



Felons and the Right to Vote in Wisconsin

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The right to vote is a fundamental right, but it is not inviolable. Like the right to liberty, the right to vote may be restricted or denied as a consequence for committing certain acts. Denying a person the right to vote after he or she has been convicted of certain crimes (felony disenfranchisement) is enforced to varying degrees by 48 states; this issue brief describes the constitutional basis for felony disenfranchisement, the manner in which it is enforced in Wisconsin, and the ways a felon may have his or her right to vote restored in this state.

CONSTITUTIONAL AUTHORITY FOR FELONY DISENFRANCHISEMENT

U.S. Constitution

Felony disenfranchisement has been challenged as violating the equal protection clause under the Fourteenth Amendment to the U.S. Constitution. In considering a California statute that barred persons convicted of certain crimes from voting, the U.S. Supreme Court found the statute constitutional under the U.S. Constitution. The Court cited Section 2 of the Fourteenth Amendment for the proposition that the right to vote, generally secured under Section 1 of the Fourteenth Amendment, may be denied for “participation in a rebellion or other crime.” The Court held that this provision provides an “affirmative sanction” of the exclusion of felons from the right to vote.¹

In subsequent decisions, the Court has held that felony disenfranchisement enacted for a separate, discriminatory purpose does not pass constitutional muster², but has otherwise allowed states to determine when, and under what conditions, a person who has been convicted of a felony may regain his or her right to vote. Currently, 48 states prohibit felons from voting for at least part of the time the felons are serving their sentences: some states restore voting rights upon the felon’s release from prison, some upon completion of a sentence, and some bar felons permanently from voting.³

Wisconsin Constitution

The Wisconsin Constitution provides that the Legislature may enact laws excluding a person who has been convicted of a felony from voting until he or she is “restored to civil rights.”⁴ This language precludes permanent felony disenfranchisement, but it does not define or describe what constitutes restoration of civil rights. That question is addressed in the statutes, which establish that for the purposes of voting rights, restoration occurs when a person is pardoned for a felony or when he or she completes any period of incarceration, probation, parole, or extended supervision to which he or she was sentenced upon conviction for the felony.⁵

STATUTES GOVERNING FELONY DISENFRANCHISEMENT

Disenfranchisement and Restoration of Voting Rights

The Wisconsin statutes disqualify from voting any person convicted of a felony. A person is ineligible to vote until he or she is pardoned for the crime or until he or she completes his or her sentence including any term of imprisonment, extended supervision, parole, or probation for the crime that led to the disqualification.⁶ When a person is convicted of a felony, Wisconsin law requires the sentencing judge and the Department of Corrections (DOC) to inform the person that he or she is disqualified from voting and requires the person to acknowledge in writing that he or she may not vote in any election until his or her rights are restored.⁷

Under Wisconsin law, when a felon is pardoned or completes his or her sentence, the right to vote is automatically restored without requiring a separate hearing or procedure. If the person had been

incarcerated in a state prison or otherwise under the supervision of the DOC, DOC must inform the person in writing that his or her right to vote is restored; if the person had been held in county jail, the sheriff is responsible for providing the written notification.⁸

Enforcement

The Wisconsin Elections Commission (Commission) maintains a list of all persons who are registered to vote⁹. DOC is required to transmit, on a continuous basis, a list of the names of each living person who has been convicted of a felony and who is ineligible to vote, the person's residential address, and the date on which DOC expects his or her right to vote to be restored.¹⁰ The Commission in turn forwards a list of ineligible felons to municipal clerks; the clerks notify each person in their counties that the clerk will inactivate his or her voting registration until the person becomes eligible to vote again and re-registers.¹¹

At the polling place, a person who registers to vote must sign a form indicating whether he or she has been convicted of a felony for which he or she has not been pardoned and, if so, whether he or she is incarcerated or on extended supervision, parole, or probation.¹² Providing false information on a voter registration form is a Class I felony, as is voting in an election when the person is not qualified to vote.¹³ The penalty for a Class I felony is a fine not to exceed \$10,000, imprisonment not longer than three years and six months, or both.

Although a felon's right to vote is automatically restored when the person either completes the sentence for the felony or is pardoned, the person must register again to vote if his or her registration was inactivated before his or her voting rights were restored. If a person appears at a polling place to vote in an election but an election clerk or inspector believes the person is ineligible to vote due to a felony conviction, the person must be allowed to vote, but his or her ballot will be marked for closer inspection and possible challenge by the inspector.¹⁴

Additionally, after an election is held, each election clerk creates and forwards to the Commission a list of all persons who voted in the election. The Commission checks that list against the information provided by DOC and the Commission refers any instance of voting by a disenfranchised felon to the district attorney for prosecution in the county where the vote was cast.¹⁵

¹ *Richardson v. Ramirez*, 418 U.S. 24, 54 (1974).

² See, e.g., *Hunter v. Underwood*, 471 U.S. 222 (1985).

³ See the National Conference of State Legislatures summary of felony disenfranchisement: <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>.

⁴ Wis. Const. art. III, s. 2.

⁵ s. 304.078(3), Stats.

⁶ ss. 6.03(1)(b) and 304.078(3), Stats.

⁷ ss. 302.117, 973.09(4m), and 973.176, Stats.

⁸ s. 304.078(3), Stats.

⁹ s. 6.36, Stats.

¹⁰ s. 301.30(20m), Stats.

¹¹ s. 6.53(7), Stats.

¹² s. 6.33(1), Stats.

¹³ ss. 12.13(1)(a) and (b) and 12.60(1)(a), Stats.

¹⁴ s. 6.79(2)(dm), Stats.

¹⁵ s. 6.56(3m), Stats.