

DIRECTIVE 2010-92 (Reissue of SOS Directive 2010-71)

December 29, 2010

To: All County Boards of Elections, Members, Directors, and Deputy Directors

Re: Voting Rights of Persons Convicted of a Felony

This directive discusses the voting rights of a person convicted of a felony, the circumstances under which voting rights are lost, and the circumstances under which voting rights are restored to individuals who have been convicted of a felony in Ohio or in another state or under federal jurisdiction. There are other election-related activities (such as registering voters or circulating a petition) that may be affected by a person's felony criminal conviction. They are not discussed in this Directive.

Affect of a Felony Conviction

R.C. 2961.01 provides that any person convicted of a **felony** is incompetent to be an Ohio elector *while the person is incarcerated for the felony conviction*. Thus, a felony conviction alone does not bar a person from registering to vote and/or voting in Ohio. For the purposes of voter registration and voting, an otherwise competent elector will lose the rights to register and to vote only as long as he or she is *actually incarcerated* as a result of a felony conviction and sentence. However, once those rights are lost, the person must re-register to vote.

Persons convicted of a **misdemeanor only** are **not** prevented by the law from voting, even if they are incarcerated. Also, persons who are in jail on pending charges, whether misdemeanor or felony, for which they are awaiting trial and are not convicted have the right to register and vote. Note that a person who has been under felony community control (probation) supervision but who violates the terms of community control and is incarcerated as a result of those violations may not register and/or vote during the period of incarceration, whether locally in a county jail or community based correctional facility (see R.C. 2301.51) or in a state or federal prison system.

Meaning of "Incarceration"

"Incarceration" means that a person is in a local jail, prison or a community based correctional facility. R.C. 2961.01 provides that when any person convicted of a felony under any state or federal law is granted parole, judicial release, or a conditional pardon or is released under a non-jail community control sanction (otherwise known as "probation," which includes a house arrest or halfway house situation) or a post-release control sanction (community supervision after a prison term), the person is competent to be an elector during the period of community control, parole, post-release control, or release, or until the conditions of the pardon have been performed or have transpired, and is competent to be an elector thereafter following final discharge.

Notice from Court Officials – Duties of Boards of Elections

Officials of the state courts send reports to the boards of elections, apprising the boards of the names and addresses of Ohioans whose criminal convictions and resulting incarceration make

them ineligible to vote in Ohio. Pursuant to R.C. 3503.18, the clerk of the common pleas court in each county must file with the board of elections for that county the names and residence addresses of all persons who have been convicted during the previous month of crimes that would disfranchise such persons under Ohio law.¹ This report should only include the names and addresses of those persons who have both been convicted of a felony and incarcerated because of that conviction, and the board should verify with the clerk of courts that this is the case. If it is not the case, the board should take necessary steps to obtain accurate information regarding which individuals convicted of felonies are actually incarcerated.

Upon receiving the clerk of court's report and/or securing accurate information consistent with this Directive, the board of elections must compare the information obtained to the board's voter registration records. If the board has a current voter registration record for any person named in the clerk of court's report and/or the information obtained, the board shall immediately cancel that voter registration in accordance with the provisions of R.C. 3503.21(A)(3). Only persons *actually incarcerated* for a *felony* may have their voter registration canceled under this statute.

Boards of elections are hereby advised that, if the clerk's list does not indicate the reason for an individual's incarceration, or if the list notes a felony conviction but fails to state whether the sentence imposed included incarceration, then the elector should not be removed from the voter registration system solely on that information.

The offices of the U.S. Attorneys send reports of Ohioans convicted of criminal offenses in the federal courts to the office of the secretary of state, which forwards the information to the appropriate boards of elections. Each board shall process reports received from federal court officials in the same manner as it processes reports received from the county clerk of courts.

Restoration of Voting Rights for Persons Convicted of a Felony

An otherwise competent elector convicted and incarcerated for a felony is allowed to register to vote and to vote upon the occurrence of one of the following events: upon the granting of parole, post-release control, judicial release or conditional pardon; upon the final discharge of the imposed incarceration; or if the felony conviction is reversed or set aside. Because this person's registration has been cancelled, he or she must re-register to vote.

In summary, under R.C. §2961.01(A):

- A person incarcerated for a felony is **incompetent** to be an Ohio elector.
- During a period of community control, parole, post-release control or conditional pardon, an otherwise competent elector is once again **permitted** to register to vote in Ohio.
- Upon final discharge or reversal of the felony conviction, an otherwise competent elector is once again **permitted** to register and to vote in Ohio.

More information regarding this subject and the subject of voter registration eligibility may be found in Directive 2007-11.

¹ Ohio's criminal justice procedures provide that a criminal matter is not final until the court imposes sentence on the defendant and issues a judgment entry that is entered upon the court's journals. Because all judgment entries are filed with the clerk of courts, the clerk's office should have records of which individuals convicted of felonies have been ordered to be transported to a place of incarceration and which individuals convicted of felonies have been placed under the supervision of the court's adult probation department. Consequently, the clerk of court's report should include the names and addresses of only those persons who, in the 30 days immediately preceding that report, have been both (1) convicted of a felony by the court of common pleas for that county and (2) incarcerated as a result of that conviction.

Second Conviction for Violation of Ohio Election Law – R.C. 3599.39

Additionally, pursuant to R.C. 3599.39, an individual who has twice been convicted of violating any provision of Title XXXV of the Revised Code (Ohio's election laws) is permanently barred from registering to vote and from voting in Ohio.²

If you have any additional questions concerning this directive, please contact your assigned elections attorney by email or at telephone number (614) 466-2585.

Sincerely,

Jennifer Brunner

² Any person convicted of a violation of any provision of Title XXXV [35] of the Revised Code, who is again convicted of a violation of any such provision, whether such conviction is for the same offense or not, is on such second conviction guilty of a felony of the fourth degree, and in addition, shall be disfranchised.