

Advisory Memorandum

To: The U.S. Commission on Civil Rights

From: The Washington Advisory Committee to the U.S. Commission on Civil Rights

Date: June 2020

Subject: Voting Rights and Felony Convictions

On March, 30, 2020, the Washington Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) convened a public meeting to hear testimony regarding voting rights and felony convictions.

The following advisory memorandum results from the testimony provided during the March 30, 2020 meeting of the Washington Advisory Committee, as well as related testimony submitted to the Committee in writing during the relevant period of public comment. It begins with a brief background of the issue to be considered by the Committee. It then presents an overview of the testimony received. Finally, it identifies primary findings as they emerged from this testimony, as well as recommendations for addressing related civil rights concerns. This memo is intended to focus specifically on the voting rights of people with a felony conviction. While other important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion. This memo and the recommendations included within it were adopted by a majority of the Committee on Thursday, June 4, 2020.

Background

The right to vote is one of the most fundamental components of democracy. In recognition of this importance, the United States Constitution includes four amendments entirely dedicated to protecting it.¹ Though it does not explicitly address voting rights, the 14th Amendment to the U.S. Constitution has also been used to protect voting rights, by granting citizenship to “all persons born or naturalized in the United States” and guaranteeing “equal protection of the laws”² to all within its jurisdiction.

¹ Amendment XV guarantees the right to vote will not be denied or abridged on the basis “of race, color, or previous condition of servitude;” Amendment XIX guarantees that the right to vote will not be denied or abridged “on account of sex;” Amendment XXIV guarantees that the right to vote will not be denied or abridged “by any reason of failure to pay poll tax or other tax;” Amendment XXVI guarantees that “The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.”

² U.S. Const. amend. XIV. More information available at Legal Information Institute, Cornell University School of Law: U.S. Constitution. <https://www.law.cornell.edu/constitution/overview>

Washington State law also protects the right of every eligible voter to “participate fully in all elections” and “without discrimination based upon race, creed, color, national origin, sex, or political affiliation.”³

Despite these protections, throughout much of American history, state and local jurisdictions resistant to extending voting rights to African American citizens have utilized techniques such as gerrymandering; and instituted discretionary, often inconsistently applied requirements such as poll taxes, literacy tests, vouchers of "good character," and disqualification for "crimes of moral turpitude" in order to suppress the African American vote.⁴ As a result, in 1965 the United States Congress passed the Voting Rights Act⁵ (VRA) further protecting against discrimination in elections administration. In 1982, the VRA was amended to provide that a violation of the Act’s nondiscrimination section could be established “without having to prove discriminatory purpose.”⁶ In other words, regardless of intent, if voting requirements of a particular jurisdiction are found to have a discriminatory impact, they may be in violation of the VRA.

Laws and policies regarding the voting rights of people with felony convictions differ widely from state to state. According to the National Conference of State Legislatures, “It has been common practice in the United States to make felons ineligible to vote, in some cases permanently. Over the last few decades, the general trend has been toward reinstating the right to vote at some point, although this is a state-by-state policy choice.”⁷

Voting in Washington

In Washington, individuals convicted of a felony lose their right to vote during the time they are incarcerated or are otherwise under the custody of the Department of Corrections (DOC).⁸ Once a person is no longer under the custody of the DOC, his or her right to vote is automatically restored; however, he or she must re-register to vote.⁹ In addition, a sentencing court may revoke voting rights if it determines a person with a felony conviction has failed to comply with his or her fines, restitution, or other legal financial obligations.¹⁰

³ Wash. Rev. Code. § 29A.04.205. (2019)

⁴ The United States Department of Justice, Introduction to Federal Voting Rights Laws, *Before the Voting Rights Act*. Available at: <https://www.justice.gov/crt/introduction-federal-voting-rights-laws> (last updated August 18, 2018). Hereafter cited as *DOJ: Before the Voting Rights Act*.

⁵ 42 U.S.C. §§ 1973 to 1973aa-6 (2018).

⁶ Introduction to Federal Voting Rights Laws, *DOJ: The Voting Rights Act of 1965* (Last updated July 28, 2017).

⁷ National Conference of State Legislatures, *Felon Voting Rights*. (last updated October 14, 2019). Available at: <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>. Hereafter cited as *NCSL: Felon Voting Rights*.

⁸ See Wash. Rev. Code. § 29A.08.520 (2019).; see also Washington Secretary of State, *Felons and Voting Rights*, <https://www.sos.wa.gov/elections/voters/felons-and-voting-rights.aspx> (last visited Nov. 7, 2018); ACLU of Washington, *Can I Vote Flowchart*, June 7, 2018, <https://www.aclu-wa.org/docs/can-i-vote-flowchart>.

⁹ *Id.*

¹⁰ *Id.*

Washington is one of twenty-one states that automatically restores voting rights, but not until completion of an offender's entire sentence, including parole and probation.¹¹ Sixteen states and the District of Columbia automatically restore the rights of persons with felony convictions to vote after their release from incarceration, without respect to any post-incarceration requirements such as parole or probation.¹² Two states, Maine and Vermont, never revoke the right to vote for people with felony convictions, even while they are incarcerated.¹³ Eleven states never offer automatic restoration of voting rights at all, requiring the Governor's or a court's action to restore those rights.¹⁴ In 2019, around 26,000 individuals in Washington were ineligible to vote because they were in the custody of the Department of Corrections (DOC).¹⁵ Approximately 10,000 of those ineligible to vote are on community supervision.¹⁶

In the Washington State Legislature's 2019-2020 session, Senator Patty Kuderer filed the Voting Rights Restoration Act, or SB 6228. This bill proposed restoring the voter eligibility for all persons convicted of a felony offense who are not in total confinement under the jurisdiction of the Department of Corrections. The bill was debated on the Senate floor on February 19, 2020, but failed to pass with enough votes before the session adjourned.¹⁷ Proponents of the bill asserted that it would improve political representation because of the over-representation of African American and Native American populations in the criminal legal system. They also think simplifying voter eligibility criteria, will reduce the risk that affected individuals will be mistakenly informed they are ineligible to vote. They concluded that there is no criminogenic basis for eliminating the right to vote when someone is out of DOC custody, and that there is some evidence it might even reduce recidivism. Opponents of the bill expressed concern for community safety and victims' rights.¹⁸

Overview of Testimony

The Committee is comprised of Washington citizens who strove to approach this project from an open-minded and neutral posture. During the March 30, 2020 online briefing, the Committee

¹¹ NCSL: *Felon Voting Rights*. Also Note: *Current legislation pending in the WA State Legislature would restore the voting rights of persons convicted of felony offenses immediately upon their release from incarceration, HB 1924 and SB 5076*.

¹² NCSL: *Felon Voting Rights*.

¹³ NCSL: *Felon Voting Rights*.

¹⁴ NCSL: *Felon Voting Rights*.

¹⁵ David Elliott, Written Testimony. *Data by County DOC Authority*.

¹⁶ Jaime Hawk, testimony, Briefing Before the Washington Advisory Committee to the U.S. Commission on Civil Rights, Online, March 30, 2020, Transcript, pp. 810-11 (hereafter cited as *Transcript*).

¹⁷ Voting Rights Restoration Act, SB 6228, 66th Leg., Reg. Sess. (Wash. 2020), *available at* <https://app.leg.wa.gov/billsummary?BillNumber=6228&Chamber=Senate&Year=2019>.

¹⁸ Voting Rights Restoration Act, SB 6228, 66th Leg. Reg. Sess. (Wash. 2020), (Senate Floor Debate, February 19, 2020), *available at* <https://www.tvw.org/watch/?clientID=9375922947&eventID=2020021235&startStreamAt=2667&autoStartStream=true>

heard from a broad spectrum of perspectives, including academic experts, community advocates, state legislators, state government officials, and individuals who have been directly impacted by the laws and practices the Committee was examining.¹⁹ The Committee received a number of written statements offering supplemental information on the topic.²⁰ Additionally, the Committee invited prosecutors from around the state to submit written testimony on their role in revoking provisional voting rights.²¹

The Committee went to great lengths to solicit participation from stakeholders representing diverse perspectives. The Committee made many outreach attempts over several months to lawmakers opposed to the expansion of voting rights for people with felony convictions, to solicit their participation at the public meeting, through written testimony, and/or by joining a Committee meeting. The Committee also invited the Department of Corrections to participate in the project by testifying at the public hearing or through written testimony. Regrettably, after multiple attempts by Committee members and U.S. Commission on Civil Rights staff, the views of these stakeholders remain largely absent from this memorandum. A full list of individuals and organizations that were invited, but were unable to participate is attached in Appendix D.

Findings

The section below provides findings received and reflects views of the cited panelists, not necessarily the members of the Committee. While the Committee has not independently verified each assertion, panelists were chosen to testify due to their professional experience, academic credentials, subject matter expertise, and/or firsthand experience with the topics at hand.

1. Historically, felony disenfranchisement laws were intended to limit the voting rights of people of color, specifically Black populations following the passage of the 15th amendment.²²
 - a. The U.S. is distinctive in the primary role race has played in creating these voting restrictions and maintaining them.²³

¹⁹ A full list of the panelists who provided testimony at the online hearing can be found in Appendix A

²⁰ Written testimony submitted can be found in Appendix C.

²¹ Letter requesting written testimony from county prosecutors can be found in Appendix E.

²² Satterberg, Written Testimony; Hawk, *Transcript* at 9.

²³ Uggen, *Transcript* at 5.

- b. These laws were first adopted widely in the U.S. in the late 19th century when Black men gained the right to vote and were made in conjunction with many Jim Crow restrictions.²⁴
 - c. Although laws restricting the right to vote were never overtly connected to race, they were intended to preserve existing racial hierarchies and exclude Black communities from gaining political power.²⁵
 2. Restrictions on voting for people with felony convictions have a disparate impact on people of color.
 - a. About 7.4 percent of the Black voting-age population was disenfranchised in 2016 due to a felony conviction, which is a direct reflection of racial disproportionality in the criminal legal system.²⁶
 - b. In Washington, as of 2016, 4 percent of the Black voting-age population was disenfranchised because of a felony conviction. It is projected that this ratio is the same, if not a little worse, in 2020.²⁷
 - c. Extending voting rights to those on community supervision, could have a large impact on this disparate impact. For example, if Minnesota were to allow voting rights restoration for people on community supervision the rate of disenfranchisement for Black voters would decrease from 7 percent to around 2 percent.²⁸
 - d. In Washington, 12.5 percent of those on community supervision are Black, while less than 4 percent of Washington citizens are Black and 4.5 percent of those on community supervision are Native American, while 1.3 percent of citizens are Native American.²⁹
3. Misinformation about when voting rights are restored is one major barrier to voting for individuals with a former felony conviction who have had their voting rights restored.

²⁴ Uggen, *Transcript* at 5.

²⁵ Kuderer, *Transcript* at 26 (quoting Erin Kelley, Brennan Ctr. For Justice, RACISM & FELONY DISENFRANCHISEMENT: AN INTERTWINED HISTORY, 2 (2015)).

²⁶ Uggen, *Transcript* at 6.

²⁷ Uggen, *Transcript* at 6.

²⁸ Uggen, *Transcript* at 6.

²⁹ Hawk, *Transcript* at 10; Kuderer, *Transcript* at 27; The Committee would like to note they wanted to include demographic information on both Hispanic/Latino populations and Southeast Asian and Pacific Islander populations, but could not find reliable and up-to-date data to include.

- a. Once individuals know they have the right to vote, reregistering and voting is straightforward and a similar process as the general population.³⁰
 - b. There are common misconceptions surrounding voting with a felony conviction, including that people must pay off all their legal financial obligations before they can vote or that they never have the right to vote again.³¹
 - c. Variations in states' laws on when voting rights are restored, if ever, is a large source of confusion. Similarly, the different policies relating to federal convictions contribute to misunderstanding and confusion about voting rights.³²
4. Restricting voting rights for individuals on community supervision after release from prison can create additional challenges to successful reintegration back into the community.³³
- a. Not allowing people on community supervision to vote creates a stigma. This can lead to feelings of “otherness” and that they have not been fully accepted back into the society they are living and working in.³⁴
 - b. Some studies suggest expanding voting rights can lead to less recidivism and more successful reintegration back into society. For example, in Oregon people who voted on probation and parole were more likely to successfully complete their community supervision with re-offense.³⁵
 - c. Individuals returning to their communities after incarceration have many other priorities, such as housing, employment, and relationships. Because of this, confusion around and limitations to voting can serve as a greater burden.³⁶
5. The consequences for wrongfully voting because of a felony conviction are severe and can even result in re-incarceration. The misalignment of the consequences and the offense act as a deterrent for engaging the voting process even after voting rights have been restored.³⁷

³⁰ Van Velzen, *Transcript* at 13; Taylor, *Transcript* at 33-34.

³¹ Hawk, *Transcript* at 10 and 18; Beaulac, *Transcript* at 14; Taylor, *Transcript* at 32-33.

³² Beaulac, *Transcript* at 14; Pavey, *Transcript* at 20; Taylor, *Transcript* at 32; Hawk, *Transcript* at 18.

³³ Uggen, *Transcript* at 8.

³⁴ Uggen, *Transcript* at 7; Hawk, *Transcript* at 11; Beaulac, *Transcript* at 14-15; Le'Taxione, *Transcript* at 16-17; Kuderer, *Transcript* at 28-29; Taylor, *Transcript* at 32; Dolan, *Transcript* at 44.

³⁵ Uggen, *Transcript* at 7; Hawk, *Transcript* at 12; Beaulac, *Transcript* at 15.

³⁶ Van Velzen, *Transcript* at 13; Taylor, *Transcript* at 33.

³⁷ Uggen, *Transcript* at 4, 8, and 19; Dolan, *Transcript* at 31; Taylor, *Transcript* at 32.

6. There is no evidence that individuals in Washington are having their voting rights revoked due to the failure to pay legal financial obligations (LFOs), but there is still evidence that there is lingering confusion about LFOs and how they affect voting rights.³⁸
7. Extending voting rights to people with felony convictions could positively impact our democracy, on both the individual and societal level.
 - a. A majority of the panelists asserted that the right to vote is seen as a fundamental element of our democracy and an important avenue for individual civic engagement. It is an important symbol that your voice matter and allows you to impact the community you live in and work in.³⁹
 - b. Currently, felony disenfranchisement laws in the U.S. can have a large impact on the outcomes of elections.⁴⁰ In the U.S. there are five to six million people who are restricted from voting because of a felony conviction.⁴¹ This is a particularly important factor, given the disproportionate number of people of color impacted by these voting restrictions.⁴²
8. There is widespread community support for expanding voting rights to people on community supervision.
 - a. In a national survey, eight in ten Americans favored restoring the right to vote for those who have served their time. Around two-thirds of Americans support restoring voting rights for individuals on probation and parole.⁴³
 - b. Many organizations in Washington support extending automatic voting rights restoration to those on community supervision, including the King County Bar Association's Board, the Washington State Bar Association.⁴⁴
 - c. Many voices across the criminal legal system in Washington support extending voting rights to individuals on community supervision, including Washington Association of Prosecuting Attorneys, the Washington Association of Public

³⁸ Elliott, *Transcript* at 36; Satterberg, Written Testimony; Zempel, Written Testimony.

³⁹ Satterberg, Written Testimony; Uggen, *Transcript* at 5 and 7. Hawk, *Transcript* at 10-12. Van Velzen, *Transcript* at 13 and 19. Beaulac, *Transcript* at 14. Le'Taxione, *Transcript* at 16. Kuderer, *Transcript* at 28. Taylor, *Transcript* at 32.

⁴⁰ Uggen, *Transcript* at 5; Uggen, Presentation slides. Hawk, *Transcript* at 10.

⁴¹ Uggen, *Transcript* at 5 and 8.

⁴² Uggen, *Transcript* at 6. Kuderer, *Transcript* at 27.

⁴³ Uggen, *Transcript* at 7.

⁴⁴ Hawk, *Transcript* at 11.

Defenders, the Washington Department of Corrections, and the Washington Attorney General.⁴⁵

9. There is no criminogenic basis for taking away the right to vote, although much of the opposition to expanding voting rights is based on the idea that it would put public safety at risk.⁴⁶
 - a. There is no evidence someone on community custody who votes is more likely to re-offend.⁴⁷
 - b. There is evidence that suggests that voting reduces recidivism and that once people started voting, they were extremely unlikely to get into trouble again.⁴⁸

Recommendations

Among their duties, advisory committees are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws; and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.⁴⁹ In keeping with these responsibilities, and in consideration of the testimony heard on this topic, the Washington Advisory Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to the United State Department of Justice to:
 - a. Uphold the requirements of the Voting Rights Act in its entirety, and strengthen your enforcement of protections against discrimination based on race regardless of discriminatory intent.
2. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to Congress to pass and the President to sign legislation to:
 - a. Restore the Voting Rights Act to its original intent and strengthen its protections of voting rights for all Americans.⁵⁰

⁴⁵ Kuderer, *Transcript* at 29.

⁴⁶ Kuderer, *Transcript* at 38.

⁴⁷ Beaulac, *Transcript* at 15; Kuderer, *Transcript* at 39.

⁴⁸ Uggem, *Transcript* at 8; Kuderer, *Transcript* at 28.

⁴⁹ 45 C.F.R. § 703.2 (a).

⁵⁰ While the Voting Rights Act (VRA) was not included in the scope of this investigation, many Committee members discussed the need to further investigate the VRA. There was concern that the intent of the VRA has been eroded and that legislative action is needed.

- b. Expand the voting rights for individuals with felony convictions released from incarceration in all federal elections.
3. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to the Washington State Legislature to:
 - a. Restore voting rights for individuals on community supervision. Automatically and permanently restore the voting rights for individuals as soon as incarceration is completed.⁵¹
 - b. Establish clear and bright distinctions in the law on when voting rights are restored and how legal financial obligations impact provisional voting rights restoration.
 - c. Appropriate funds to be dedicated to increasing public awareness about voting rights for people with felony convictions, including public service announcements, developing online resources, and improved training for judges, DOC officials and elections administrators.
 - d. Mandate better civic education of judges, Department of Corrections officials, parole/probation officers, and inmates to clarify when voting rights are lost, when voting rights are restored, and how to re-register to vote.
4. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to the Secretary of State’s Elections Office and Washington Department of Corrections (DOC) to coordinate to:
 - a. Implement a public education campaign focused on the voting rights of people with a felony record for the purpose of creating a culture of inclusion and encouraging the civic engagement for all individuals in a community. Further encourage public awareness by partnering with community groups and local media. Include information on who is eligible to vote and how to re-register to vote after the restoration of voting rights.
 - b. Notify and educate individuals who are affected by Washington’s felony voting restrictions about the changes to their voting rights at the time of their sentencing. Effectively implement the requirement that the DOC educate and raise awareness about when voting rights will be restored and how to re-register to vote while individuals are in their custody.⁵²
 - c. Take measures to guard against perceived acts of intimidation and misinformation by DOC officers and employees. Provide education and training on the rights of individuals with a felony conviction.
 - d. Include information on the voting rights of people with a felony conviction in all poll worker and election official training.

⁵¹ “Community supervision” is defined by the Committee as the additional requirements of parole/probation which are imposed on convicted individuals for a limited amount of time after conviction or incarceration. “Incarceration” is defined by the Committee as the total confinement of a convicted individual under the jurisdiction of the Department of Corrections.

⁵² Wash. Rev. Code. § 72.09.275 (2019).

- e. Notify individuals directly when their voting rights are restored. Include information on procedures to re-register, a know-your-rights guide, and the contact information of election official who can answer any questions.
- f. Collect and make publicly available data on individuals who lost their voting rights in DOC custody and successfully re-registered to vote after their provisional voting rights were restored. Publish an annual report summarizing the data, including more robust data on racial and ethnic demographics (such as Hispanic/Latino, Native American, and Southeast Asian and Pacific Islander populations), LGBTQ+ populations, and immigration status.

Appendix

- A. Hearing Agenda & Minutes
- B. Hearing Transcript
- C. Written Testimony
- D. List of Individuals and Organizations Invited, But Were Unable to Participate
- E. Letter of Request for Written Testimony from County Prosecutors

Appendix A

Agenda & Minutes for March 30, 2020 Online Hearing

<https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzmYAAQ>

Appendix B

Hearing Transcript for March 30, 2020 Online Hearing

<https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzmYAAQ>

Appendix C

Written Testimony

<https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzmYAAQ>

Appendix D

List of Individuals and Organizations Invited, But Were Unable to Participate in March 30, 2020 Online Briefing

- Adam Hall, Washington State Senate Democratic Caucus
- Larry H. Haskell, Spokane County Prosecutor's Office
- Mary Robnett, Pierce County Prosecutor's Office
- Representative Paul Harris (R), Washington State Legislature
- Representative Joe Schmick (R), Washington State Legislature
- Senator Brad Hawkins (R), Washington State Legislature
- Senator Hans Zeiger (R), Washington State Legislature
- Senator Randi Becker (R), Washington State Legislature
- Senator Rebecca Saldana (D), Washington State Legislature
- Senator Ron Muzzall (R), Washington State Legislature
- Washington Democracy Hub
- Washington State Department of Corrections

Appendix E

Letter of Request for Written Testimony from County Prosecutors

February 12, 2020

Dear Prosecutor [Last Name],

The Washington Advisory Committee to the U.S. Commission on Civil Rights (Committee) is conducting a study on the voting rights for people with felony convictions in Washington. The Committee invites you to provide written testimony regarding your experience as a Prosecutor in [County Name] County.

In Washington, individuals who have been convicted of a felony and completed their sentence are not required to pay off fines, restitution, or other financial obligations to have their provisional voting rights restored. However, the sentencing court has the right to revoke the provisional restoration of voting rights if the court determines that a person has willfully failed to comply with the terms of their order to pay legal financial obligations.⁵³ **Has your office ever sought to revoke the provisional restoration of voting rights? If yes, can you please provide the Committee information on:**

- a) The criteria used to determine “willfully failed to comply”;
- b) Approximately how many times your office has requested provisional voting rights revocation;
- c) And, the process for restoring voting rights after they were revoked by the prosecutor, including how long rights were revoked, additional financial obligations to restore voting rights, and the requirements for demonstrating a good faith effort to pay.

Additionally, the Committee would appreciate data and documentation that can be shared to inform us of the frequency, duration, and demographics of voting rights revocations as a result of outstanding legal financial obligations.

Your response to these questions and any additional information you would like to provide can be sent directly to the Committee’s designated federal officer (DFO) Brooke Peery at bpeery@usccr.gov.

Thank you,
Brooke Peery
Civil Rights Analyst
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The U.S. Commission on Civil Rights is an independent, bipartisan federal agency charged with advising the President and Congress on civil rights matters and issuing an annual federal civil rights enforcement report.

⁵³ See WA ST 29A.08.52 available at <http://app.leg.wa.gov/RCW/default.aspx?cite=29A.08.52> (last visited Feb. 12, 2020)