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LEGISLATIVE CHANGES ON FELONY DISENFRANCHISEMENT, 1996-2003

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Nationally, more than four million Americans are denied the right to vote as a result of laws that prohibit voting by felons or ex-felons. In 48 states (with the exception of Maine and Vermont) and the District of Columbia prisoners cannot vote, in 33 states felons on probation or parole are disenfranchised, and in 12 states a felony conviction can result in a lifetime ban long after the completion of a sentence. This fundamental obstacle to participation in democratic life is exacerbated by racial disparities in the criminal justice system, resulting in an estimated 13% of black men unable to vote. As a result of various changes in state laws, as well as extensive grassroots efforts, an increasing number of Americans with a felony conviction are regaining their voting rights. Public opinion data clearly shows strong support for reform - 80% of the public supports restoration of voting rights for ex-felons who have completed their sentences, and 64% and 62% respectively support the right of probationers and parolees to vote.

The Sentencing Project collaborates with leading civil rights and civil liberties organizations to encourage reconsideration of disenfranchisement policies.

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LEGISLATIVE CHANGES ON FELONY DISENFRANCHISEMENT, 1996-2003

In recent years there has been a great deal of legislative and grassroots activity focused on the issue of felony disenfranchisement. More than four million Americans are currently unable to vote due to laws in 48 states and the District of Columbia that disenfranchise varying categories of persons currently serving a felony sentence or in some states, persons who have completed their sentence.

Since 1996, 11 states have adopted changes to their felony disenfranchisement policies, with 8 states reducing restrictions and 3 adopting more restrictive policies. Cumulatively, these changes have resulted in a significant number of persons now becoming eligible to register to vote. A 2002 analysis (attached) by academics Christopher Uggen and Jeff Manza estimated that in the five states with the most significant changes (Connecticut, Delaware, Maryland, New Mexico, and Texas) 471,000 persons had gained access to the ballot box.

Overall, the strong direction of movement on disenfranchisement is toward expanding the right to vote. The three states which have restricted voting rights in recent years were atypical. In two cases (Massachusetts and Utah) they involved adopting prohibitions on prisoner voting. Prior to these actions, these states had been among just four nationally that permitted prisoners to vote. In the third state (Kansas) the restriction on probationer voting essentially remedied an inconsistency in state law.

The policy changes documented in this report have come about in many cases with bipartisan support and relatively little organized opposition. As such, they reflect a growing trend among Americans to consider voting as a fundamental right, as well as a recognition that there should be limits on the consequences of a criminal conviction.

As described in this report, the following states have adopted felony disenfranchisement changes since 1996:

<i>Connecticut</i>	Restoration of voting rights to felons on probation
<i>Delaware</i>	Permanent disenfranchisement replaced with 5-year waiting period for most offenses
<i>Kansas</i>	Expansion of disenfranchisement to felons on probation
<i>Maryland</i>	Repeal of lifetime ban for non-violent repeat offenders
<i>Massachusetts</i>	Disenfranchisement of felons in prison
<i>Nevada</i>	Automatic restoration for first-time non-violent felons; elimination of 5-year waiting period before eligibility for restoration of rights
<i>New Mexico</i>	Repeal of lifetime ban
<i>Texas</i>	Elimination of 2-year waiting period for restoration of rights
<i>Utah</i>	Disenfranchisement of felons in prison
<i>Virginia</i>	Streamlining of restoration process
<i>Wyoming</i>	Restoration of rights for first-time non-violent felons

CONNECTICUT *Restoration of voting rights to felons on probation*

In May 2001, Connecticut enacted a law restoring the right to vote for people currently on probation for a felony conviction. Those still serving their sentences in prison and on parole remain disenfranchised. This legislative change was the conclusion of a two-year effort on the part of several state legislators and a diverse coalition of organizations.

State Representative Kenneth P. Green first introduced a similar bill in 1999. Although the measure died, Rep. Green was able to team up with DemocracyWorks, a citizen lobbying association, and several key legislative leaders to form a coalition with civil rights groups and election reform advocates. Called the Connecticut Voting Rights Restoration Coalition, membership grew to over 40 organizations during the legislative session of 2000, including the ACLU, NAACP, church groups, and social service agencies. The bill they had introduced, however, was again defeated. After the defeat, the Coalition shifted its efforts to a state-wide public awareness campaign using brochures, workshops, and billboards to educate community members, criminal justice professionals, and state legislators alike. As a result of these efforts, as well as implementing a coordinated legislative strategy with key allies, the bill passed during the 2001 session—with strong majorities in both the House and the Senate. On May 4, Republican Governor John Rowland signed the bill, Public Act 01-11.

DELAWARE *Permanent disenfranchisement of all felons replaced with 5-year waiting period for most offenses*

In 2000, Delaware repealed its permanent ban on voting for ex-felons. As a result, an ex-felon now regains the right to vote after a five-year waiting period, along with paying outstanding fines and completing restitution. (Certain classes of offenders are excluded: persons convicted of murder, manslaughter, sex offenses or violations of the public trust.) Permanent felony disenfranchisement had been a part of Delaware's constitution since the early 1880s.

There was no major opposition to reform, and the issue never was a target of “soft on crime” criticism. In fact, citizens signed petitions and consistently polled 75% - 80% in favor of the legislation. Nevertheless, the alliance behind the legislation—which included the Delaware Center for Justice, labor unions, peace groups, the NAACP, and the ACLU—struggled for ten years before their bill passed. The only obstacle was the Chair of the Senate Corrections Committee who deeply opposed the legislation. For an entire decade he never let the bill out of committee. Finally, in 2000 he was forced to move on the issue when a government task force presented a viable plan for implementing the new voting law. Once out of the Committee, the legislation passed with a large majority.

KANSAS

Expansion of disenfranchisement to felons on probation

During the 2002 legislative session, Kansas added probationers and persons serving sentences in conservation camps to the category of excluded felons. As a result, all persons in prison, on parole, and on probation are barred from voting. The right to vote is automatically restored upon completion of the prison sentence, probation, and parole.

House Bill 2761, which contains the provision excluding probationers, primarily came about in order to clarify contradictory language in the Kansas state law. One statute states that all felons lose the right to vote until being discharged from custody. However, two other statutes state that felons only lose their civil rights when their sentences involve custody within the Department of Corrections. Therefore, it was unclear whether probationers and persons in custody at conservation camps—offenders who are not under the control of the Department of Corrections—were legally disenfranchised or not. The Secretary of State requested that the bill be introduced to clarify the state code.

MARYLAND

Lifetime ban for all repeat offenders reduced to 3-year waiting period for non-violent repeat offenders

In 2002, Maryland repealed its lifetime ban on two-time ex-felons. The new legislation imposes a three-year waiting period after completion of sentence (including parole, probation, restitution, fines and community service) for second-time felons before voting rights can be restored. Ex-felons with two convictions for *violent* crimes will remain permanently disenfranchised, while first-time felons will remain able to register to vote after completing their sentence.

The Maryland Voting Rights Restoration Coalition, the driving force behind the legislation, was initially comprised of Baltimore chapters of the Phi Beta Sigma Fraternity Alumni and the Southern Christian Leadership Conference. Membership eventually grew to over 50 organizations, including the NAAACP, League of Women Voters, religious groups, ex-offender groups, and many other community associations. In March and April of 2002, hearings were held on two disenfranchisement bills that had been introduced, one each in the House and Senate. The Coalition brought hundreds of ex-felons to the hearings, a number of whom gave testimony about how the voting laws affected their lives. Representatives of the ACLU, NAACP and other organizations also testified. In response to opposition by Senate Republicans that threatened to kill the bill, the coalition launched a wave of lobbying carried out by members of the NAACP, Green Party, ACORN, and BUILD (a church coalition). After the lobbying and a compromise amendment was added implementing the three-year waiting period, the bill passed by a margin of three votes and was signed by the Governor.

MASSACHUSETTS *Constitutional amendment to disenfranchise incarcerated felons*

During the November 2000 election, Massachusetts voters passed a ballot initiative which amends the state constitution to prohibit incarcerated felons from voting. Until the 2000 election, Massachusetts, Vermont, and Maine were the only states that allowed inmates to vote. Felons serving probation and parole, however, retain their right to vote.

The movement to bar inmate voting was initiated in 1998 in response to the formation of a political action committee (PAC) at a state prison. Then Lieutenant Governor Paul Cellucci, who was campaigning for governor, called for the prisoner voting ban in response. At the time, the PAC had less than \$300 in its account.

In order for a proposal amending the constitution to be adopted, it must be passed by two consecutive legislatures and then be put to a statewide ballot vote. The Republican-sponsored measure passed with strong support in both legislative sessions: 155-34 in 1998 and 144-45 in 2000. House Republican Leader Francis Marini claimed that prisoners "are incapable of running their own lives. They should not be allowed to run ours." Despite outspoken opposition by the NAACP, ACLU, League of Women Voters, legal scholars, and by media such as the *Boston Globe*, the Massachusetts electorate voted in favor of the amendment by a two-to-one margin. Opponents of the measure argued that it was a movement backwards because it denies prisoners an important part of their connection to society, does nothing to improve public safety, and disproportionately impacts minority communities. The adoption of the disenfranchisement amendment reversed a tradition of inmate voting in Massachusetts that had been in place since before the American Revolution.

NEVADA *Automatic restoration for first-time non-violent felons; elimination of 5-year waiting period before eligibility for restoration of voting rights*

In 2001, Nevada passed Assembly Bill 328, which removed the waiting period imposed after completion of prison and parole terms before becoming eligible to apply for restoration of civil rights. However, as under prior law, persons on probation are still restricted from applying for six months after completion of probation. Under the old law, ex-felons who had completed their prison sentence, parole, or who had been granted a pardon without restoration of rights, could apply only after a five-year waiting period had expired. New legislation adopted in the 2003 legislative session automatically re-enfranchises first-time non-violent ex-felons upon completion of their prison or parole terms, thereby eliminating the cumbersome application process they must go through in order to re-register. The bill received strong support from the ACLU, Interfaith Workers Justice, Progressive Leadership Alliance of Nevada (PLAN) and labor unions. Supporters testified at legislative hearings, lobbied lawmakers, and disseminated newsletter articles about voting restoration.

NEW MEXICO *Repeal of lifetime disenfranchisement of all felons*

In March 2001, the New Mexico legislature adopted Senate Bill 204, repealing the state's lifetime ban on ex-felon voting. Prior to the bill's passage, anyone convicted of a felony faced permanent disenfranchisement. According to the new law, persons convicted of a felony who have completed their prison terms, as well as any offenders completing probation or parole, are automatically eligible to register. There is no application process required to restore voting rights. It is estimated that over 50,000 New Mexicans were barred from voting at the time of the law's enactment.

The bill was introduced by Democratic Senator Richard M. Romero and followed up with a diligent lobbying effort made up of a coalition including the ACLU, the Committee on Prison Reform and Accountability (COPRA), and students and faculty of the University of New Mexico School of Law. Every Democratic member of both the House and the Senate received copies of a study in progress which demonstrated that Democratic defeats in several close elections in various states could be attributed directly to felony disenfranchisement. Hearing testimony was critical, which included members of the ACLU, COPRA, New Mexico Federation of Labor, and civil rights attorneys, as well as ex-felons who were working for a living, raising families, and paying taxes but could not vote. Finally, Republican Governor Gary Johnson, a leading critic of the drug war, was sympathetic to reform.

TEXAS *Elimination of 2-year waiting period for restoration of voting rights*

During the 1996 legislative session, the Texas legislature eliminated the 2-year waiting period required after completion of sentence before being eligible to vote. Introduced by Harold Dutton, a Democratic Senator from Houston, the new state law makes restoration of voting rights automatic upon completion of incarceration, parole, or probation. The passage of Dutton's bill marked the culmination of a three decade struggle to achieve automatic restoration of voting rights. In the mid 1970s a constitutional amendment repealing the then lifetime ban on ex-felon voting passed the legislature but was voted down when the measure went to public referendum. In 1977, a bill to automatically restore the right of ex-felons to vote passed the legislature, but was then vetoed by the Governor. The 1980s saw a gradual lessening of restrictions when in 1983 the lifetime ban was replaced by a 5-year waiting period and in 1985 when the 5-year waiting period was reduced to 2-years.

UTAH *Constitutional amendment to disenfranchise incarcerated felons*

During the November 1998 election, Utah voters approved an amendment to the state constitution that bars prisoners from voting. In the statewide ballot, over 80% of the electorate voted in favor of the amendment. The bill that led to the proposition was sponsored by Republican Carl Saunders, who had stated that voting is "not a right, it's a privilege, and it needs to be earned by those who've shown complete disregard for our laws." Until the proposition was passed, Utah was one of four states—including Maine, Vermont, Massachusetts—that allowed prison inmates to vote. Today, only Maine and Vermont have not taken away the franchise from this population. Persons on parole or probation were not affected by the amendment and retain their right to vote.

VIRGINIA

Streamlining of the restoration process; new disenfranchisement bills introduced in the 2003 legislative session

Since 1999, Virginia has experienced a variety of legislative and executive action regarding the state's felony voting laws. Virginia's state constitution mandates that all felons be permanently disenfranchised unless they successfully petition the Governor to have their civil rights restored. In 1991, Governor L. Douglas Wilder added a 7-year waiting period after the completion of sentence for drug offenders, and a 5-year period for all other offenders, before becoming eligible to petition the governor.

In July 1999, the legislature's Subcommittee Studying Election Law Innovations heard testimony from ex-felons, NAACP, Nation of Islam, and the Richmond Crusade for Voters proposing new legislation. However, according to Virginia's Attorney General, the state constitution gave the General Assembly no authority to directly change ex-felon voting laws—only the Governor or a constitutional amendment could do so. While efforts to amend the constitution were unsuccessful in the 2000 legislative session, two relevant bills were passed. HB 1081, sponsored by Democrat Jerrauld Jones, allows most non-violent ex-felons to petition the circuit courts, not just the governor, for restoration of rights. HB 1080, also sponsored by Jones, requires the Department of Corrections to instruct inmates about their loss of rights and the process for regaining them.

In June 2002, the Virginia State Crime Commission recommended that the General Assembly intervene on behalf on non-violent ex-felons and establish a new process for restoring their voting rights. In August, newly elected Democratic Governor Mark Warner greatly streamlined the process for non-violent offenders. As of September 1, 2002, the application for restoration of rights was reduced from 13 pages to one. As a result, non-violent applicants no longer need to include three letters of reference, a letter from a probation or parole officer, and proof that restitution has been paid. Also, persons convicted of non-violent offenses may apply 3 years after completing their sentence, as opposed to the previous waiting periods of 5 or 7 years. These applicants are guaranteed to receive a decision by the governor within six months. Persons convicted of violent offenses, drug distribution offenses, and election fraud, face a mandatory 5-year waiting period and must use the former, longer application process. In just over a year in office, Gov. Warner has restored the voting rights of nearly 300 ex-felons. Previous Gov. Jim Gilmore approved the petitions of only 236 applicants during his entire four-year term.

In the 2003 legislative session, two felony disenfranchisement bills are making their way through the General Assembly. HB 2020, sponsored by Republican Robert Bell, would add a long list of crimes—including burglary, pandering, and obstruction of justice—to the category of violent offenses, thus making it harder for these types of offenders to regain their right to vote. Another bill, SJR 283, would amend Virginia's Constitution to grant the General Assembly the authority to enact legislation regarding restoration of voting rights for non-violent felons. This bill was introduced as a result of a report produced by the Joint Subcommittee Studying Collateral Consequences of Criminal Convictions, consequences such as loss of voting rights as well as denial of welfare and housing assistance, college financial aid, and exclusion from employment opportunities. To change the constitution, the proposed measure must pass in two different legislative sessions separated by a general election, and then win a majority of votes in a state-wide referendum—a process taking at least three years.

WYOMING

Restoration of voting rights for first-time non-violent felons

In February 2003, Wyoming's legislature passed a bill that will make it easier for persons convicted of non-violent offenses to regain their right to vote. Effective July 1, 2003, first-time non-violent felons can have their voting rights restored after a 5-year waiting period beyond the completion of their sentence. Any probation or parole terms must also be completed. Eligible persons may write to the state parole board informing them of the completed requirements, whereupon the parole board will issue a certificate restoring voting rights. Wyoming's previous policy of permanent disenfranchisement still applies to all other felons. The only option for these ex-felons is to apply for restoration of rights, or a pardon, from the governor, who then makes a decision on a case-by-case basis.

The bill which passed in February, Senate File 65, was sponsored by Democratic Senator Keith Goodenough. A wide coalition rallied behind the bill, including labor unions, church groups, a small business association, and the Department of Corrections. The legislation was also strongly supported by the governor. The bill passed the House by a margin of 48-12, and 20-9-1 in the Senate.

APPENDIX

IMPACT OF RECENT LEGAL CHANGES IN FELON VOTING RIGHTS IN FIVE STATES

Christopher Uggen and Jeff Manza with Melissa Thompson and Sara Wakefield
University of Minnesota Department of Sociology

This briefing paper estimates the impact of changes in state felon disenfranchisement provisions in five states since 1997. By year-end 2003, when each of these provisions will be in effect, we calculate that a total of almost 500,000 persons in these states will have regained the right to vote. For current populations, our analysis is based on U.S. Department of Justice Bureau of Justice Statistics publications (e.g., *Prisoners in the United States*). For ex-felons no longer under supervision, we rely on our own life table estimates. For legal changes that become effective after 2001, our projections apply recent rates of change to current correctional population data.

CONNECTICUT

Legal Change: Connecticut restored voting rights to all probationers as of January 1, 2002.

Impact: We estimate that the restoration of voting rights for probationers resulted in approximately 33,054 felony probationers regaining the vote as of 12/31/2002

Sources: Projection based on 2001 population of probationers, 1997 proportion of probationers who are felons in Connecticut (last available estimate), and application of 2000-2001 rate of change in probation population to 2001-2002.

DELAWARE

Legal Change: Delaware reduced its lifetime ban on voting for felons to a five-year waiting period after completion of sentence as of June 23, 2000.

Impact: We estimate that this change resulted in approximately 6,355 former felons regaining the vote in 2000. As of 12/31/2000, we estimate that 14,384 were disenfranchised in Delaware, whereas 20,739 would have been denied voting rights under the lifetime ban.

Sources: Estimate based on our life tables, updated to include 2000 population of prisoners, parolees, and the 1997 proportion of probationers who are felons in Delaware.

MARYLAND

Legal Change: Maryland passed legislation to automatically restore voting rights to non-violent recidivists three years after completion of sentence (violent recidivists remain disfranchised) in 2002.

Impact: We estimate that approximately 46,515 felons will regain the vote when the law takes effect in 2003. We calculate that 87,415 felons would have been disfranchised in 2003 under the old law, whereas 40,900 felons will remain disfranchised under the new law.

Sources: We count non-violent recidivists among the disfranchised for a three-year period after release and violent recidivists among the disfranchised indefinitely (until death or recidivism removes them from the ex-felon pool). Because we have not yet obtained detailed state-level data on the offense distribution of releasees from standard Bureau of Justice Statistics sources or the Maryland Department of Public Safety, we base our estimates on national data on the proportion of recidivists being released after serving time for violent felonies. Use of these data may introduce some error into the Maryland numbers, but we believe that this procedure is likely to produce reasonable estimates of the number re-enfranchised by the legal change.

NEW MEXICO

Legal Change: New Mexico removed its lifetime ban on voting for ex-felons as of July 7, 2000.

Impact: We estimate that the removal of the ex-felon voting ban resulted in 68,729 ex-felons regaining the vote as of 12/31/2001.

Sources: Estimate based on our life tables, updated to include 2001 population of prisoners, parolees, and the 1997 proportion of probationers who are felons in New Mexico.

TEXAS

Legal Change: Effective in 1998, Texas removed its two-year waiting period after completion of sentence for the restoration of voting rights for all felons.

Impact: We estimate that the removal of the two-year waiting period resulted in 316,981 former felons regaining the right to vote in 2000 who would have been disfranchised had the earlier law remained in place.

Sources: Estimate based on our life tables, updated to include 1998, 1999, and 2000 population of prisoners, parolees, and the 1997 proportion of probationers who are felons in Texas.