

Voting Rights in the Era of Mass Incarceration: A Primer

As of 2020, 5.2 million Americans were prohibited from voting due to laws that disenfranchise citizens convicted of felony offenses.¹ Voting rights vary by state, which institute a wide range of disenfranchisement policies.

Table 1. Voting Restrictions in 2021

No restriction (4)	Prison (21)	Prison & parole (1)	Prison, parole & probation (15)	Prison, parole, probation & post-sentence – some or all (11)
Maine	California	Louisiana ³	Alaska	Alabama ⁴
Vermont	Colorado		Arkansas	Arizona ⁵
District of Columbia	Connecticut		Georgia	Delaware ⁶
Puerto Rico	Hawaii		Idaho	Florida ⁷
	Illinois		Kansas	Iowa ⁸
	Indiana		Minnesota	Kentucky ⁹
	Maryland		Missouri	Mississippi ¹⁰
	Massachusetts		New Mexico	Nebraska ¹¹
	Michigan		North Carolina	Tennessee ¹²
	Montana		Oklahoma	Virginia ¹³
	Nevada		South Carolina	Wyoming ¹⁴
	New Hampshire		South Dakota	
	New Jersey		Texas	
	New York		West Virginia	
	North Dakota		Wisconsin	
	Ohio			
	Oregon			
	Pennsylvania			
	Rhode Island			
	Utah			
	Washington ²			

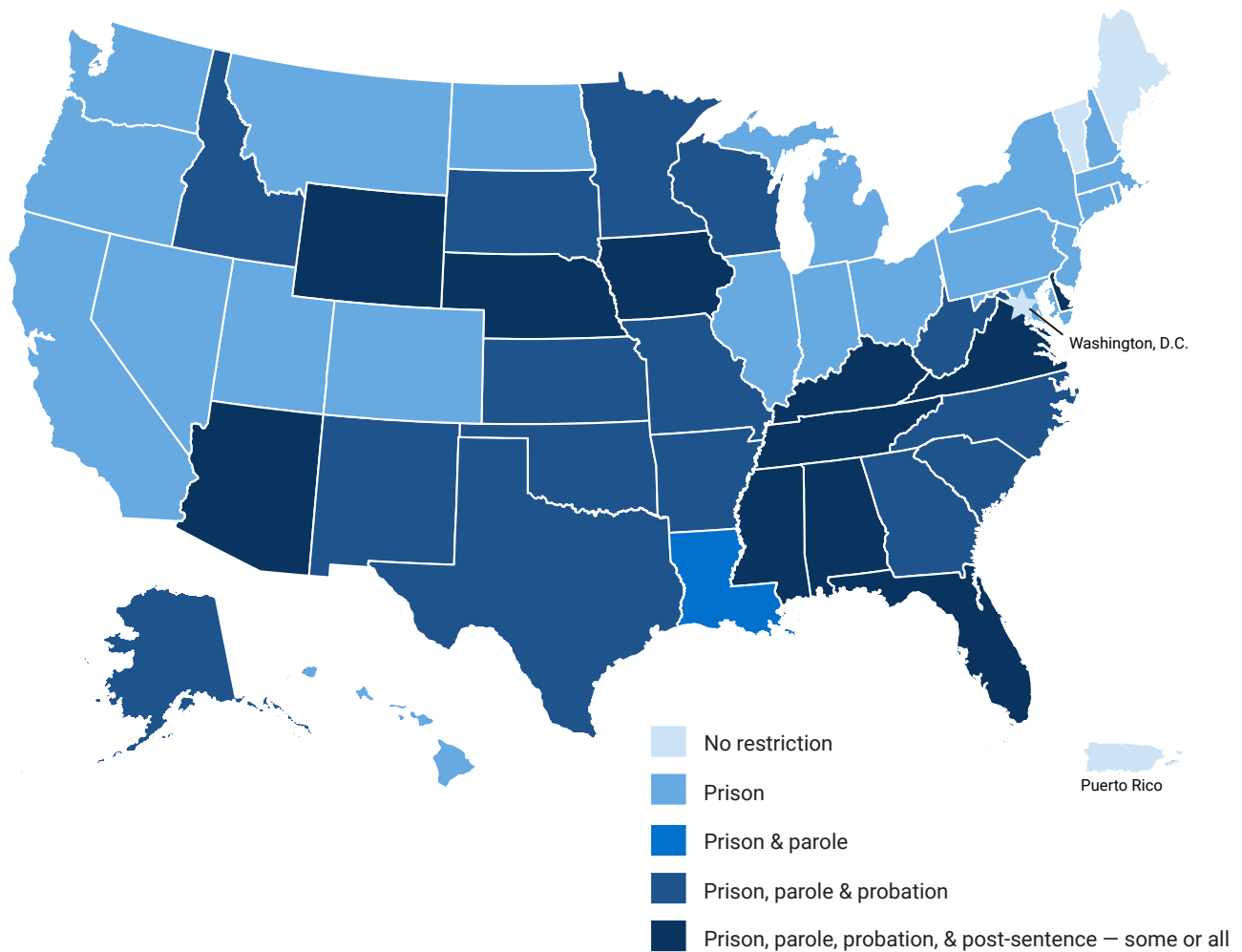
The 11 most extreme states restrict voting rights for some or all individuals even after they have served their prison sentence and are no longer on probation or parole; such individuals make up over 58% of the entire disenfranchised population. Only Maine, Vermont, Washington DC, and the Commonwealth of Puerto Rico do not restrict the voting rights of anyone with a felony conviction, including those in prison.

Persons currently in prison or jail represent a minority of the total disenfranchised population. In fact, 75% of disenfranchised voters live in their communities, either under probation or parole supervision or having completed their sentence. An estimated 2.2 million people

are disenfranchised due to state laws that restrict voting rights even after completion of sentences.¹⁵

Rights restoration practices vary widely across states and are subject to the turns of political climate and leadership, which has led some states to vacillate between reform and regression. In Iowa, then-Governor Vilsack issued an executive order in 2005 automatically restoring the voting rights of all persons who had completed their sentences, but this order was rescinded in 2011 by then-Governor Branstad. In 2020, Governor Reynolds signed an executive order automatically restoring voting rights to most people who have completed their sentences.¹⁶

Figure A. Voting Restrictions by State, 2021



In Florida, voters passed a 2018 amendment that restored the voting rights of most people who had completed their sentences. The following year, state legislators made restoration conditional on an individual's payment of all restitution, fines, and fees, meaning only people who have paid all legal financial obligations have become eligible to vote.¹⁷ The Sentencing Project estimates that almost 900,000 people who owe legal financial obligations remain disenfranchised in the state.¹⁸ Voting rights advocates have called the move a “poll tax” and a “pay to vote” system.¹⁹

In addition to Florida, three other states (Alabama, Arizona, and Tennessee) condition eligibility for the restoration of voting rights on the repayment of legal

financial obligations. Tennessee requires that people be up to date on all child support payments in order to regain the right to vote.²⁰

The denial of voting rights has a disproportionate impact on communities of color. Black Americans of voting age are nearly four times as likely to lose their voting rights than the rest of the adult population, with one of every 16 Black adults disenfranchised nationally. As of 2020, in seven states – Alabama; Florida; Kentucky; Mississippi; Tennessee; Virginia; Wyoming – more than one in seven Black adults are disenfranchised. In total, 1.8 million Black citizens are banned from voting. In 34 states, the Latinx population is disenfranchised at a higher rate than the general population.²¹

HISTORY OF VOTING RESTRICTIONS

English colonists brought to North America the common law practice of “civil death,” a set of criminal penalties that included the revocation of voting rights. Early colonial laws limited the penalty of disenfranchisement to certain offenses related to voting or considered “egregious violations of the moral code.”²² After the American Revolution, states began codifying disenfranchisement provisions and expanding the penalty to all felony offenses.²³ Many states instituted felony disenfranchisement policies in the wake of the Civil War, and by 1869, 29 states had enacted such laws.²⁴ Political scientist Ward Elliot argues that the elimination of the property test as a voting qualification may help to explain the popularity of felony disenfranchisement policies, as they served as an alternate means for wealthy elites to constrict the political power of the lower classes.²⁵

In the post-Reconstruction period, several Southern states tailored their disenfranchisement laws in order to bar Black male voters; targeting those offenses believed to be committed most frequently by the Black population.²⁶ For example, party leaders in Mississippi called for disenfranchisement for offenses such as burglary, theft, and arson, but not for robbery or murder.²⁷ The author of Alabama’s disenfranchisement provision “estimated the crime of wife-beating alone would disqualify sixty percent of the Negroes,” resulting in a policy that would disenfranchise a man for beating his wife, but not for killing her. Such policies would endure for over a century.²⁸ Whether or not felony disenfranchisement laws today are intended to reduce the political clout of communities of color, this is their undeniable effect.

LEGAL STATUS

Disenfranchisement policies have met occasional legal challenges in the last century. In *Richardson v. Ramirez*, 418 U.S. 24 (1974), three men from California who had served time for felony convictions sued for their right to vote, arguing that the state’s felony disenfranchisement policies denied them the right to equal protection

of the laws under the U.S. Constitution. Under Section 1 of the Fourteenth Amendment, a state cannot restrict voting rights unless it shows a compelling state interest. Nevertheless, the U.S. Supreme Court upheld California’s felony disenfranchisement policies as constitutional, finding that Section 2 of the Fourteenth Amendment allows the denial of voting rights “for participation in rebellion, or other crime.” In the majority opinion, Justice Rehnquist found that Section 2 – which was arguably intended to protect the voting rights of freed slaves by sanctioning states that disenfranchised them – exempts from sanction disenfranchisement based on a felony conviction. By this logic, the Equal Protection Clause in the previous section could not have been intended to prohibit such disenfranchisement policies.

Critics argue that the language of the Fourteenth Amendment does not indicate that the exemptions established in Section 2 should prohibit the application of the Equal Protection Clause to voting rights cases.²⁹ Moreover, some contend that the Court’s interpretation of the Equal Protection Clause in *Richardson* is inconsistent with its previous decisions on citizenship and voting rights, in which the Court has found that the scope of the Equal Protection Clause “is not bound to the political theories of a particular era but draws much of its substance from changing social norms and evolving conceptions of equality.”³⁰ Therefore, even if the framers of the Fourteenth Amendment seemingly accepted felony disenfranchisement, our interpretation of the Equal Protection Clause today should allow for the ways in which our concept of equality may have evolved since 1868.

GROWTH AND DECLINE OF THE DISENFRANCHISED POPULATION

As states began expanding voting rights in the civil rights era, the disenfranchisement rate dropped between 1960 and 1976. Although reform efforts have been substantial in recent years, the number of people disenfranchised because of a felony conviction increased dramatically, rising from 1.17 million in 1976 to 6.1 million by 2016, just as mass incarceration and criminalization took hold in the U.S.

Recent state voter restoration reforms have led to a nearly 15% decline in the number of people disenfranchised since 2016, with nearly 5.2 million people disenfranchised in 2020. Some jurisdictions have even begun to address voting in prison. In 2020, Washington, DC became the first jurisdiction to restore voting rights for people in prison and legislators in Oregon are considering similar legislation.³¹ In order to strengthen democracy and address significant racial disparities, The Sentencing Project supports establishing universal voting for all citizens impacted by the criminal legal system.³²

POLICY REFORMS IN RECENT YEARS

Public opinion surveys report that a clear majority of U.S. residents support voting rights for citizens who have completed their sentence. In a 2018 Pew Research Center survey, a majority of both Democrats and Republicans supported re-enfranchisement.³³ In recent years, heightened public awareness of voting restrictions has resulted in successful state-level reform efforts, from legislative changes expanding voting rights to grassroots voter registration initiatives targeting

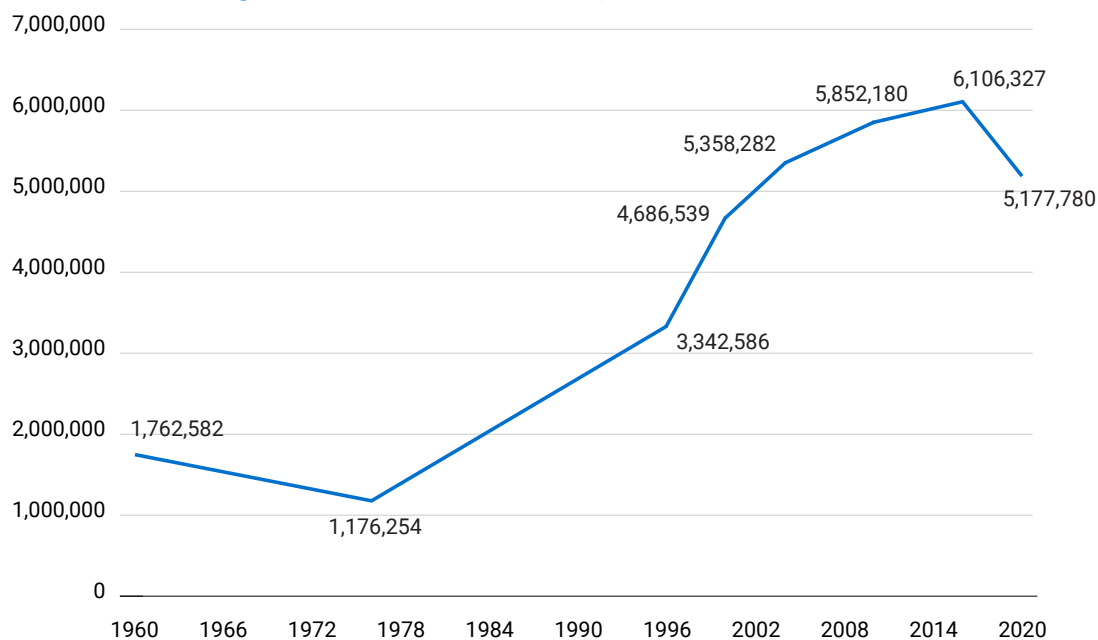
individuals with felony convictions. Between 1997 and 2021, 25 states and Washington, DC expanded voter eligibility and/or informed persons with felony convictions of their voting rights either through legislative or executive action.³⁴ Among these:

- In 2020, Washington, DC became the first jurisdiction in the country to restore voting rights for people in prison.
- Ten states either repealed or amended lifetime disenfranchisement laws since 1997.
- Ten states have expanded voting rights to some or all persons on probation and/or parole since 1997.
- Sixteen states and Washington, DC enacted voting rights reforms between 2016 and 2021, either through legislation or executive action.

DISENFRANCHISEMENT IN AN INTERNATIONAL CONTEXT

Although they are rooted in the “civil death” tradition of medieval Europe, disenfranchisement policies in the United States today are exceptional in their severity

Figure B. Disenfranchised Population, 1960-2020



Source: Uggen, C., Larson, R., Shannon, S., & Pulido-Nava, A. (2020). *Locked out 2020: Estimates of people denied voting rights due to a felony conviction*. The Sentencing Project.

Table 2. Restoring Voting Rights in the Era of Mass Incarceration, 1997-2021

State	Change
Alabama	Streamlined restoration for most persons upon completion of sentence (2003); codified list of felony offenses that result in disenfranchisement (2017)
Arizona	Removed requirement to pay outstanding fines before rights are automatically restored for people convicted of first-time felony offenses after completion of court-imposed sentence (2019)
California	Restored voting rights to people convicted of a felony offense housed in jail, but not in prison (2016); Restored voting rights for people on parole (2020)
Colorado	Restored voting rights to persons on parole (2019)
Connecticut	Restored voting rights to persons on probation (2001); repealed requirement to present proof of restoration in order to register after completing a prison term or parole (2006); restored voting rights to people on parole (2021)
Delaware	Repealed lifetime disenfranchisement, replaced with five-year waiting period for persons convicted of most offenses (2000); repealed five-year waiting period for most offenses (2013); Eliminated requirement that people pay all legal financial obligations after completion of their sentence to regain voting rights (2016)
District of Columbia	Restored voting rights to people in prison (2020)
Florida	Simplified clemency process (2004, 2007); adopted requirement for county jail officials to assist with restoration (2006); reversed modification in clemency process (2011); Restored voting rights to most residents after sentence completion (2018); Passed legislation requiring persons to pay all legal financial obligations after completion of court-imposed prison, probation, or parole sentence to have voting rights restored (2019)
Hawaii	Codified data sharing procedures for removal and restoration process for people who have completed a prison term (2006)
Iowa	Restored voting rights post-sentence via executive order (2005); rescinded executive order (2011); simplified application process (2016); restored voting rights to people who have completed their sentences, except for those convicted of homicide, by executive order (2020)
Kentucky	Simplified restoration process (2001, 2008); restricted restoration process (2004, amended in 2008); restored voting rights post-sentence for non-violent felony convictions via executive order (2015); rescinded executive order (2015); restored voting rights post-sentence for non-violent felony convictions via executive order (2019)
Louisiana	Required Department of Public Safety and Corrections to provide notification of rights restoration process (2008); Authorized voting for residents who have not been incarcerated for five years including persons on felony probation or parole (2018)
Maryland	Repealed lifetime disenfranchisement (2007); restored voting rights to persons on probation and parole (2016)
Nebraska	Repealed lifetime disenfranchisement, replaced with two-year waiting period (2005)
Nevada	Repealed five-year waiting period (2001); restored voting rights to persons convicted of first-time non-violent offenses (2003); Restored voting rights to people dishonorably discharged from probation or parole, allowed people convicted of category B offenses to have their rights restored after two-year waiting period (2017); Restored voting rights to persons on probation and parole (2019)
New Jersey	Established procedures requiring state criminal justice agencies to notify persons of their voting rights when released (2010); restored voting rights to persons on probation and parole (2019)
New Mexico	Repealed lifetime disenfranchisement by restoring voting rights to people upon completion of sentence (2001); codified data sharing procedures, certificate of completion provided after sentence (2005)
New York	Required criminal justice agencies to provide voting rights information to persons who are again eligible to vote after a felony conviction (2010); restored voting rights to persons on parole via executive order (2018); passed bill restoring voting rights to persons on parole (2021)
North Carolina	Required state agencies to establish a process whereby individuals will be notified when their voting rights are restored upon completion of sentence (2007)
Rhode Island	Restored voting rights to persons on probation and parole (2006)
South Dakota	Established new procedures to provide training and develop voter education curriculum to protect the voting rights of citizens with certain felony convictions (2010); revoked voting rights for persons on felony probation (2012)

Tennessee	Streamlined restoration process for most persons upon completion of sentence (2006)
Texas	Repealed two-year waiting period to restore rights (1997)
Utah	Clarified state law pertaining to federal and out-of-state convictions, re-enfranchising people residing in Utah but convicted out-of-state or in federal courts (2006)
Virginia	Required notification of rights and restoration process by Department of Corrections (2000); streamlined restoration process (2002); decreased waiting period for non-violent offenses from three years to two years and established a 60-day deadline to process voting rights restoration applications (2010); eliminated waiting period and application for non-violent offenses (2013); restored voting rights post-sentence via executive order (2016); restored voting rights to over 69,000 people who have completed their prison sentences but are still on probation via executive order (2021)
Washington	Restored voting rights for persons who exit the criminal justice system but still have outstanding financial obligations (2009); restored voting rights to people on probation and parole - bill takes effect in 2022 (2021)
Wyoming	Restored voting rights to persons convicted of first-time non-violent offenses (2003); authorized automatic rights restoration for persons convicted of first-time non-violent felony offenses who apply and receive a certificate of voting rights restoration (2015); removed application process and automatically restored voting rights to persons convicted of first-time non-violent felony offenses who have completed their community supervision (2017)

and the restriction of the voting rights of people who have completed their prison terms or were never incarcerated at all.³⁵ While in the United States, only Maine, Vermont, the District of Columbia, and Puerto Rico allow citizens to vote from prison, the European Court of Human Rights determined in 2005 that a blanket ban on voting from prison violates the European Convention on Human Rights, which guarantees the right to free and fair elections.³⁶ Indeed, almost half of European countries allow all incarcerated individuals to vote, facilitating voting within the prison or by absentee ballot.³⁷ In Canada, Israel, and South Africa, constitutional courts have ruled that any conviction-based restriction of voting rights is unconstitutional.

IMPACT OF VOTING RESTRICTIONS

Research suggests that restoring voting rights to people impacted by the criminal legal system could aid their transition back into community life. The revocation of voting rights for people with felony convictions compounds isolation from communities, even though civic participation has been linked with lower recidivism rates. In one study, among individuals who had been arrested previously, 27% of non-voters were rearrested, compared with 12% of voters.³⁸ Although the limitations of the data available preclude proof of direct causation, it is clear that “voting appears to be part of a package of pro-social behavior that is linked to desistance from crime.”³⁹

CONCLUSION

The dramatic growth of the U.S. prison population and the corresponding reach of the criminal legal system over the last 40 years has led to high levels of disenfranchisement unparalleled among democratic nations. Nationwide, these policies disenfranchised an estimated 5.2 million adults in 2020. Disenfranchisement policies vary widely by state, ranging from no restrictions on voting to a lifetime ban upon conviction. Voting rights restrictions have potentially affected the outcomes of U.S. elections, particularly as disenfranchisement policies disproportionately impact people of color. Nationwide, as of 2020 one in every 16 Black adults could not vote as the result of a felony conviction, and in seven states more than one in seven Black adults was disenfranchised. Felony disenfranchisement laws remain a serious structural barrier to racial justice in this country.

Denying the right to vote to an entire class of citizens is deeply problematic, undemocratic, and counterproductive to effective reentry. Fortunately, many states are reconsidering their archaic disenfranchisement policies, with half of states and the District of Columbia enacting reforms since 1997. But there is still much to be done before the United States will resemble comparable nations in allowing, honoring and promoting the full democratic participation of its citizens.

ENDNOTES

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- In 2021, Washington passed legislation to restore voting rights to people on probation and parole. The change will take effect on January 1, 2022. Washington House Bill 1078. (2021). <https://app.leg.wa.gov/billsummary?billnumber=1078&year=2021>
- Louisiana – In 2019, authorized voting for residents under an order of imprisonment for a felony who have not been incarcerated for five years, including those on probation and parole.
- Alabama - In 2016, legislation eased the rights restoration process after completion of sentence for persons not convicted of a crime of “moral turpitude.” The state codified the list of felony offenses that are ineligible for re-enfranchisement in 2017.
- Arizona - Permanently disenfranchises persons with two or more felony convictions. In 2019, removed the requirement to pay outstanding fines before rights are automatically restored for first time felony offenses only.
- Delaware – In 2013, removed the five-year waiting period to regain voting eligibility. Apart from some disqualifying offenses, people convicted of a felony are now eligible to vote upon completion of sentence and supervision.
- Florida – In 2018, voters passed an amendment to restore voting rights to most people after sentence completion. In 2019, legislation was passed that made restoration conditional on payment of all restitution, fees, and fines. As of October, 2020, only the rights of those who had paid all legal financial obligations (fines and fees) had been restored.
- Iowa – In 2020, Governor Reynolds signed an executive order restoring voting rights to people who have completed their sentences, except for those convicted of homicide. This follows previous executive orders from Governor Vilsack (restoring voting rights to individuals who had completed their sentences in 2005) and Governor Branstad (reversing this executive order in 2011).
- Kentucky – In 2019, Governor A. Beshear issued an executive order restoring voting rights to those who had completed sentences for nonviolent offenses. This follows a similar 2015 executive order by Governor S. Beshear, which had been rescinded by Governor Bevin later that year.
- Mississippi – Permanently disenfranchises individuals convicted of certain offenses.
- Nebraska – In 2005, Reduced its indefinite ban on post-sentence voting to a two-year waiting period.
- Tennessee - Disenfranchises those convicted of certain felonies since 1981, in addition to those convicted of select crimes prior to 1973. Others must apply to the Board of Probation and Parole for restoration.
- Virginia – In 2019, Governor Northam reported that his administration has restored voting rights to 22,205 Virginians previously convicted of felonies. Governor McAuliffe had earlier restored rights to 173,166.
- Wyoming – In 2017, restored voting rights after five years to people who complete sentences for first-time, non-violent felony convictions.
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The Sentencing Project promotes effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice.