

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2774/1dn  
MGD:wlj:jf

March 9, 2001

Senator Moore:

1. As I indicated in our phone conversation, it is unclear which felons are prohibited from voting under current law. The former version of article 3, section 2, of the constitution prohibited felons from voting, but that provision applied only to persons who committed crimes that were felonies when the constitution was enacted in 1848. *See, e.g.*, 41 Op. Atty. Gen. 181, 182 (1952). Moreover, s. 6.03 (1) (b), stats., which contained language comparable to that contained in the former version of article 3, section 2, of the constitution could not take away voting rights that were granted under the constitution. Therefore, it too only applied to persons who committed 1848-era felonies.

When the former version of article 3, section 2, of the constitution was repealed and replaced by the current version in 1986, s. 6.03 (1) (b), stats., was left intact. In addition, the legislative history of the current version of article 3, section 2, of the constitution suggests that the legislature may not have intended to make any substantive changes in the law regarding voter eligibility. Therefore, s. 6.03 (1) (b), stats., may still be construed to apply only to persons who committed 1848-era felonies.

2. Section 304.078 may be construed to require a person to fulfill all of his or her restitution obligations (just as he or she would be required to pay a fine) before his or her civil rights (including the right to vote for a person subject to s. 6.03 (1) (b)) are restored. But it is unclear how that provision would be interpreted if the restitution is converted into a civil judgment under s. 973.09 (3) (b) when a person completes a term of probation. After all, neither the statutes nor rules promulgated by the department of corrections (DOC) indicate how DOC is to learn when that judgment is satisfied. More importantly, the discharge certificate issued by DOC "at the expiration of the term noted on the court order committing the client to ... the department," Wis. Admin. Code § DOC 302.17 (2), probably constitutes a "certificate of the department ... that a convicted person has served his or her sentence or otherwise satisfied the judgment against him or her" for the purpose of s. 304.078. In that case it would be "evidence ... that the person is restored to his or her civil rights."

In any event, a person may still have his or her civil rights restored without complying with a court's restitution order if he or she is pardoned.

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