



Summary: Components of a Right to Vote Bill July 2006

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Right to Vote legislation should contain several provisions. An advocate reviewing a state's law on the restoration of voting rights to people with criminal convictions should look for each of the components listed below. Piecemeal improvements may be possible in states where more comprehensive legislation is impossible or unnecessary.

- **Restoration of Rights:** This provision should clearly identify at what point voting rights are restored to people with criminal convictions – upon discharge from prison? upon completion of parole? upon completion of parole or probation? upon completion of sentence plus a waiting period?
- **Notice:** This provision should ensure that criminal defendants are informed: (1) before conviction and sentencing, that they will lose their voting rights; and (2) at the point of restoration, that they are again eligible to register and vote.
- **Voter Registration:** Under this provision, the government agency that has contact with people at the point of restoration (the Department of Corrections, or the Department of Parole or Probation, for example) should take responsibility for assisting them with voluntary voter registration.
- **Maintaining the Statewide Voter Registration Database:** This provision should ensure that names are removed from and then restored to the state's computerized list of registered voters by electronic information-sharing between corrections agencies and elections agencies.
- **Education:** This section should make the state's chief election official, usually the secretary of state, responsible for educating other government agencies and the public about the legislation.



Components of a Right to Vote Bill July 2006

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A bill to restore voting rights to people with felony convictions should have several sections, including **Title, Findings, Purpose, Restoration of Rights, Notice, Voter Registration, Maintaining a Statewide Voter Registration Database, Education, Conforming Amendments, and Effective Date**. This memorandum will describe each section and identify any relevant strategy decisions to be made. The memo also provides examples of legislative language to use in each section. Of course, every state is different, and every coalition will need legal help in drafting a bill tailored to its state.

I. Title

The bill needs a name. The “[Name of State] Restoration of Voting Rights Act” is a typical title.

II. Findings

The findings section states the facts and principles that make the bill necessary. Ordinarily, the findings should include:

- A statement about how important voting is to democracy;
- A statement about how political participation helps with rehabilitation and reintegration into the community;
- A statement about how many people in the state have lost their right to vote because of felony convictions;
- A statement about the harms of disfranchisement in minority communities;
- A statement about how the bill will streamline the process by which the government restores rights to people with criminal convictions and thus save the taxpayers money.

Here, for example, are the findings from a bill that was introduced in Rhode Island in 2005:

1. Voting is both a fundamental right and a civic duty. Restoring the right to vote strengthens our democracy by increasing voter participation and helps people who have completed their incarceration to reintegrate into society. Voting is an essential part of reassuming the duties of full citizenship.

2. Rhode Island is the only state in New England that denies the vote to people convicted of felonies, not only while they are in prison, but also while they are living in the community under the supervision of parole or probation officials.

3. As a result of this extended disfranchisement, Rhode Island deprives a greater proportion of its residents of voting rights than any other state in the region. More than 15,500 Rhode Islanders have lost the right to vote because of a felony conviction. Of these, 86% are not in prison: they have either been released or their convictions did not result in actual incarceration. Rhode Island has the second highest rate of people on probation in the nation.

4. Criminal disfranchisement in Rhode Island has a disproportionate impact on minority communities. The rate of disfranchisement of African American voters is more than six times the statewide rate. Hispanics lose the vote at more than 2.5 times the statewide average. One in five black men and one in eleven Hispanic men are barred from voting in Rhode Island. By denying so many the right to vote, criminal disfranchisement laws dilute the political power of entire minority communities. Because these communities are concentrated in cities, the urban vote is also suppressed, with the rate of disfranchisement in urban areas 3.5 times the rate in the rest of the state.

5. Extending disfranchisement beyond a person's term of incarceration complicates the process of restoring the right to vote. Under current law, a person may regain that right when released from incarceration if no parole follows, when discharged from parole, or when probation is completed. This system requires the involvement of many government agencies in the restoration process. This bill would simplify restoration by making people eligible to vote once they have

served their time in prison, thereby concentrating in the Department of Corrections the responsibility for initiating restoration of voting rights. A streamlined restoration process conserves government resources and saves taxpayer dollars.

III. Purpose

This section states the purpose of the bill, explaining why it should be enacted. For example:

The purposes of this act are to strengthen democratic institutions by increasing participation in the voting process, to help people who have completed their incarceration to become productive members of society, and to streamline procedures for restoring their right to vote.

IV. Restoration of Rights

This section restores voting rights to people with felony convictions. Before it is drafted, the state coalition needs to make an important strategy decision: how great a change in state law to seek?

Here are some possibilities:

- Full restoration, including the right to vote from prison;
- Restoration upon release from incarceration;
- Restoration upon completion of parole (probationers can vote);
- Restoration upon completion of parole or probation;
- Restoration upon “completion of sentence” (*beware*: this may require a person to pay all fines, restitution, and court costs before being allowed to vote);
- Restoration upon completion of sentence and expiration of a waiting period.

What is possible will depend in part on whether the state in question disfranchises people in its *state constitution*. Each state has its own constitution, and each one is unique. Laws passed by a state legislature cannot conflict with the constitution of that state. Some of the state constitutions have provisions relevant to the voting rights of people with criminal convictions. Some provisions pose no bar to restoration by legislation alone. In other states, however, restoration is impossible without an amendment to the state constitution. The amendment process differs from state to state, but it is usually multi-layered and generally involves a public referendum (popular vote) on the amendment.

The political climate may also set limits. Some state coalitions are committed to full restoration, including the right to vote while in prison, but few states are prepared to go

that far. At the other end of the spectrum, some laws, like one passed in March 2005 in Nebraska, would restore rights only when a person has completed parole or probation and waited an additional two years. This can be a step forward in a state, again like Nebraska, that previously disfranchised people permanently.

Where possible, there are many advantages to proposing legislation that would restore voting rights as soon as a person gets out of prison. This approach re-enfranchises more people than most plausible alternatives. In addition, election officials can understand and follow this rule: a person who is living in the community and appears at a polling place should not be barred from voting because of any criminal record – once the person is out, the person is eligible. This system also concentrates the restoration process in the Department of Corrections, without the need to involve probation and parole officials.

A restoration of rights section may look like this:

A person who has lost the right of suffrage . . . because of such person's incarceration upon a felony conviction shall be restored the right to vote when that person is discharged from incarceration.

V. Notice

A good bill should require notice both before conviction or sentencing and before release from prison.

These are typical notice provisions for a bill that restores rights immediately following incarceration:

Before accepting a plea of guilty or nolo contendere to a felony, and before imposing a felony sentence after trial, the court shall notify the defendant that conviction will result in loss of the right to vote only if and for as long as the person is incarcerated and that voting rights are restored upon discharge.

As part of the release process leading to the discharge of a person who has been disfranchised because of incarceration upon a felony conviction, the Department of Corrections shall notify that person in writing that voting rights will be restored.

VI. Voter Registration

Assuming the bill restores the right to vote when a person gets out of prison, this section should require the Department of Corrections to assist people in registering to vote just before they are released. The best option is to make the Department of Corrections a

“voter registration agency.” Under a federal law passed in 1993, the National Voter Registration Act, the states should have designated certain social welfare agencies as “voter registration agencies.” These agencies must offer people assistance with voter registration in a non-coercive way. Because laws establishing this system already exist in most states, the bill can “piggyback” by adding the Department of Corrections to the existing list of voter registration agencies. The bill should refer to the existing state law.

Here is an example:

The Department of Corrections shall act as a voter registration agency in accordance with § [xxx] of this Code. As part of the release process leading to the discharge of a person who has been disfranchised because of a felony conviction, the Department of Corrections shall provide that person with a voter registration form and a declination form, and offer that person assistance in filling out the appropriate form. Unless the registrant refuses to permit it to do so, the Department of Corrections shall transmit the completed voter registration form to the [appropriate registration agency] in the county where the registrant resides.

VII. Maintaining a Statewide Voter Registration Database

The states are in the process of creating centralized voter registration databases that will contain electronic information about all registered voters, in accordance with the federal Help America Vote Act. The names of eligible and registered ex-felons need to be included in these databases. In most states, the secretary of state is the chief election official and is responsible for maintaining the database.

When a person just out of prison registers or reregisters to vote, that person’s name should be added to the database even without special provisions in the bill. Just in case that system has gaps, however, the bill can include other avenues for transmitting names to the secretary of state and adding these names to the database.

Here are some typical provisions:

The Department of Corrections shall, on or before the 15th day of each month, transmit to the secretary of state two lists. The first shall contain the following information about persons convicted of a felony who, during the preceding period, have become ineligible to vote because of their incarceration; the second shall contain the following information about persons convicted of a felony who, during the preceding period, have become eligible to vote because of their discharge from incarceration:

- name,
- date of birth,
- date of entry of judgment of conviction,
- sentence,
- last four digits of social security number or driver's license number, if available.

The secretary of state shall ensure that the statewide voter registration database is purged of the names of persons who are ineligible to vote because of their incarceration upon a felony conviction. The secretary of state shall likewise ensure that the names of persons who are eligible and registered to vote following their discharge from incarceration are added to the statewide voter registration database in the same manner as all other names are added to that database.

The secretary of state shall ensure that persons who have become eligible to vote because of their discharge from incarceration face no continued barriers to registration or voting resulting from their felony convictions.

VIII. Education

State officials and the public should learn about the changes in the law that would result from passage of the bill. The bill should therefore require relevant training and education.

Here are some relevant provisions:

The Secretary of State shall develop and implement a program to educate attorneys; judges; election officials; corrections officials, including parole and probation officers; and members of the public about the requirements of this section, ensuring that:

1. Judges are informed of their obligation to notify criminal defendants of the potential loss and restoration of their voting rights, in accordance with subsection (x) of this section.
2. The Department of Corrections is prepared to assist people with registration to vote in anticipation of their discharge from incarceration, including by forwarding their completed voter registration forms to the [appropriate registration agencies].

3. The language on voter registration forms makes clear that people who have been disqualified from voting because of felony convictions regain the right to vote when they are discharged from incarceration.

4. The Department of Corrections is prepared to transmit to the Secretary of State the information specified in subsection (x) of this section.

5. Probation and parole officers are informed of the change in the law and are prepared to notify probationers and parolees that their right to vote is restored.

6. Accurate and complete information about the voting rights of people who have been charged with or convicted of crimes, whether disfranchising or not, is made available through a single publication to government officials and the public.

IX. Conforming Amendments

The bill will need to amend various provisions of pre-existing state law that would otherwise conflict with it. This is a job for the lawyer or lawyers who do the drafting.

X. Effective Date

Finally, the bill will need an effective date. Different states have different rules and customs about when bills take effect as law. To ensure that the bill protects people who were sentenced or discharged before its effective date, however, a provision like the following is necessary:

Voting rights shall be restored in accordance with this act to all [name of state] residents who have been discharged from incarceration or who were never incarcerated following felony convictions, whether they were discharged or sentenced before or after the effective date of this act.

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These model provisions can help in drafting or evaluating a bill. It is also extremely helpful to have local, experienced criminal lawyers who understand how the bill would work in practice and can recommend improvements.