

RIGHTS RESTORATION IN KENTUCKY

I. DISENFRANCHISEMENT AND RESTORATION PROCESSES

Who does Kentucky disenfranchise?

People convicted of crimes considered “violent” under Kentucky state law suffer permanent lifelong disenfranchisement unless they successfully apply to the Governor for restoration. Legal financial obligations (“LFOs”) must be paid before making this application to the Governor.⁷⁰ “Violent” crimes include any capital offense, second-degree manslaughter, second-degree assault, and any felony sexual offense.⁷¹

In accordance to a new executive order issued by Governor Andy Beshear last December, people convicted of crimes considered “non-violent” receive automatic restoration of their right to vote following completion of their sentences, including probation and parole, but excluding payment of LFOs.⁷² Note, however, there are some LFOs that must be paid before probation and parole are considered complete.

What is Kentucky’s restoration process for people with felony convictions?

Only those convicted of crimes considered violent must apply to the Governor for restoration of the right to vote. Applicants must have a Final Discharge from parole or their sentence must have expired, must not be under felony indictment, and must not have pending charges or any outstanding fines or restitution.⁷³

Those convicted of non-violent offenses do not have to make an application for restoration. Their voting rights are automatically restored upon completion of sentence.

What is the voter registration and verification process for voters with convictions?

To date, once a person’s right to vote is restored there is no known special procedure or documentation required to register to vote. The person becomes like any other eligible, but unregistered voter.

Governor Beshear’s recent Executive Order directs the Department of Corrections to provide information about any Kentuckian who qualifies for automatic restoration to the “necessary election officials.” It also provides Kentuckians with the right to request “verification” from the DOC. Finally, it directs the Justice and Public Safety Cabinet and all state agencies to comply with the order.⁷⁴

II. IMPACT

How many people are directly impacted by disenfranchisement and mass incarceration?

Prior to the EO, Kentucky disenfranchised an estimated 312,046 persons from voting due to a felony conviction, amounting to 9.1%, or one out of every 11 residents in Kentucky. This was more than three times the national average of 2.47%, or one in 40.

The EO restores voting rights for an estimated 140,000 people, leaving approximately 172,000 people permanently disenfranchised.

Who are the impacted people?

African Americans are disproportionately impacted. Prior to the EO, the state had the “highest African American disenfranchisement rate in the country with one of every four (26.2%) African Americans ineligible to vote. This rate is more than triple the national rate for African Americans.”⁷⁵

Women are significantly impacted. Kentucky has the second-highest rate of incarceration for women.⁷⁶

III. STRATEGIES TO EXPAND RIGHTS RESTORATION

What are key legal and policy rights restoration strategies tried as of February 2020?

	Legislation	Litigation	Executive Order	Ballot Initiative	Administrative Advocacy
Interventions Attempted in the State	X	X	X		

Legislation

HB 40 (2016) — Passed. Allowed certain people with Class D felony convictions to have those convictions vacated and expunged after a five-year waiting period and a fee of \$500. As of 2017, the number of former felons who may now vote because of HB 40 was something less than 389 people.⁷⁷

HB 70 (2016 - 2019) — Failed every year. This is the constitutional amendment to restore voting rights to 250,000 people. Had carve-outs and waiting periods. Passed House, but did not pass Senate.

Current Session (2020)

- House
 - HB 6 (Booker) — No carve-outs
 - HB 119 (Brown) — Carve-outs
- Senate
 - SB 48 (Neal) — No explicit carve-outs; decision on carve-outs goes to the Legislature⁷⁸
 - SB 62 (Higdon) — Carve-outs and waiting periods⁷⁹

Executive Order

Governor Andy Beshear issued an Executive Order.

Litigation

Lostutter v. Commonwealth of Kentucky, No. 6:2018-cv-00277 (E.D. Ky.) (filed Oct. 29, 2018) — Federal constitutional challenge; alleges arbitrary discretion of Governor violates the First Amendment.

What is the process for bringing forward a ballot initiative in Kentucky?

Legislature: In even-numbered years, the Legislature can refer statewide ballot measures after each chamber approves the measure by 60%.

IV. KEY ISSUES/WHERE THE FIGHT IS

Kentucky Governor Andy Beshear recently issued an Executive Order automatically restoring voting rights to 140,000 Kentuckians. Going forward, key issues will involve the implementation of this Executive Order as well as how this new Governor handles individual applications for restoration. Specific questions include: How will the various state agencies coordinate to verify a person's voter eligibility under the EO? How will Kentucky inform 140,000 people of their newly restored voting rights? What will the Governor do with the pending federal lawsuit challenging the constitutionality of the Governor's restoration process?

We should also keep an eye on defense. Kentucky's EO is similar to Virginia's recent EO, which Virginia conservatives successfully attacked with a lawsuit, forcing the Virginia Governor to restore voting rights on an individual basis.

Finally, various restoration bills are moving through the legislature. Some have carve-outs and waiting periods. Some do not. None of the bills – even the best ones – restore the right to vote to people who are on probation or parole.