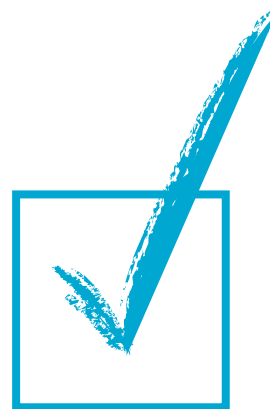


ADDRESSING BARRIERS TO THE BALLOT BOX:

Registering to Vote in Tennessee
with a Past Felony Conviction

A publication of the ACLU of Tennessee.



**ADDRESSING BARRIERS TO THE BALLOT BOX:
Tennessee Voting Rights Restoration Survey**

September 2008



The American Civil Liberties Union of Tennessee (ACLU-TN) is the state's premier guardian of liberty, working daily in the courts, in the state legislature and in communities to protect and promote individual rights and freedoms guaranteed by the United States and Tennessee Constitutions. ACLU-TN, which translates the guarantees of the Bill of Rights into realities for all Tennesseans, is an affiliate of the National ACLU which has more than 500,000 members across the country.

The ACLU-TN Right to Vote Campaign (RTV-TN) seeks to end the ban on voting for people with felony convictions, and to promote their active participation in the political process through research, public education, legislative advocacy and litigation. This effort is particularly important in Tennessee, which has one of the most complicated disenfranchisement policies in the country.

Special thanks to:

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I. Executive Summary

Tennessee's felony disenfranchisement policies are among the most complicated in the country. In 2006 the state legislature attempted to fix this by passing legislation to streamline the restoration procedures, but the new process is still not working. Tennessee's convoluted and inadequate registration scheme bars an estimated 94,258 persons from the polls, more than two-thirds of whom are living and working in our communities but remain without a say in public affairs.¹ Detailed findings and conclusions of this survey follow in Section V and VI of this report. We highlight here the principal findings and recommendations:

- 1. Most election officials do not know or understand the 2006 law.** While a significant improvement on the prior law, the new law is still far too complex for officials and voters to understand and use. Not a single question elicited a 100% accurate answer and at least 30% of the answers to each question were incorrect, incomplete or inaccurate. Tennessee law is also out of step with the vast majority of the states, which automatically restore voting rights without any application process. For these reasons, we recommend ongoing trainings about the law for officials, a public education campaign similar to the one in Rhode Island for both officials and the public, and a redesign of regulations and procedures to make the current law easier to understand and apply.
- 2. The multiple requirements for eligibility are extremely burdensome on the applicant, and on relevant state agencies, deterring many who could be eligible to vote from doing so.** If an individual has fully completed his or her sentence, and the crime for which he or she was convicted does not fall into one of eight permanently excluded categories, and he or she has paid all restitution, and is current on all court-ordered child support payments, then he or she must take the following steps to register to vote: (1) The individual must obtain a Certificate of Restoration, (2) have the Certificate of Restoration signed by his or her probation or parole officer, or other incarcerating or pardoning authority, certifying that all probation and parole requirements have been completed, (3) have it signed by the court, to show restitution is fully paid, (4) return the form to the local election commission, which (5) sends it to the state Election Commission office to verify that the individual is current on all court-ordered child support payments, and, if so, (6) the state Election Commission notifies the local Election Commission office that the individual is eligible to vote, and (7) the local Election Commission sends a letter to the individual that his or her Certificate of Restoration has been approved, whereupon (8) the individual goes to the local Election Commission office to complete a Voter Registration form and (9) the local Election Commission issues a Voter Registration Card to the individual (see Appendix B, Registration Process).

¹ Jeff Uggen and Christopher Manza, "Locked Out: Felon Disenfranchisement and American Democracy," (Oxford University Press, USA, 2006), Table A3-3, pp. 248-250.

It is difficult for election commissioners to know who is eligible to apply for a Certificate of Restoration – 62% of respondents surveyed could not provide the list of crimes and dates that prevent individuals with a felony conviction from having their right to vote restored. Additionally, there is no time frame within which agencies must act. Accordingly we recommend the state consider changing its policy to a straight post-incarceration enfranchisement policy. This policy helps law enforcement, assures fair and accurate voter rolls, empowers families and communities, and builds a stronger democracy. It also properly decouples from voting the payment of fines and fees and child support without removing these obligations, doing away with what now currently acts like a poll tax.

The state's own policy is so complex that it was no surprise that officials did not know how to apply it to people who had federal or out-of-state convictions. This results in the further disenfranchisement of potentially eligible persons. Ninety-one percent of respondents replied incorrectly to questions regarding voter eligibility for individuals with federal felony convictions; 75% responded incorrectly regarding voter eligibility for individuals with out-of-state felony convictions; 54% responded incorrectly regarding voter eligibility for individuals on probation; and 35% responded incorrectly regarding voter eligibility for individuals on parole. This highlights the need to engage in ongoing training of all election officials regarding the current law.

3. **There was great inconsistency as to notification of individuals with felony convictions regarding when they are disenfranchised, as well as to when they are returned to the rolls.** A statewide notification policy that spells out the terms of disenfranchisement and the required steps for restoration would go a long way toward reducing confusion and streamlining the process for both officials and potential voters.

This survey demonstrates that the revised 2006 voter rights restoration law is not working. As of June 24, 2008 only 469 individuals have had their rights restored in 2008, a small fraction of those who are eligible.² The process for rights restoration in Tennessee is confusing, bureaucratic, un-democratic and costly to taxpayers. We urge Tennessee to join the vast majority of states that automatically enfranchise individuals with felony convictions without an application process, and to restore the right to vote automatically upon completion of incarceration.

² The Sentencing Project: Disenfranchisement News, July 3, 2008.

II. Introduction

Tennessee has one of the most complicated felony disenfranchisement policies in the country. Additionally, Tennessee is one of only eight states that still permanently disenfranchise some citizens even after they have fully completed their sentences. This is in stark contrast to 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.

As of December 2004 there were 94,258 persons disenfranchised in Tennessee³. Fully 70% of these disenfranchised citizens are working, paying taxes and living in the community. Although African-Americans comprise only 16.9% of the general population, they disproportionately make up 46% of the disenfranchised population in Tennessee. Confusing restrictions and arduous processes further complicate matters: only 393 successful registrations by individuals with felony convictions were recorded between 2001 and 2004, less than 0.5% of the disenfranchised population.⁴

The law in Tennessee is particularly complicated as restoration depends on the year when a person is convicted, as well as the type of offense. This information determines whether a formerly incarcerated individual permanently loses the right to vote. A series of amendments established different restrictions for post-1981 convictions, added new crimes in 1986 and 1996 for which voting rights can never be restored, and also mandated the receipt of a court order, necessitating the hiring of an attorney to restore one's voting rights. To address the complicated nature of the law and its inequitable application, a concerted legislative campaign led to the passage of a 2006 statute replacing the requirement for a signed court order with the completion of a Certificate of Restoration, which no longer necessitates an attorney. However, even with this change, Tennessee's disenfranchisement policy continues to be one of the most onerous and complicated in the country.

ACLU-TN surveyed all 95 local Election Commission officials to ascertain their level of knowledge and understanding of the requirements for registering to vote those individuals with a felony conviction. Our intent was to ensure that 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 Commission officials, whose job it is to assist eligible individuals to register, have difficulty understanding and accurately applying the state's disenfranchisement policies. 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. Simplifying the current statute by allowing individuals with felony convictions to vote immediately upon release from incarceration would lift the administrative burden on local election officials, ease access to the polls for eligible individuals, and more equitably enfranchise individuals across income and racial lines.

³ Uggen and Manza, "Locked Out: Felon Disenfranchisement and American Democracy, pp. 248-250.

⁴ King, Ryan S., "A Decade of Reform: Felony Disenfranchisement Policy in the United States," (The Sentencing Project, October 2006), p. 16.

b.) Misconduct Involving Public Officials and Employees

- √ Sexual contact with inmates
- √ Official misconduct
- √ Official oppression

c.) Interference with Government Operations

- √ Retaliation for past action
- √ False reports
- √ Coercion of witness
- √ Coercion of juror
- √ Tampering with or fabricating evidence

8. Any sexual offense or violent sexual offenses designated as a felony where the victim was a minor

If convicted after July 1, 2006, including:

- a.) Sexual battery
- b.) Sexual exploitation
- c.) Incest
- d.) Indecent exposure (third offense)
- e.) Aggravated (HIV positive) prostitution
- f.) False imprisonment or aggravated kidnapping

In February 2008, ACLU-TN and the ACLU Voting Rights Project filed a legal challenge to the two provisions of the law that act as financial impediments to voting: all court-ordered restitution must be paid in full and child support payments must be up to date before an individual with a felony conviction can register to vote. Similar to a poll tax, these requirements prevent formerly incarcerated individuals with limited resources from exercising their right to vote, even though they have completed their sentences.

The process to regain the right to vote for eligible individuals with felony convictions is as follows:

- 1.) The individual must secure a form called a “Certificate of Restoration” from the State Election Commission website, local Election Commission office, probation or parole officer, or court clerk.
- 2.) The individual must have the Certificate of Restoration signed by his or her probation or parole officer, or other incarcerating or pardoning authority, certifying that all probation and parole requirements have been completed.
- 3.) The individual must 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.
- 4.) The individual must return the completed Certificate of Restoration to the local Election Commission office.

- 5.) 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.
- 6.) The State Election Commission office sends notice to the local Election Commission office certifying that the Certificate of Restoration has been approved or denied.
- 7.) The local Election Commission sends a letter to the individual that his or her Certificate of Restoration has been approved or denied.
- 8.) The individual goes to the local Election Commission office to complete a Voter Registration form.
- 9.) The local Election Commission issues a Voter Registration Card to the individual.

IV. Survey Results

The survey analysis assumes that when asked by a person with a felony conviction, local Election Commission staff explains how to obtain and process a Certificate of Restoration form which needs to be completed before he or she can apply to register to vote. Consequently, survey answers were categorized as correct if they were complete, that is, contained all the legally required elements. Incorrect answers were those that were deemed incomplete because they failed to include each restriction listed in the Tennessee law, contained inaccurate information, or the respondent indicated he or she did not know the answer. The answer to each question is not detailed herein, in order to reduce repetition and to allow a more narrow focus on those questions that specifically relate to the registration requirements and process. Not all offices responded to every question, thus the percentage of correct and incorrect answers are calculated according to only the total number of responses for each specific question.

Voting Eligibility

Question 1: If a person is convicted of a felony can they register to vote?

Correct Answer Yes, if the individual has completed his or her sentence (including all court-ordered jail or prison time, probation and parole), paid all court-ordered restitution, is current on all court-ordered child

support, and was not convicted of certain felonies between specified dates.

Survey Answers

Correct: 0

Incorrect: 100%

No office listed all four elements contained in the law. Twenty-three percent mentioned between one and three restrictions, 37% knew that there were restrictions but failed to state them, 25% responded “yes” or “no” without mention of any restrictions, and 7% gave inaccurate answers or said they did not know.

Incorrect information included that the trial judge or court must reinstate the individual’s right to vote, and that an individual must have his or her citizenship rights restored before he or she can vote. One office troublingly expressed: “They can’t register to vote under most felonies” but “it is hard for me to determine what is and isn’t a felony.”

<u>Question 2:</u>	Can an individual with a felony conviction vote while on probation?
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Correct Answer

No. Probation must be complete before an individual with a felony conviction can vote.

Survey Answers

Correct: 46%

Incorrect: 54%

Comments included the statement, “We really don't need to deal with this. The courts need to deal with this.”

<u>Question 3:</u>	Can an individual with a felony conviction vote while on parole?
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Correct Answer

No. Parole must be complete before an individual with a felony conviction can vote.

Survey Answers

Correct: 65%

Incorrect: 35%

Question 4: Can a person vote if they were convicted of a federal felony?

Correct Answer Yes, if his or her right to vote was reinstated in another state or if he or she meets the Tennessee requirements.

Survey Answers Correct: 9% Incorrect: 91%

Fifty-four percent did not mention any specific restriction, 27% cited one or two of the five restrictions, and 9% stated they did not know the answer.

Of note were the comments, “Not if they were convicted of any felony,” and “The Federal Court is not good about letting us know if someone is convicted of a felony.”

Question 5: Can a person vote if they were convicted of a felony in another state?

Correct Answer Yes, if his or her right to vote was reinstated in another state or if he or she meets the Tennessee requirements, including the four restrictions.

Survey Answers Correct: 25% Incorrect: 75%

Five percent mentioned only one or two of the restrictions, 56% did not mention even one of the restrictions, and 14% said they did not know.

Responses included, “No, they shouldn’t be allowed to vote,” “Not if I can catch them,” and “No, they’re not supposed to, but it all depends on if we’ve been notified.”

Regaining the Right to Vote

Question 6: Does an individual with a felony conviction ever regain the right to vote?

Correct Answer Yes, an individual is eligible to apply for a Certificate of Restoration if he or she has completed all court-ordered jail or prison time, finished probation and parole, paid all court-ordered restitution, is current on all court-ordered child support, and was not convicted of certain felonies between specified dates.

Survey Answers Correct: 1% Incorrect: 99%

Eighty-six percent did not list even one restriction, 7% mentioned either one or two restrictions, and 6% gave inaccurate information or indicated they did not know the answer.

Among the responses of most concern were, “If he has been convicted of a felony then he can never regain the right to vote” and “The court needs to reinstate.”

Question 7: Does an individual with a felony conviction regain the right to vote after their sentence is complete?

Correct Answer Yes, an individual is eligible to apply for a Certificate of Restoration when his or her sentence is complete and he or she has finished probation and parole, paid all court-ordered restitution, and is current on court-ordered child support, provided he or she was not convicted of certain felonies between specified dates.

Survey Answers Correct: 0% Incorrect: 100%

No office listed all five restrictions contained in the law. Thirty-four percent knew there were restrictions but did not mention even one, 33% gave no indication that there were any restrictions, 21% mentioned between one and three of the restrictions, and 12% provided inaccurate information or said they did not know the answer.

Question 8: Does an individual with a felony conviction regain the right to vote when their child support is up to date?

Correct Answer Yes, individuals are eligible to apply for a Certificate of Restoration once child support is up to date and they have also completed all court-ordered jail or prison time, their probation and parole is finished, and they have paid all court-ordered restitution, provided the individual has not been convicted of certain felonies between specified dates.

Survey Answers Correct: 0% Incorrect: 100%

No office listed the other four restrictions contained in the law. Sixty percent answered “Yes” or “No” but did not mention any specific restriction, 16% indicated they did not know the answer, 14% simply stated, “after their right to vote is restored,” 8% mentioned one or two of the specific restrictions, and 1% gave a general statement that there are restrictions but provided no specifics.

Question 9: Does an individual with a felony conviction regain the right to vote when restitution is paid in full?

Correct Answer Yes, individuals are eligible to apply for a Certificate of Restoration if they have completed all court-ordered jail or prison time, probation and parole is finished, all court-ordered child support is current, and they have not been convicted of certain felonies between specified dates.

Survey Answers Correct: 0% Incorrect: 100%

No office listed the four other restrictions contained in the law. Sixty-six percent answered “Yes” or “No” but did not mention any specific restriction, 14% merely said, “After their right to vote is restored,” 9% said there were restrictions but gave no specifics, 9% gave between one and three restrictions, 2% indicated they did not know the answer, and 1% gave the inaccurate response: “Only reason they cannot be registered is if they have been convicted of a felony.”

Question 10: For which crimes can you never have your right to vote restored?

Correct Answer

1. First-degree Murder
 - a.) If convicted between July 1, 1986 and July 1, 1996
OR
 - b.) If convicted after July 1, 2006

2. Aggravated Rape
 - a.) If convicted between July 1, 1986 and July 1, 1996
OR
 - b.) 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
 - If convicted after July 1, 2006, including:
 - a.) Bribery
 - √ Bribery of a public servant
 - √ Bribing a witness
 - √ Bribing a juror
 - √ Soliciting unlawful compensation
 - √ Buying and selling in regard to offices

 - b.) Misconduct Involving Public Officials and Employees
 - √ Sexual contact with inmates
 - √ Official misconduct
 - √ Official oppression

 - c.) Interference with Government Operations
 - √ Retaliation for past action
 - √ False reports
 - √ Coercion of witness
 - √ Coercion of juror
 - √ Tampering with or fabricating evidence

8. Any sexual offense or violent sexual offenses designated as a felony where the victim was a minor

If convicted after July 1, 2006, including:

- a.) Sexual battery
- b.) Sexual exploitation
- c.) Incest
- d.) Indecent exposure (third offense)
- e.) Aggravated (HIV positive) prostitution
- f.) False imprisonment or aggravated kidnapping

Survey Answers

Correct: 38%

Incorrect: 62%

Thirty-seven percent correctly stated all 8 crimes and the applicable dates, yet 51% mentioned only between 1 and 6 of the possible crime categories and the corresponding time period. Ten percent indicated they did not know the answer and 1% gave inaccurate information.

Process for Restitution

Question 11:

What steps must an individual with a felony conviction take to regain the right to vote?

Correct Answer

There are five steps that an individual with a felony conviction needs to take to have the right to vote reinstated:

1. The individual must secure the Certificate of Restoration from the State Election Commission, local election Commission office, their probation or parole officer, or the court clerk where his or her conviction took place.
2. The individual must have the Certification of Restoration form completed by his or her probation or parole officer, agent of pardoning authority, or officer of incarcerating authority certifying that his or her sentence is complete, including all terms of probation and parole.
3. The individual must have the Certificate of Restoration form completed by the circuit/criminal court clerk, or his or her agent, certifying that all restitution is paid in full.

4. The individual must return the completed Certificate of Restoration to the local Election Commission office, who sends it to the state to certify that child support is current and that the form is completed correctly and fully. The State notifies the local office whether the Certificate is approved or denied and the local office sends a letter to the individual informing him or her of the State's decision.
5. If approved, the individual must go to the local Election Commission office and complete a Voter Registration form and the local office issues a Voter Registration Card.

Survey Answers

Correct: 19%

Incorrect: 81%

Nineteen percent cited all five steps. Forty-three percent of the incorrect answers listed just one of the steps, 21% provided inaccurate information, mostly referencing the need to go to court, 12% said a form needs to be completed, and 4% indicated they did not know the answer.

Question 12:

What is the name of the documentation an individual needs to provide to show that his/her sentence was completed?

Correct Answer

Certificate of Restoration.

Survey Answers

Correct: 68%

Incorrect: 32%

Twenty-two percent did not know the name of the form and 10% gave the wrong name or provided other inaccurate information.

Question 13:

Where can the form be found?

Correct Answer

In one of four locations:

- State Election Commission office (website/mail/pick up)
- Local Election Commission office
- Probation-Parole Officer/Supervising Authority
- Circuit Court Clerk's office

Survey Answers

Correct: 2%

Incorrect: 98%

Of the incorrect responses, 93% listed only between one and three of the four locations where forms are available. The local Election Commission was mentioned by just 43% of respondents as a place to obtain a Certificate of Restoration. Five percent of respondents gave inaccurate information or an answer that was not responsive to the question.

Question 14:

Which agencies or departments need to sign the Certificate of Restoration?

Correct Answer

Two signatures are required to complete the Certificate of Restoration:

1.) To confirm that the sentence, including probation and parole, is complete, the form must be signed by one of the following agents:

- An agent of the pardoning authority, **or**
- an agent or officer of the incarcerating authority, **or**
- a probation/parole officer or agent of the supervising authority

AND

2.) To confirm that all restitution is paid in full, the form needs to be signed by:

- Circuit/Criminal Court Clerk or his or her agent

Survey Answers

Correct: 4%

Incorrect: 96%

Eighty-three percent gave only one or two of the three agencies for the sentencing section or the one agent for the restitution section, and 13% provided inaccurate answers or said they did not know.

Question 15:

What happens if an individual says they cannot find someone to fill out the form?

Survey Answer:

Sixty-two percent said they would refer the applicant to the county or circuit court clerk, the probation/parole officer, a judge, the local court, an attorney, the District Attorney or a Public Defender. Twelve percent said the staff of the local election commission office would offer help, 7% said it was the applicant's problem if he or she could not identify someone to fill out the form, 10%

merely said that an individual with a felony conviction is not allowed to register unless he or she finds someone to fill out the form, and 6% indicated this never happened or they did not know the answer. One stated, “That’s one thing that we have problems with, that people in the county don’t know, or aren’t told, or are getting wrong instructions about getting their rights restored.”

Question 16: What happens after an individual submits the completed form?

- Correct Answer*
- 1.) Certificate of Restoration form is sent to State Election Commission to check if child support payments are current and form is completed correctly and fully.
 - 2.) State office notifies the local Election Commission office that the person is eligible or ineligible to register to vote.
 - 3.) Local Election Commission sends letter to individual informing him or her that he or she is eligible or ineligible to register.
 - 4.) If eligible, the individual completes a Voter Registration form and is provided a Voter Registration Card.

Survey Answers Correct: 34% Incorrect: 66%

Thirty four percent correctly cited all three steps but 33% mentioned only two, 28% cited one, and 5% gave inaccurate information.

Question17: From the time the completed form is given back to your office, how long does it take for the applicant to be notified that his/her right to vote has or has not been restored?

Survey Answers Twenty-three percent stated that it takes from a few days to less than a week after they receive the form, 45% said one to two weeks, 11% said three to four weeks, 2% said more than a month, and 19% were unsure of the timeframe or gave an answer that was not relevant to the question.

Revocation and Notification

Question 18: Is your office notified when a voter is convicted of a felony?

Survey Answers Eighty-six percent have received notification from the court or state in the past, but 14% said they do not routinely receive notification.

Staff comments included, “That’s a big problem. Sometimes we get notified and sometimes we don’t,” “If it’s a federal felony, then no;” “We don’t get notice from other states;” and “Not if they are convicted in other counties.”

Question 19: Who notifies your agency?

Survey Answers Seventy-seven percent are notified by the local Circuit Court Clerk, 15% by “the court,” and 8% by the state.

Question 20: Do you revoke their right to vote?

Survey Answers Ninety-nine percent purge the voter from the rolls upon receiving notification from the court or state.

Question 21: Does your agency notify the person that their right to vote has been revoked?

Survey Answers Eighty-two percent notify the individual by sending a letter. Sixteen percent do not notify the person, 1% stated they are not required to provide notification, and 1% indicated they were unsure as to how to answer this question.

Among the answers were the following comments: “The court does this;” “It’s my understanding that they’re notified when they’re convicted;” and “There are others who registered after their felony,

after they were convicted of another felony. This list will go to the attorney general for possible prosecution.”

Other Information

<u>Question 22:</u>	Approximately how many individuals with felony convictions have tried to register since the new law took effect in July 2006?
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Survey Answers The 72 Election Commission offices answering this question had a total of approximately 687 individuals try to regain their right to vote since the new law took effect in July 2006. Of these, 271 individuals, or 39% of applicants, were successful.

<u>Question 23:</u>	Other information, concerns, or unusual experiences as you’ve helped individuals with felony convictions complete the necessary paperwork to have their right to vote restored?
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Survey Answers Of the 60 offices offering additional comments, 35% said that the new law and the process were better than the old, but 22% said that the law and the process were more complicated, frustrating and unclear. Five percent said the new law is extremely complicated for the staff, 12% noted that the State Election Commission provides help when the local office has questions, but 3% said that the formerly incarcerated individual has to address all the issues that arise on his or her own.

V. Key Findings and Conclusions

The information collected for this survey indicates that the staff in many local Election Commission offices are clearly misinformed and/or disseminate inaccurate and false information concerning the voting rights of individuals with felony convictions. The local Election Commission offices appear to readily provide assistance throughout the registration process, and do not seem to be adverse to the enfranchisement of individuals with felony convictions. However, the law in its current form proves difficult to apply because its key provisions are complicated, abstract and confusing.

The high number of incorrect responses to the survey questions illustrate the problematic nature of the law. Not a single question elicited a 100% correct response rate. Additionally, at least

30% of the answers to each question were incorrect, incomplete or inaccurate, with many respondents not knowing the answer. Furthermore, not one of the Election Commission offices was able to list the four key restrictions individuals with felony convictions must address before they are eligible to apply for a Certificate of Restoration:

1. The formerly incarcerated person has not been convicted of a crime in one of eight categories within the designated time frames
2. Probation and/or parole has been completed
3. All court-ordered child support obligations are up-to-date
4. Court-ordered restitution is paid in full

Due to the complicated nature of the law, these restrictions form a caveat for many of the questions, and thus had to be included for the response to be considered complete and accurate.

The majority of local Election Commission offices indicated their awareness that a new felon enfranchisement law had been passed in 2006. However, in response to most every question at least one respondent continued to say that a formerly incarcerated individual must secure a court order to have his or her voting rights restored. While still an option, the completion of a Certificate of Restoration is a less costly and easier alternative, and thus should be the focus of the restoration process when Election Commission staff are discussing with a formerly incarcerated individual the process for regaining his or her right to vote.

This report also found that, of the Election Commission offices surveyed:

- 62% could not provide the list of specific crimes and dates that prevent a person from ever having his or her right to vote restored.
- 91% failed to respond correctly regarding the voting eligibility of a person convicted of a federal felony and 75% provided incorrect answers regarding whether a person convicted of a felony in another state can vote in Tennessee.
- 54% were confused or wrong regarding the voting eligibility of an individual with a felony conviction while on probation and 35% responded incorrectly concerning eligibility while on parole.
- 81% failed to provide the five key steps an individual with a felony conviction must take in order to regain his or her right to vote.
- 32% could not name the Certificate of Restoration form, 98% failed to list the four locations where the Certificate can be found, and 96% were unable to list the authorities certified to sign it.
- 14% said they do not receive notification when a voter is convicted of a felony, and 16% do not notify an individual when his or her right to vote is revoked because of a felony conviction—highlighting the lack of a common notification procedure utilized by all Election Commission offices.

- 7% indicated that they would not offer assistance, either directly or through a referral, to a formerly incarcerated individual experiencing difficulty securing the appropriate signatures on the Certificate of Restoration.
- 11% indicated it takes on average 3 to 4 weeks to receive a response certifying eligibility to register once the Certificate of Restoration reaches the State office, although the time varied from a few days (23%) to more than a month (2%).
- 26% said the law was still too complex.
- 39% of the 687 formerly incarcerated persons for whom the local Election Commission processed registration and restoration forms between July 2006 (when the new law was enacted) and May 2007 were successfully registered to vote.

VI. Recommendations

There are seven recommendations ACLU-TN is offering to address the findings of this report:

1. Automatically restore the right to vote upon release from incarceration.

As demonstrated in this report, the restoration process is too complicated for local Election Commission offices to effectively administer. While the new process is better than the prior statute that required a court order, it is still far too complicated for both the applicants and the Election Commission offices. A streamlined restoration process would ease much of the confusion exhibited by local Election Commission offices.

2. Remove all financial obligations from the right to vote.

Individuals should pay restitution and child support, but it should not be coupled with the right to vote. These requirements place a burden on the state and further complicate the restoration process for both the applicant and Election Commission office. Removing all financial obligations would streamline and ease the restoration process.

3. Mandate regular trainings for all election commission staff on restoring voting rights to individuals with felony convictions, and ensure that both elections and probation and parole staff understand it is their duty to assist such individuals.

As authorized by the legislature (under Tennessee Code S2-11-202), the State Election Commission should ensure that every local Election Commission staff person is appropriately trained and able to advise formerly incarcerated individuals as to their right to vote. A presentation should be developed for use in training new staff and reviewed periodically by current staff, to ensure a refreshed and updated knowledge of the law. ACLU-TN can assist in creating and conducting such trainings. The trainings should include reminding officials – as well as advising parole and probation staff—that it is their responsibility to advise and assist formerly incarcerated individuals seeking to regain the

right to vote. The staff of several Election Commission offices discussed the difficulty some individuals have had in securing the necessary signatures on the Certificate of Restoration form, particularly in obtaining the cooperation of probation and parole officers. Additionally, while a number of Election Commission offices indicated that they actively assist individuals with felony convictions in securing the necessary signatures on this form, others stated quite candidly, and to the contrary, “I uphold the good people, and criminals can take care of themselves. I was raised in the church but I’m not going to bend over backwards to help a felon.”

4. Develop and distribute a poster which clearly explains the requirements of the law and mandate that it be displayed in a prominent place at all local Election Commission offices.

The State Election Commission is authorized by the legislature (Tenn. Code Ann. S2-11-202) to mandate that voting information be made public. The process for restoration of voting rights for individuals with a felony conviction should be prominently posted in local Election Commission offices and provided to any citizen seeking such information. The poster created by ACLU-TN can be readily adapted for this purpose (Appendix C). It can be easily downloaded from the ACLU-TN website <http://www.aclu-tn.org/> and additional copies are available upon request (615-320-7142).

5. Institute a uniform policy for informing each local Election Commission office when a person is convicted of a felony, and send written notification to the individual that his or her right to vote has been revoked.

Currently there is no single authority responsible for notifying local Election Commission offices when a person has lost the right to vote due to a felony conviction, and no consistent practice of providing written notification to individuals with felony convictions that their right to vote has been revoked. One entity should be designated as the responsible authority for these duties.

6. Track and publish a monthly tally of the number of Certificate of Restoration applications processed and the subsequent number of successful voter registrations.

Anecdotally, there appears to be an increase in the number of individuals with felony convictions attempting to register since the legislation took effect in July 2006. However, given that the state does not uniformly track the number of individuals seeking restoration against those who are actually successful, a true and accurate picture of the impact of the law is not possible.

7. Provide the legislature a copy of this report and recommend that individuals with felony convictions have their right to vote restored upon release from incarceration.

The Legislature specifically requested under Tenn. Code Ann. S2-11-202 that the Coordinator of Elections provide to them recommendations for improvement of the election laws and their application. It is our hope that the findings of this report, and the recommendations contained herein, be included in such a report. Particular note should be made of the key finding that the law as currently written is itself a barrier to voting registration.

As stated by the Tennessee Secretary of State, Riley Darnell:

“The right to vote is the most fundamental right of citizenship. Tennessee law allows many individuals with past felony convictions to apply. I urge all eligible Tennesseans to do so. It has been shown that individuals who vote are more involved in their communities’ affairs and less likely to be rearrested. Voting may thus enhance public safety. I call upon our Election Commissioners and Probation and Parole officers to actively assist all Tennesseans with past felonies to regain the right to vote.”

VII. Conclusion

Post-incarceration enfranchisement helps to build a stronger democracy, empowers families and communities and helps to ensure fair and accurate voter rolls. Therefore Tennessee law should be amended to allow individuals with felony convictions to have their right to vote restored upon release from incarceration.

VIII. Appendices

A. Survey Methodology

- i. ACLU-TN Letter to Local Election Commission Offices
- ii. ACLU-TN Survey Instrument

B. Voter Registration Process for Former Felons Voting in Tennessee

C. Sample Poster

Appendix A.

Survey Methodology

A letter was sent to each of the 95 Election Commission Officials in early February 2007 alerting them that an ACLU-TN Right to Vote (RTV) representative would be calling to conduct the survey (Appendix A. i., Letter). The RTV Coordinator, with assistance from a summer intern, successfully completed phone surveys with each Election Commission office between May and July 2007. A set script was followed during each phone call to the Election Commission offices (Appendix A ii., Survey Instrument). The ACLU staff person identified herself to the Election Commission staff person who answered the phone and then stated that the purpose of the call was to conduct a survey regarding the voting registration process for individuals with a felony conviction. She then asked if she could proceed with the interview at that time. If the staff person said, "Yes," the interview commenced. In some cases the staff person referred the interviewer to another staff member, usually the Election Commission Official, and the interview was then conducted with this person. If the Election Commission Official was not available the ACLU staff agreed to call back to conduct the interview on another date. A few times the staff answering the phone indicated that it was not a good time to conduct the interview and in these instances the ACLU staff agreed to call back when it was more convenient. Follow-up calls were made as necessary until a survey was completed with every local Election Commission office. Approximately 50% of the surveys were completed on the first call, 25% on the second, and the remaining 25% required 3-5 follow-up phone calls. The intern conducted approximately 25% of the surveys and the RTV Coordinator conducted 75%.

There is a maximum of 95 possible answers to each question, one for every Election Commission office. If an interviewee chose not to answer a question, the interviewer moved to the next question and left the response section blank. However, if the interviewee made any kind of response, including "I don't know," this was recorded.

The percentages provided for each question are based on the actual number of answers to that question, not the total number of possible answers (95). The gross number of possible answers, if all 95 staff answered each of the 41 questions, is 3,895 responses. The total number of actual responses secured is 2,809, or 72%. The average number of responses per question (actual number of responses to all questions divided by the number of questions) is 68.

Appendix A.i.

ACLU-TN Letter to Local Election Commission

February 19, 2007

Dear Election Official,

I am writing to inform you that the ACLU of Tennessee will be calling your office sometime in the next few weeks to survey your staff about the new law that streamlined the process for former felons to have their right to vote restored (Public Chapter 860).

Between August 8 and September 8, 2006, the ACLU held 8 Town Hall meetings in large and small cities across the state to advise the general public about the new change in the felon enfranchisement law. 350 individuals attended these meetings, including former felons, their friends and family members, non-profit agency and organization staff, government officials, activists, academics and lawyers. Election Commission staff served on the panels along with representatives from the National Right To Vote Campaign, local Bar Association members, and former felons. League of Women Voter volunteers and NAACP members helped former felons in attendance begin the voting restoration process. In total, 936 individuals, agencies, organizations, presenters, and new partners received direct communication about the Right to Vote Campaign. 27 print, radio and TV reports reached numerous others. These efforts were dedicated to reaching former felons with the information that they may now be eligible to vote and to encourage them to go to their local Election Commission office to register.

We are now surveying each Election Commission office to confirm their knowledge about the new law, learn if they have experienced an increase in the number of former felons attempting to register since the legislation became law in July 2006, and determine if former felons are having any difficulties in completing the necessary paperwork and submitting the required documentation to have their right to vote restored.

We would appreciate the cooperation of your office in our endeavor. The survey is designed to take only 15 minutes of your time. We would be happy to share the results of the survey with you once it is complete.

Thank you.

Sincerely,

Hedy Weinberg, Executive Director
ACLU of Tennessee

Michele Flynn, Coordinator
ACLU-TN Right to Vote Campaign

Appendix A.ii.

ACLU-TN Survey Instrument

1. County Name
2. Contact Name
3. Name of Interviewee
4. If a person is convicted of a felony can they register to vote?

5. If YES to Question 4, under what circumstances?

If NO, go on to Question #6

6. Can a former felon vote while on probation?
7. Can a former felon vote while on parole?
8. Can a person vote if they were convicted of a federal felony?
9. Can a person vote if they were convicted of a felony in another state?
10. Is your office notified when a voter is convicted of a felony?
11. Who notifies your agency? (What office/department/branch of government?)
12. Do you revoke their right to vote?
13. Does your agency notify the person that their right to vote has been revoked?

14. If YES to Question 13, How?

15. If NO to Question 13, does anyone notify them?

16. If YES to Question 15, who?

17. Does your agency remove the names of people disqualified from voting for other purposes, for example, because they have moved or died?
18. Who notifies your agency that the person is disqualified?
19. Does a former felon ever regain the right to vote?
20. After their sentence is complete?

21. After their probation is complete?
22. After their parole is complete?
23. When their child support is up to date?
24. When their restitution is paid in full?
25. Are there any crimes for which you can never have your right to vote restored?

26. If YES to Question 25, what are these?

If NO to Question 25, go on to Question 27.

27. What are the steps a former felon must take to regain their right to vote?
28. Do they need to provide you documentation that their sentence was completed?

29. If YES to Question 28, what is this documentation?

30. If YES to Question 18, where can it be found?

31. If forms need to be completed what are the names of the forms?
32. Where can they be found?
33. Which agencies or departments need to sign the forms?
34. So specifically who is responsible to complete which forms?
35. Who needs to sign each of these forms?
36. Where are the forms turned in or sent to?
37. What happens if the person says they cannot find someone to fill out the form?
38. Is there anything else required for a former felon to regain their voting rights?

39. If YES to Question 38, what?

If NO, go on to Question 40

40. What happens after the former felon submits their completed form?

41. From the time the completed form is given back to your office, how long does it take for the former felon to be notified that their right to vote has or has not been restored?

42. How are they notified?

43. Approximately, how many former felons have tried to register since the new law took effect in July 2006?

44. Is there anything else you would like to share, any concerns or unusual experiences that you have had, as you have helped former felons complete the necessary paperwork to have their right to vote restored?

45. OUR Additional Notes

Thank you so much for your time.

Your name?

Position?

Appendix B.

ACLU-TN Diagram—Voter Registration Process for Former Felons in Tennessee



Your vote is your voice, get your vote back!

Voting with a Felony Conviction in Tennessee

If you are one of the 94,000 Tennesseans who has lost the right to vote due to a felony conviction, you can register to vote by successfully completing a Certificate of Restoration.

You are eligible for a Certificate of Restoration if you meet all of the following requirements:*

- ✓ have completed all court-ordered jail or prison time;
- ✓ have finished probation and parole;
- ✓ have paid all court-ordered restitution; and
- ✓ are current on all court-ordered child support.

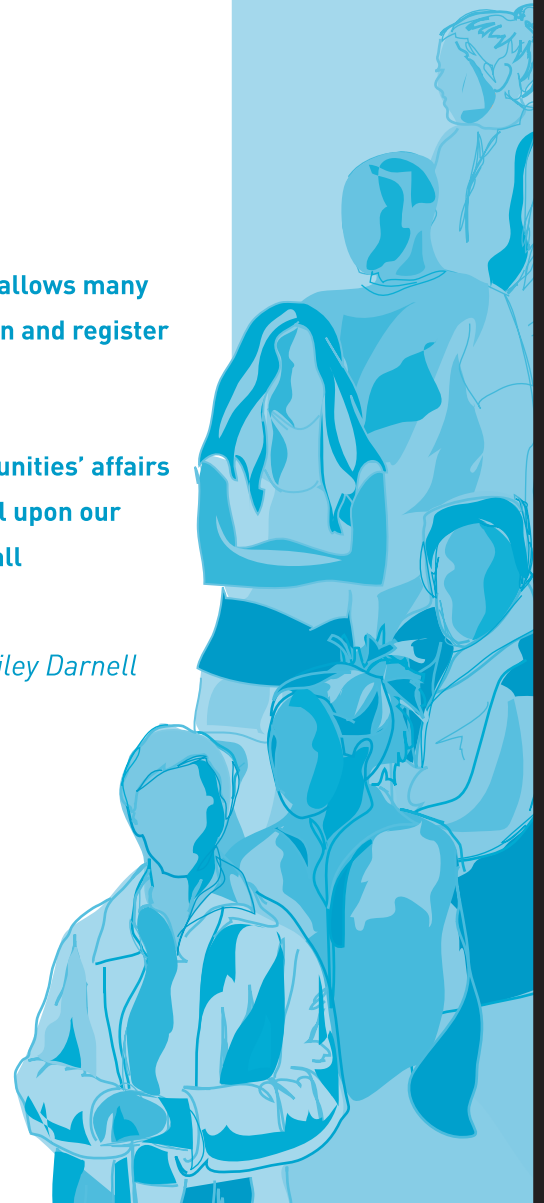
"The right to vote is the most fundamental right of citizenship. Tennessee law allows many individuals with past felony convictions to apply for a Certificate of Restoration and register to vote. I urge all eligible Tennesseans to do so.

It has been shown that individuals who vote are more involved in their communities' affairs and less likely to be re-arrested. Voting may thus enhance public safety. I call upon our Election Commissioners and Probation and Parole officers to actively assist all Tennesseans with past felonies to regain the right to vote."

—Tennessee Secretary of State Riley Darnell

* You are NOT eligible for a Certificate of Restoration if you were convicted of one of the following felonies during the given time period:

- 1) First-degree murder after July 1, 1986
- 2) Any degree of murder after July 1, 1996
- 3) Aggravated rape after July 1, 1986
- 4) Any degree of rape after July 1, 1996
- 5) Treason and voter fraud after July 1, 1986
- 6) Offenses against administration of government after July 1, 2006 including: a) Bribery b) Misconduct involving public officials and employees c) Interference with government operations
- 7) Any felony sexual offense or violent sexual offense against a minor after July 1, 2006



For more information,
please contact:

ACLU of Tennessee
www.aclu-tn.org

Tennessee Election Commission
www.tennessee.gov/sos/election
(615) 741-7956

