

ADVISORY 2008-16

August 8, 2008

To: All County Boards of Elections

Re: Voting Rights of Persons Convicted of a Felony

In response to numerous questions received by the Secretary of State's office, this advisory 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 that may be affected by a person's felony criminal conviction.

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, 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* under a felony sentence. However, once that right is 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.

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 law of that type 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 federal and 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.

Upon receiving the clerk of court's report, the board of elections must compare the information contained in that report to the board's voter registration records. If the board has a current voter registration for any person named in the clerk of court's report, the board shall immediately cancel that registration in accordance with the provisions of R.C. 3503.21(A)(3). Only persons *actually incarcerated* for a *felony* may have their registration canceled by these means.

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.

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 once one of the following takes place: parole, post-release control, judicial release or conditional pardon is granted; upon the final discharge of the imposed incarceration; or if the felony conviction is reversed or set aside. Because this person's registration was cancelled, he or she must re-register to vote. The law places no affirmative duty on a board of elections to notify an individual of his or her renewed competency to be an elector.

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 will once again be **allowed** to register to vote in Ohio.
- Upon final discharge or reversal of the felony conviction, an otherwise competent elector will once again be **allowed** 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.

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

It is not only a person incarcerated for a felony conviction who is barred from voting in Ohio. Pursuant to R.C. 3599.39, a person 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 voting in Ohio.

Other Rights Related to Election Activity

R.C. 2961.01(B) prohibits any person convicted of a felony from circulating, or serving as a witness for the signing of, any declaration of candidacy and petition; voter registration application; or nominating, initiative, referendum, or recall petition.

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 knows which felons were ordered to be transported to a place of incarceration and which felons were placed in the custody 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, had 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.

Also, R.C. 2967.17(B) prohibits a person convicted of a felony who is administratively released from prison from having voting rights restored until the end of his or her original sentence, unless commuted, and prevents restoring of the privileges of circulating **or serving as a witness** for a declaration of candidacy petition, voter registration application, or nominating, initiative, referendum, or recall petition.

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

Sincerely,

Jennifer Brunner