

## **Felon Enfranchisement in Virginia**

Virginia and Kentucky are now the only two states that permanently disfranchise all felony offenders unless the governor personally approves an individual application for restoration of rights or grants a pardon. Alternatively, in Virginia, an individual can petition the local circuit court to restore the right to vote ( unless convicted of a violent felony, drug-trafficking, or election fraud ) . The court holds a hearing on demonstrated “civil responsibility” and then makes a recommendation to the governor.

To reinstate voting and civil rights, in addition to completing their sentence and probation, felons must have paid all fines, violent felons must wait five years before applying, and non-violent felons must wait three years. The application process requires applicants to retrieve all court records and sentencing orders and submit reference letters from three people ( in the case of violent felons ) .

The process is burdensome and the overall disfranchisement policy deprives at least 377,847 Virginia citizens, or 6.76% of the state voting age population, of the right to vote. In 2003, Virginia Governor Mark Warner, a Democrat, implemented an expedited application process for non-violent offenders seeking the right to vote. Under Warner’s administration, a one-page application could be filed with the Secretary of the Commonwealth, who would then perform a records check. A longer 13-page application was still necessary for persons convicted of violent offenses, as well drug trafficking offenses and election fraud. Between January 2002 and January 2006, Governor Warner restored civil rights to 3,486 people, more than four times the number of his four predecessors combined.

In 2006, incoming Governor Tim Kaine, also a Democrat, promised to continue Warner’s expedited practice and between January 2006 and April 2007, Governor Kaine granted restoration to 778 offenders. This rate of 622 per year is somewhat less than Warner’s 871 grants annually.

Virginia’s felon disfranchisement policy is deeply rooted in the longstanding desire of many Southern whites to deprive African Americans of fundamental rights and political influence. Addressing the Virginia Constitutional Convention in 1902, State Senator Carter Glass spoke approvingly of the state’s plan, which included felony disfranchisement laws, to:

“eliminate the darkey as a political factor in this State in less than 5 years, so that in no single county...will there be the least concern felt for the complete supremacy of the white race in the affairs of government.”

Glass was correct in his prediction. As noted by the Advancement Project in its 2005 report on the impact of Virginia’s felony disfranchisement laws: “Shortly after implementation of the 1902 constitutional amendments, Virginia’s Black electorate plummeted to less than 22,000 registered voters; only ninety days earlier Virginia’s rolls reflected as many as 147,000 registered black voters. Thus, in a matter of three months Virginia’s scheme to permanently disenfranchise black voters successfully purged over 85% of the black voting populace.” And according to the Fourth Circuit Court of Appeals, the purpose of the 1902 state constitutional convention was to “disenfranchise as many impoverished people, including most blacks,” as possible.

Virginia’s practice still disproportionately impacts African Americans to a very significant degree.

As of 2006, African Americans made up 19.9% of the state population of 7.6 million, but the state's 208,343 disfranchised African Americans comprised more than half ( 55.1% ) of the total disfranchised population. And while 6.76% of the total voting age population is disfranchised, the corresponding figure for African Americans is almost three times higher at 19.76% Sixteen percent of all adult African Americans in the Commonwealth ( including 25% of black men ) cannot vote because of a felony conviction.

Three out of five felony convictions do not lead to jail time and fully 78.4% of Virginia's disfranchised population already have completed the conditions of their criminal sentences, with as many as 71% of those individuals who reenter their communities remaining there with no further brushes with the law.

Because disfranchisement in Virginia is pursuant to the state constitution - which also gives the governor the power to "remove political disabilities consequent upon conviction" - any change to the state's policy would require either executive action by the Governor or an amendment to the state constitution.... Although any governor could adopt new rules at any time, in the absence of gubernatorial action the adoption of a constitutional amendment – first by the legislature and then by the voters – is the only avenue for policy change.

On January 25, 2007, the Virginia Senate approved by a vote of 29 to 10 a proposed constitutional amendment ( SJR 307 ) that would have placed the question before voters to decide whether voting rights should be automatically restored after a person completes their sentence. The bill was successfully amended to restrict the legislative authority for rights restoration to non-violent offenders, however. Despite significant and bi-partisan support in the Senate, it did not advance in the House of Delegates, which has been more resistant to reform.

As a result of the progress that already has taken place in Florida, and the likelihood of progress in Kentucky, it is reasonable to assume that it will become very difficult for Virginia to remain the only state that permanently disfranchises all felony offenders. Because amending the constitution in Virginia is a lengthy and somewhat cumbersome process, it will take several years to achieve this goal. Under Virginia law, any proposed constitutional amendment must first pass both houses of the legislature and then be "referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates." If the measure passes the General Assembly this second time it can then and only then be presented to the voters.

Because Virginia House of Delegates elections take place in odd-numbered years, voting rights advocates will have both 2008 and 2009 in which to persuade the General Assembly to adopt a proposed constitutional amendment. The amendment would then have to be brought back before the General Assembly following the 2009 House of Delegates elections. If approved, it could then be placed on the ballot for consideration by the voters at the 2010 federal elections.

**Southern States Legislative Review: State and Regional Trends in Voting Policy and Barriers to Civic Participation in Six Southern States 2006 and 2007** Daniel Levitas and Jessica Cox, January 2008, [www.southerncouncil.org](http://www.southerncouncil.org).