



**ACLU**

**AMERICAN CIVIL LIBERTIES UNION  
of NEBRASKA**

# Voting Rights of Former Felons

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The ACLU of Nebraska is a non-profit, non-partisan organization that works to defend and strengthen the individual rights and liberties guaranteed in the United States and Nebraska Constitutions through a sophisticated program of integrated advocacy with strategies that include litigation, negotiation, policy research, and public education. In 2016 we are proudly celebrating our 50th anniversary and are supported by over 2,000 members and about 6,000 supporters stretching far across our great state.

Voting is the cornerstone of our democracy and the fundamental right upon which all our civil liberties rest. The right to vote is constitutionally protected under the state and federal constitutions. Specifically, Article I, Section 22 of the Nebraska State Constitution says: "All elections shall be free; and there shall be no hindrance or impediment to the right of a qualified voter to exercise the elective franchise." This provision is substantial, broad and goes farther to protect the right to vote than the federal Constitution.

The ACLU of Nebraska works to protect and expand Nebraskans' freedom to vote. We have secured decisive voting rights victories that include winning the right of a first responder to exercise his right to vote on Election Day, standing up for the rights of minority and voters with disabilities, fighting for fairness and equal treatment of all candidates and ballot questions, successfully beating back discriminatory Voter ID laws in the Nebraska Legislature, monitoring the availability of Spanish-language voter materials and consistently supporting felon re-enfranchisement laws allowing Nebraskans to regain their voting rights after completing their sentence.

## Policy Overview: Ex-Felon Voter Registration

Voting is one of the most fundamental rights that demonstrates a citizen's connection to and participation in her community. When we turn away an eligible voter from registering or submitting a ballot, we are denying their political voice.

Criminal disenfranchisement laws proliferated during the Jim Crow era were intended to bar minorities from voting. In the modern era, laws that disqualified those with a conviction have had the impact of diminishing the collective voice of communities of color as well as the poor. When Nebraska had a lifetime ban on felons' voting rights, we were denying participation in our body politic to tens of thousands of people.

Neb. Rev. Stat. 29-112 was amended in 2005 to automatically remove disqualification to vote from anyone with a felony conviction once two years elapsed from their completion of their sentence. The proposal had no opponent testimony at the hearing, and passed into law with a supermajority of senators overriding a gubernatorial veto.<sup>1</sup> The bipartisan support for re-enfranchisement mirrored American opinions on this issue: according to a recent survey, eight out of ten Americans support voting rights for citizens who have completed their sentence.<sup>2</sup>

This significant reform was estimated at the time of the law's passage to affect approximately 59,000 Nebraskans.<sup>3</sup> More recent reports indicate that approximately 7,819 former felons in Nebraska were restricted from voting in the 2010 elections.<sup>4</sup> Every year, the Nebraska Department of Corrections estimates 2,000 people with a felony conviction complete their sentence and are returned to their communities.<sup>5</sup> Given the large number of impacted Nebraskans, it is essential that election officials are familiar with former felons' eligibility.

People with a former felony have returned to their community and are striving to become contributing members of society. This is why Nebraska's felony re-enfranchisement law was such a significant step forward. Unfortunately, passage of the law is meaningless if election officials are struggling with implementation.

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<sup>1</sup> LB 53 Committee Statement, 99<sup>th</sup> Legislature.

<http://nebraskalegislature.gov/FloorDocs/99/PDF/CS/LB53.pdf>

<sup>2</sup> The Sentencing Project: "Felony Disenfranchisement, A Primer,"

<sup>3</sup> [http://journalstar.com/news/local/effort-under-way-to-get-ex-felons-registered-to-vote/article\\_75945fad-fbea-51b6-9975-21911ed8bfe3.html](http://journalstar.com/news/local/effort-under-way-to-get-ex-felons-registered-to-vote/article_75945fad-fbea-51b6-9975-21911ed8bfe3.html)

<sup>4</sup> "Prisoner Reentry FAQ," Legislative Research Office (2014), page 6.

<http://www.nebraskalegislature.gov/pdf/reports/research/prisonerreentryfaq2014.pdf>

<sup>5</sup> Id. at page 2.

## ACLU Phone Survey on Felon Re-enfranchisement

Between May 27 and June 6, 2016, ACLU volunteers phoned all 93 election commissioners to ask “Can a former felon register to vote?” Our volunteers wrote down the response from each county. See Appendix for a full table of each county’s response. Many counties immediately and politely provided the accurate information — “Yes, if it’s been two years.” Our volunteers recorded great customer service and friendly demeanors in many of these counties.

However, our volunteers also encountered several counties who gave inaccurate information initially but then corrected after consulting someone else on staff. Several counties commendably went the extra mile and phoned our volunteers back to make sure they corrected a mistake. We’ve counted all of these in the appendix as “accurate” because ultimately the right information was given, but it is concerning that 14 counties could not provide legally accurate information from the outset.<sup>6</sup>

### **Disturbingly, a decade after our ex-felon voting rights law was adopted, only half of all counties provided correct and accurate information.**

The inaccurate responses by election staff ranged from people who were apologetic for lacking knowledge, to people who were friendly while giving completely inaccurate answers, to slightly aggressive rejections with definitively inaccurate answers. Notably, three common misperceptions emerged:

- “You can vote if it’s been five years.” (Boone, Saunders)
- “You can vote if you’ve had your rights restored by the court / have paperwork from the judge / if you’ve been pardoned.” (Dixon, Fillmore, Harlan, Hooker, Loup, Pierce, Saline, Scottsbluff, Seward)
- “It depends on what your charge / sentence was.” (Boyd, Kearney, Nuckolls)

It remains unclear what if any impact or discouragement this dynamic has caused for those who have completed the terms of their sentence and have attempted to register to vote as they reintegrate into our communities. As the Vera Institute has said, “The path to social reintegration after incarceration is fraught with significant obstacles. Adjusting to life outside of prison can be a profound challenge, particularly after a long sentence. People released from prison or discharged from community supervision find that they must also comply with a vast array of rules and regulations that flow from having a criminal record. Many of these strictures limit their integration into mainstream society...”<sup>7</sup> While former felons navigate these obstacles, we should ensure that resuming their right to vote, at least, should not be difficult.

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<sup>6</sup> Counties listed as “accurate” but who initially gave inaccurate information before they corrected themselves: Boone, Burt, Dawes, Frontier, Gage, Greeley, Hamilton, Hayes, Holt, Hooker, Otoe, Perkins, Richardson, Rock.

<sup>7</sup> Vera Institute of Justice, “Justice in Review: New Trends in State Sentencing and Corrections 2014-15” May 2016.

## Proposed Solutions

### Election Officials Education

The confusion among county officials on the issue of ex-felon voting rights is cause for concern. We suggest the Secretary of State immediately provide clear written guidance to all election officials on these issues. We also recommend that the Secretary of State and/or the Nebraska Association of County Officials work together to schedule a training—prior to the November 2016 elections—in person or via webinar to address these issues and improve understanding and compliance on these and any other significant voter access matters.

### Establish Uniform Election Guidelines

Newly elected officials at the county level are entrusted with an essential task involving the fundamental right to vote. Most would begin working at their new position without a past knowledge of election laws. They need uniform election guidelines to ensure statewide processes that comport with state and federal law. As now-Senator Adam S. Morfeld wrote in 2012, “a recent national study found that on average local election administrators have less than twenty hours of formal training.”<sup>8</sup>

### Public Education

Since the passage of Neb. Rev. Stat. 29-112, there have not been meaningful efforts by the state to educate former felons. For example, a review of the Secretary of State's website shows specific helpful tabs for “student voters,” “military voters,” and “overseas voters,” but no such tab for former felons. Additionally, the Secretary of State has developed and posted two online publications (16 page “A Guide for Registering to Vote and Voting in Nebraska”<sup>9</sup> and 2 page “Voter Rights”<sup>10</sup>), but neither mentions the rights of former felons to register to vote. The sole information provided to former felons on the Secretary of State's website is an entry in the list of “Voter Information Frequently Asked Questions.”<sup>11</sup>

A simple and cost effective solution to this problem is to have the Secretary of State's office update their web materials on this point and to ensure that critical information resources provide clear and prominent instructions that spell out the rights of former felons. We also encourage the Secretary of State to explore other public education strategies such as media releases, partnerships with community organizations, social media postings, public service announcements, pamphlets or other materials, as part of a proactive effort to educate Nebraskans.

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<sup>8</sup> Adam S. Morfeld, *Addressing Constitutional Concerns and Strengthening Nebraska's Election Administration: A Roadmap to Substantive Reform*, 90 Neb. L. Rev. 786, 809 (2012)

<sup>9</sup> [http://www.sos.ne.gov/elec/voter\\_outreach/pdf/first\\_time\\_voters.pdf](http://www.sos.ne.gov/elec/voter_outreach/pdf/first_time_voters.pdf)

<sup>10</sup> [http://www.sos.ne.gov/elec/pdf/voter\\_disability\\_rights.pdf](http://www.sos.ne.gov/elec/pdf/voter_disability_rights.pdf)

<sup>11</sup> [http://www.sos.ne.gov/elec/voter\\_info.html](http://www.sos.ne.gov/elec/voter_info.html)

### Eliminate the Two Year Waiting Period

Nebraska policymakers should reexamine the current two year waiting period that ex-felons currently face. Confusion about and misapplication of the current law is de facto disenfranchisement. We believe a simpler state law would make it easier for the public—and county officials—to understand the rule. If eligibility began immediately upon completion of one's sentence (i.e., the conclusion of parole or probation), members of the public and election officials would have a clear and easy-to-understand rule to follow. As shown in the map in the Appendix, there is a growing trend that expands former felons' eligibility to vote.

### Conclusion

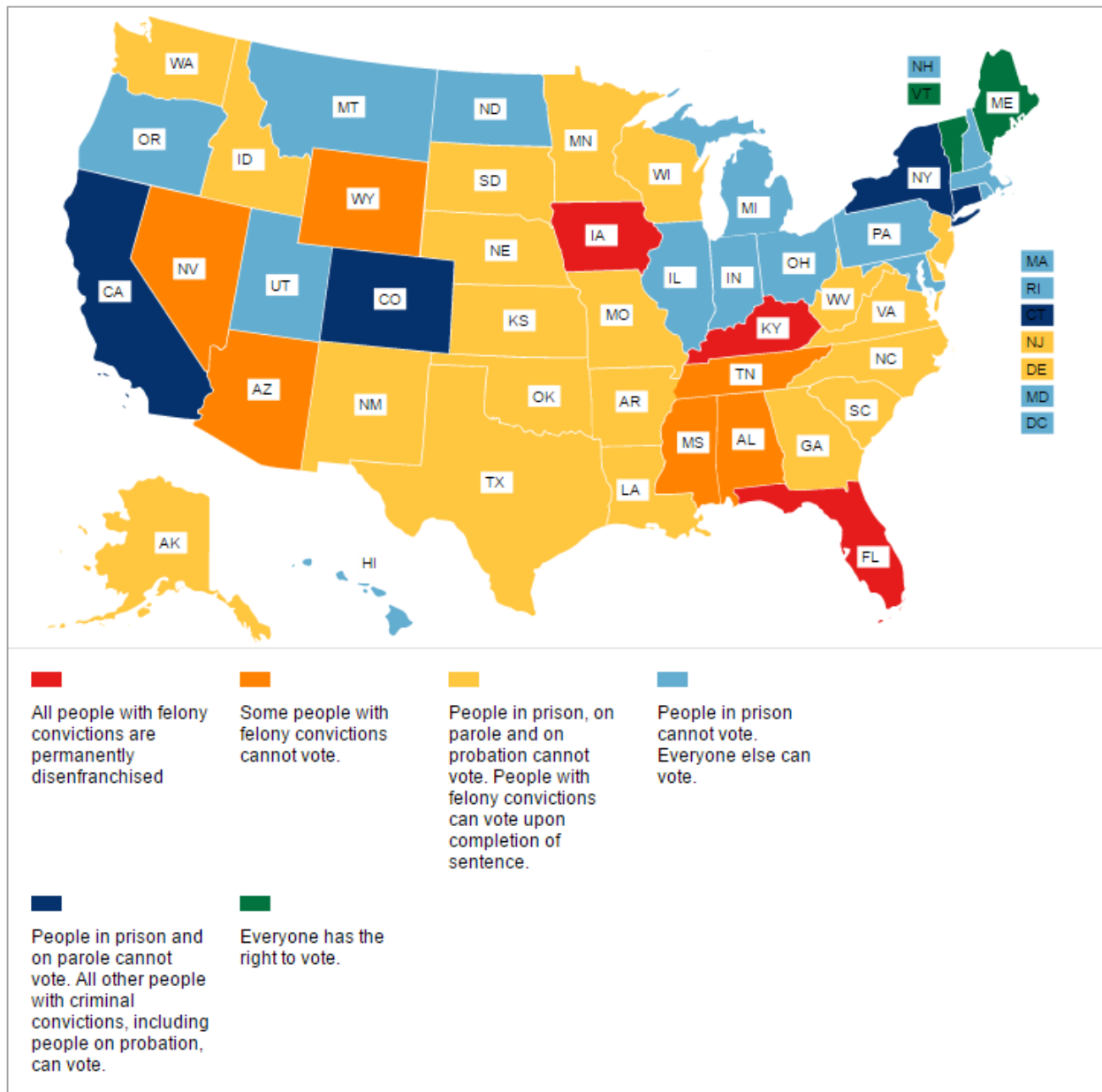
Nebraska is fortunate to have election officials that work hard and run fair and clean elections on both the local and state levels. However, there is always room for improvement and when fundamental constitutional rights are involved there is almost no room for error. We must continue to work together to remedy current issues and protect the voting rights of all Nebraskans who are eligible to exercise the franchise.

Voter interest is high in a Presidential election year. Nebraska voters are highly motivated to let their voices be heard at the ballot box, and Nebraska election officials must continue to do all they can to ensure each vote can be cast and counted appropriately.

## Appendix - Table of County Responses in Phone Survey

| COUNTY  | ACCURATE ANSWER | WRONG ANSWER | COUNTY       | ACCURATE ANSWER | WRONG ANSWER |
|---|-----------------|--------------|--------------|-----------------|--------------|
| Adams   | x               |              | Jefferson    |                 | x            |
| Antelope  |                 | x            | Johnson      | x               |              |
| Arthur  |                 | x            | Kearney      |                 | x            |
| Banner  |                 | x            | Keith        |                 | x            |
| Blaine  |                 | x            | Keya Paha    |                 | x            |
| Boone   | x               |              | Kimball      |                 | x            |
| Box Butte   |                 | x            | Knox         | x               |              |
| Boyd  |                 | x            | Lancaster    | x               |              |
| Brown   |                 | x            | Lincoln      |                 | x            |
| Buffalo   | x               |              | Logan        |                 | x            |
| Burt  | x               |              | Loup         |                 | x            |
| Butler  | x               |              | Madison      | x               |              |
| Cass  | x               |              | McPherson    | x               |              |
| Cedar   |                 | x            | Merrick      |                 | x            |
| Chase   |                 | x            | Morrill      | x               |              |
| Cherry  | x               |              | Nance        | x               |              |
| Cheyenne  | x               |              | Nemaha       |                 | x            |
| Clay  | x               |              | Nuckolls     |                 | x            |
| Colfax  |                 | x            | Otoe         | x               |              |
| Cuming  | x               |              | Pawnee       |                 | x            |
| Custer  |                 | x            | Perkins      | x               |              |
| Dakota  | x               |              | Phelps       |                 | x            |
| Dawes   | x               |              | Pierce       |                 | x            |
| Dawson  | x               |              | Platte       | x               |              |
| Deuel   | x               |              | Polk         | x               |              |
| Dixon   |                 | x            | Red Willow   | x               |              |
| Dodge   | x               |              | Richardson   | x               |              |
| Douglas   | x               |              | Rock         | x               |              |
| Dundy   |                 | x            | Saline       |                 | x            |
| Fillmore  |                 | x            | Sarpy        | x               |              |
| Franklin  | x               |              | Saunders     |                 | x            |
| Frontier  | x               |              | Scotts Bluff |                 | x            |
| Furnas  |                 | x            | Seward       |                 | x            |
| Gage  | x               |              | Sheridan     |                 | x            |
| Garden  | x               |              | Sherman      |                 | x            |
| Garfield  |                 | x            | Sioux        |                 | x            |
| Gosper  | x               |              | Stanton      | x               |              |
| Grant   |                 | x            | Thayer       |                 | x            |
| Greeley   | x               |              | Thomas       |                 | x            |
| Hall  | x               |              | Thurston     | x               |              |
| Hamilton  | x               |              | Valley       | x               |              |
| Harlan  |                 | x            | Washington   | x               |              |
| Hayes   | x               |              | Wayne        |                 | x            |
| Hitchcock   |                 | x            | Webster      |                 | x            |
| Holt  | x               |              | Wheeler      |                 | x            |
| Hooker  | x               |              | York         |                 | x            |
| Howard  |                 | x            |              |                 |              |
| <b>Total: 46 Accurate Answer; 47 Wrong Answer</b> |                 |              |              |                 |              |

## Appendix – Map of National Voting Rights Laws



Source: <https://www.aclu.org/map/state-criminal-re-enfranchisement-laws-map>