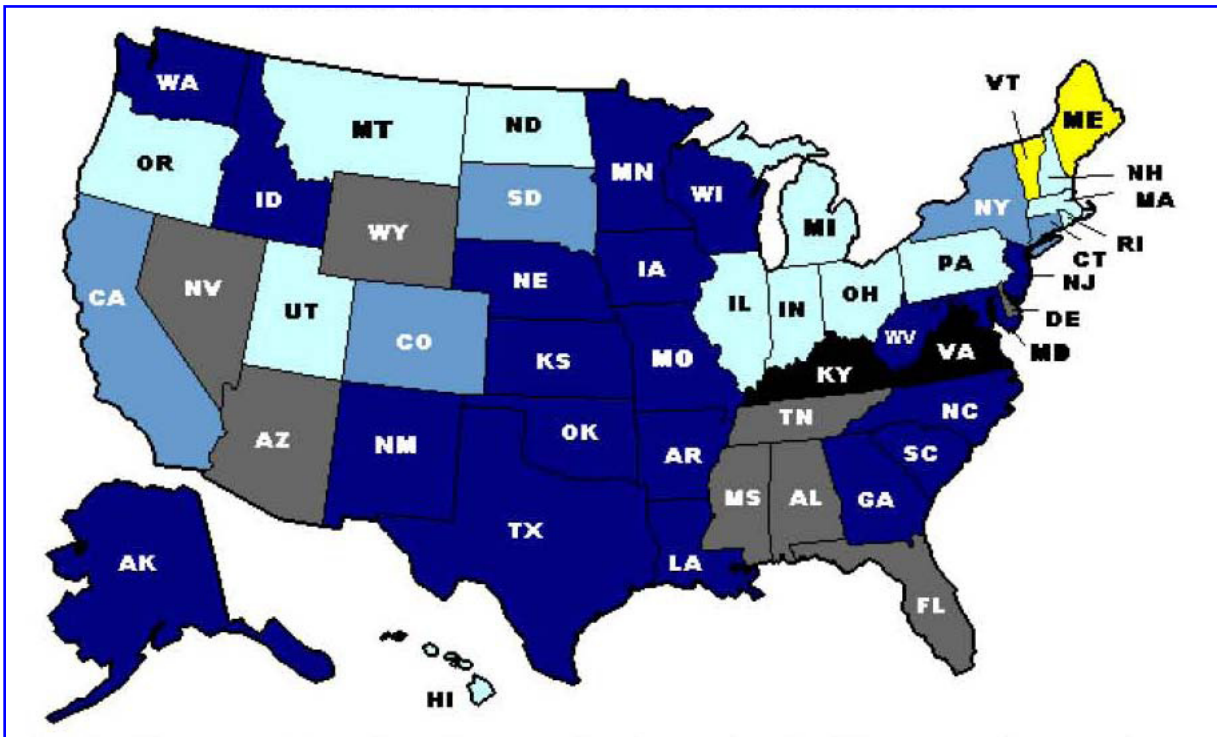


Figure 1 - Map showing the various treatment of voting rights for felons.

**Florida:** Most people with felony convictions have their right to vote restored upon completion of sentence and payment of restitution. People with certain felony convictions, mostly violent crimes or sexual offenses, must individually apply for restoration of rights or complete a fifteen-year waiting period.

**Mississippi:** People who are convicted of any of ten types of disqualifying offenses, including felonies and misdemeanors, are permanently disenfranchised. Others never lose the right to vote.

**Nevada:** The right to vote is automatically restored to people convicted of first-time non-violent felonies upon completion of sentence. People with multiple felony convictions and those convicted of violent felonies cannot vote unless pardoned or granted a restoration of civil rights from the court in which they were convicted.

**Tennessee:** People convicted of some felonies after 1981 can have their voting rights restored if they have completed their full sentences, paid all restitution, and are current with child support payments. People convicted of certain felonies cannot regain the right to vote unless pardoned.

**Wyoming:** People convicted of a non-violent felony for the first time can have their rights restored five years after completion of sentence. People with multiple felony convictions and those convicted of violent felonies are

permanently barred from voting, unless pardoned or restored to rights by the Governor.

**Voting rights restored upon completion of sentence, including prison, parole and probation:**

Alaska, Arkansas<sup>1</sup>, Georgia, Idaho, Iowa, Kansas, Louisiana, Maryland, Minnesota, Missouri, Nebraska<sup>2</sup>, New Jersey, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, Washington<sup>3</sup>, West Virginia, Wisconsin

**Voting rights restored automatically after release from prison and discharge from parole (probationers may vote):** California, Colorado, Connecticut, New York, South Dakota

**Voting rights restored automatically after release from prison:** District of Columbia, Hawaii, Illinois, Indiana, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Utah

**No disenfranchisement for people with criminal convictions:** Maine, Vermont

**Notes:**

<sup>1</sup> Under Arkansas law, failure to satisfy legal financial obligations associated with convictions may result in post-sentence loss of voting rights.

<sup>2</sup> In Nebraska, voting rights are restored two years after the completion of sentence.

<sup>3</sup> Under Washington State law, failure to satisfy legal financial obligations associated with convictions may result in post-sentence loss of voting rights.

### Definitions Are Always Helpful

**Clemency:** Action by the Governor to grant full or conditional pardons and commutations of sentences. There are two types: Restoration of Civil Rights and Pardons. (In some places clemency refers to the restoration of civil rights.)

**Felon:** Person who has been convicted of a felony; restoration of rights does not necessarily eliminate the designation.

**Felony:** A crime punishable by death or confinement in the penitentiary. There are 6 classes of felonies, with applicable sentences and fines. Examples include robbery of \$200 or more, grand larceny, malicious wounding, murder, rape.

**Long Form:** in Virginia, application for Violent Offenders, Drug Offenders, Election Law Offenders for the Restoration of Rights. A five-year waiting period is required before submission of the form.

**Misdemeanor:** A crime punishable by up to a year in jail, a fine of up to \$2500, or both. There are 4 classes of misdemeanors with applicable sentences and fines. Examples include driving offenses, possession of marijuana, assault and battery and shoplifting of less than \$200.

**Pardon:** Official forgiveness of conviction and/or sentence given by the Governor. There are three types: Simple, Conditional and Absolute. Simple does not remove the

conviction from the record. Conditional applies only to incarcerated persons. Absolute allows for the conviction to be removed from the record after court action. All three types require felons to have their Civil Rights restored first.

**Parole:** Conditional release from incarceration.

**Probation:** Suspension of sentence and release from incarceration, with supervision by probation officer.

**Restitution:** Act of making good or giving equivalency for loss, damage or injury.

**Short Form:** In Virginia, application for Non-violent Offenders for the Restoration of Rights. A three-year waiting period is required before submission of the form.

**Transparency:** Openness; clarity; lack of guile and attempts to hide damaging information. \*The word is used of financial disclosures, organizational policies and practices, lawmaking, and other activities where organization interaction (sic) with the public. [\*from Black's Law Dictionary; 2004]

**Violent felony:** Behavior that intentionally threatens, attempts, or actually inflicts physical harm. Examples include aggravated assault, arson, assault and battery, domestic violence, homicide, manslaughter, mayhem, murder and terrorism.

### What Happens Next?

Local Leagues throughout Virginia will submit their responses by December 16th to Molly McClenon, chairperson of the state study committee who will compile the responses. The LWV-VA board will review the compilation and assuming consensus has been reached, a position statement will be developed by the board to enable League advocacy on this issue.

**Remember to Vote!**

**Remind your friends  
and neighbors as well.**

### Keep in Mind . . .

*Throughout the year, League members work to register, educate and inform voters on the issues that affect them. Providing quality, nonpartisan voter education remains one of our most important and well-known activities.*