

ADOPTED

AMERICAN BAR ASSOCIATION

SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE

CRIMINAL JUSTICE SECTION

LAW STUDENT DIVISION

SECTION OF STATE AND LOCAL GOVERNMENT LAW

STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS

COALITION ON RACIAL AND ETHNIC JUSTICE

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges federal, state, local,
2 territorial, and tribal governments to:

- 3
- 4 a. repeal laws that disenfranchise persons based upon criminal conviction;
 - 5 b. restore voting rights to those currently and formerly incarcerated, including
6 those on probation, parole, or any other community-based correctional
7 program;
 - 8 c. assure that no person convicted of crime is disenfranchised because of
9 nonpayment of a fine, court costs, restitution or other financial obligations
10 imposed as a result of a criminal conviction.

11

12 FURTHER RESOLVED, That the American Bar Association amends the Criminal
13 Justice Standards on Collateral Sanctions and Discretionary Disqualification of
14 Convicted Persons (3d Edition, 2004) as follows:

15 Standards 19-2.6 **Prohibited collateral sanctions**

16 Jurisdictions should not impose the following collateral sanctions:

- 17 (a) deprivation of the right to vote.
18

REPORT

The franchise has long been valued as a fundamental right of citizenship. It is enshrined in the Universal Declaration of Human Rights as one of the basic human rights of all individuals¹ and in the International Covenant on Civil and Political Rights.² Yet, millions of Americans are still denied the right to vote. Frequently disenfranchised groups include racial and ethnic minorities, the homeless, disabled persons, and those who have committed crimes.³ Amendments to the U.S. Constitution and federal and state statutes have removed prohibitions on voting eligibility based on race, color, previous condition of servitude, sex, and age.⁴ However, the reality is very different. Several states are pursuing the arc of continued, if uneven, progress in voting rights by ending prohibitions on voting by people who have been convicted of a criminal offense. There are good reasons for this: (1) disenfranchising people based on criminal conviction is arguably unconstitutional because of its legacy as a tool to deprive African Americans of the right to vote and its continued disproportionate effects on populations defined by race, color, and national origin; (2) voting rights are a concomitant of United States citizenship; (3) voting is an internationally recognized human right; and (4) prisoner suffrage has value as a component part of the re-entry and reformation process.

This Resolution follows a long American Bar Association (“ABA”) tradition affirming and supporting the expansion of Americans’ right to vote. This Resolution supports that progression by urging removal of restrictions on voting by incarcerated citizens and citizens under an order of imprisonment.⁵ In other words, beyond the many state laws that currently regulate re-enfranchisement after incarceration, this resolution calls for a guarantee of the right to vote for prisoners while incarcerated.

The Resolution would have the effect of amending the ABA Criminal Justice Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons, Standard 19-2.6, which currently states that jurisdictions should not deprive people of their right to vote, except during actual confinement.⁶ It does so by urging removal of the stated exception of time “during actual confinement” from the broad right to vote granted to convicted persons. While the ABA Criminal Justice Standards do not oppose depriving those actually incarcerated of the right to vote during their imprisonment, this Resolution makes explicit the extension of the right to vote during confinement. The Criminal Justice Standards also make clear that voting rights continue during periods of probation and parole.

¹ Article 21, United Nations, [https://undocs.org/A/RES/217\(III\)](https://undocs.org/A/RES/217(III)).

² Article 25, United Nations (ratified by the United States in 1992), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

³ *STUDY GUIDE: The Right to Vote*, University of Minnesota Human Rights Center (February 16, 2019). <http://hrlibrary.umn.edu/edumat/studyguides/votingrights.html>.

⁴ United States Constitution, Amendments XV, XIX, XXVI.

⁵ *Hunter v. Underwood*, 471 U.S. 222 (1985) (states may disenfranchise criminals but “not with a racially discriminatory intent”).

⁶ *ABA Standards for Criminal Justice: Collateral Sanctions and Discretionary Disqualification of Convicted Persons*, American Bar Association 37-8 (3rd ed. 2004).

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Further, ABA guidelines state that the right to vote should not be curtailed as a consequence of an individual's ongoing criminal justice debt obligations in the form of fines, fees, restitution or other costs resulting from or relating to a criminal justice charge or criminal justice program.⁷ This resolution implements the ABA guidelines by ensuring that no person convicted of crime is disenfranchised because of an inability to pay a fine, court costs, restitution, or other financial obligations imposed as a result of a criminal conviction.

HISTORICAL CONTEXT

The British brought the notion of the forfeiture of rights to the 13 colonies through the punishment of attainder⁸ which resulted in “forfeiture of all property, inability to inherit or devise property, and loss of all civil rights,”⁹ generally as a penalty for treason. During the revolutionary period, however, there was an opposing argument that voting was a natural right that accompanied personhood.¹⁰ This premise would later become the basis of the creation of the Declaration of Human Rights, which enshrined the right to vote as one of the basic human rights of all people.¹¹

The Founding Fathers drafted the Constitution to reflect their belief in the sovereignty of the people.¹² A great many of the Founders believed that voters should be committed to the new country or capable of reasoned judgment, although not all agreed on the criteria for assessing those characteristics.¹³ After ratification of the Constitution, several states enacted laws with different limits on who could exercise the right to vote, such as property ownership, payment of taxes, and being a free white male over a certain age. Other states allowed voting by freed enslaved persons or noncitizens.¹⁴ Kentucky disenfranchised those convicted of crimes in its 1792 Constitution, which provided: “laws shall be made to exclude from office and from suffrage those who shall thereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors.”¹⁵ Many states enacted similar laws.¹⁶

⁷ American Bar Association, Presidential Task Force on Building Public Trust in the American Justice System, *Ten Guidelines on Court Fines and Fees*, https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_ind_10_guidelines_court_fines.pdf (Aug. 2018).

⁸ *Supra* note 5.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Supra* note 1.

¹² Publius [James Madison] THE FEDERALIST XXXIX (Jan. 16, 1788), in THE DEBATE ON THE CONSTITUTION, PART TWO, at 27 (Bernard Bailyn, ed. 1993) (defining a republic to be “a government which derives all its powers directly or indirectly from the great body of the people).

¹³ Allan J. Lichtman, THE EMBATTLED VOTE IN AMERICA 8-35 (2018).

¹⁴ *Id.*

¹⁵ K.Y. Const. Art. 8, (1792).

¹⁶ Lichtman, *supra* note 17.

I. The United States has recognized the right to vote as a basic human right.

After World War II, the United States, under the leadership of First Lady Eleanor Roosevelt, led the creation of the Universal Declaration of Human Rights, which was adopted without dissent by the General Assembly of the United Nations in 1948. The Declaration was intended to enumerate the basic and fundamental freedoms to which all human beings are entitled. While the Declaration is not binding, it includes rights that encompass human dignity, such as freedom, justice and peace. Article 21 of the Universal Declaration of Human Rights recognizes that every person has the fundamental right to a participatory government, which includes the right to take part in the government of his/her country, directly or through freely chosen representatives.

The Declaration of Human Rights is implemented by other international agreements that are binding on the countries that ratify them. One such agreement is the International Covenant on Civil and Political Rights (“ICCPR”), which was ratified by the United States on June 8, 1992.¹⁷ Article 25 of the ICCPR states that every citizen shall have the right and opportunity to vote.¹⁸ Article 2 further states that each country agrees to ensure the individual rights of its citizens “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁹

II. The United States Constitution guarantees the right to vote, and prisoner disenfranchisement laws have been used to circumvent the right of African Americans to vote.

After the Civil War, as states revised their Constitutions, disenfranchisement laws became tools to maintain white supremacy and keep African Americans from the political process.²⁰ In 1868, the 14th Amendment granted full citizenship rights, including the right to vote, to all men who were born or naturalized in the United States.²¹ The 15th Amendment prohibits states from conditioning the right to vote on race. To circumvent these Constitutional Amendments, certain states created criminal disenfranchisement

¹⁷ Jimmy Carter, *U.S. Finally Ratifies Human Rights Covenant*, The Carter Center (February 27, 2019) <https://www.cartercenter.org/news/documents/doc1369.html>.

¹⁸ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

¹⁹ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976. (The United States, at the time of ratification, made a number of declarations and reservations, one of which included: (1) That the Constitution and laws of the United States guarantee all persons equal protection of the law and provide extensive protections against discrimination. The United States understands distinctions based upon race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status - as those terms are used in article 2, paragraph 1 and article 26 - to be permitted when such distinctions are, at minimum, rationally related to a legitimate governmental objective.)

²⁰ Staples, Brent, “A Crucial Right Restored in Virginia,” April 26, 2016, The New York Times. Retrieved from: <https://takingnote.blogs.nytimes.com/2016/04/26/a-crucial-right-restored-in-virginia/>.

²¹ U.S. Const. amend XIV.

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laws that have disproportionately affected minorities through mass incarceration.²² In 1976, 1.17 million people were disenfranchised due to a felony conviction.²³ By 1996, that number grew to 3.34 million.²⁴ In 2016, an estimated 6.1 million people were disenfranchised due to criminal conviction.²⁵

A. Felony disenfranchisement has created a racial divide by disproportionately impacting minorities.

In 1870, the 15th Amendment was enacted to eliminate barriers to voting based on race. The Fifteenth Amendment provides that the right of U.S. citizens to vote shall not be denied or abridged by any state on account of race or color.²⁶ However, many states enacted legislation with the express purpose of preventing blacks from voting. A pamphlet, circa 1900, entitled *What a Colored Man Should Do To Vote* lists the barriers that were put in place to prevent African-Americans from voting.²⁷ These include: poll taxes, literacy tests, property ownership, excessive residency requirements, and being convicted of “almost any” crime.²⁸ Legislative debates in several jurisdictions made explicit the pernicious intent of felony disenfranchisement laws to prevent African Americans from voting.

B. Because of its disproportionate racial effects, prisoner disenfranchisement should be viewed in the same light as other formerly disenfranchised groups.

An analogous argument can be found in the debate about women’s suffrage. The notion that women should not have the right to vote stemmed from historical views on women and their proper role in the family and in society. Women were denied the right to vote in Great Britain and were subsequently denied the right to vote in the United States. The opposing sentiment that suffrage is a human right, that it is a natural component of citizenship, resurfaced during the women’s suffrage movement. The 1848 Declaration of Sentiments, which was based on the Declaration of Independence, detailed the views of the early suffragists. It stated in pertinent part:

He has compelled her to submit to laws, in the formation of which she had no voice. Having deprived her of this first right of a citizen, the elective

²² Staples, Brent, “A Crucial Right Restored in Virginia,” April 26, 2016, The New York Times. Retrieved from: <https://takingnote.blogs.nytimes.com/2016/04/26/a-crucial-right-restored-in-virginia/>.

²³ *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement*, The Sentencing Project 3 (Christopher Uggen, Ryan Larson, Sarah Shannon, 2016).

²⁴ *Id.*

²⁵ *Id.*

²⁶ U.S. Const. amend. XV.

²⁷ *What a Colored Man Should Do To Vote*, African American Pamphlet Collection (Library of Congress, Press of E.A. Wright) (March 28, 2019 10:48 PM) <https://www.loc.gov/teachers/classroommaterials/primarysourcesets/civil-rights/pdf/vote.pdf>.

²⁸ *Id.*

franchise, thereby leaving her without representation in the halls of legislation, he has oppressed her on all sides.²⁹

Women found no refuge in the Constitution when seeking the right to vote; rather, they looked to the states to guarantee their right to the ballot. In 1869, Wyoming became the first state to grant women the right to vote. Former Wyoming Governor Campbell said, regarding women's suffrage, "no legislature has the right to disenfranchise its own constituents."³⁰ Eighteen other states joined Wyoming in granting full or partial suffrage to women before the passage of the Nineteenth Amendment to the U.S. Constitution in 1920.

Improvements in the lot of prisoners have also been made at the state level. Attempts to pass a federal law, even a floor, for prisoner re-enfranchisement have thus far been unsuccessful.

III. The right to vote is concomitant with United States citizenship.

The most significant civil rights problem is voting. Each citizen's right to vote is fundamental to all the other rights of citizenship.

- Robert F. Kennedy

One does not lose citizenship upon being convicted of a crime. Thus, one should not lose the right to vote upon conviction either. Specifically, the right to vote is "a badge of dignity and personhood."³¹ It is an indispensable part of a civil democratic society. Participation in one's society allows citizens to voice their views on the conditions under which they live. It allows people to have a say on how their children's schools are run, how their family's tax money is spent, or how the prices of prescription drugs are regulated. People do not become divorced from issues of society merely because they are incarcerated.

A. Children of incarcerated and formerly incarcerated people are disadvantaged by disenfranchisement laws.

Prisoners and formerly incarcerated persons have an interest in the effectiveness of school policies, among other policies that affect the lives of their children. In 2007, 1.7 million children had a parent in prison.³² Disenfranchisement laws impede parents' ability to care for their children by eliminating their voice from the local school district. These laws also disproportionately affect minority children. Black children are 7.5 times more

²⁹ *Voting Rights for Women*, Library of Congress <https://www.loc.gov/teachers/classroommaterials/presentationsandactivities/presentations/elections/voting-rights-women.html>.

³⁰ *Women Suffrage*, Mary Schons, National Geographic (2011) <https://www.nationalgeographic.org/news/woman-suffrage/>.

³¹ *Voting Behind Bars: An Argument for Voting by Prisoners*, Marc Mauer (2011) <https://www.sentencingproject.org/wp-content/uploads/2016/01/Voting-Behind-Bars-An-Argument-for-Voting-by-Prisoners.pdf>.

³² *Fact Sheet: Parents in Prison*, The Sentencing Project (2012) <https://www.sentencingproject.org/wp-content/uploads/2016/01/Parents-in-Prison.pdf>.

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likely than white children to have a parent in prison.³³ Hispanic children are 2.6 times more likely to have a parent in prison.³⁴

B. Prisoner disenfranchisement erodes the basic principle of “no taxation without representation.”

Incarcerated and formerly incarcerated people have an interest in how tax dollars are spent. Obligations like paying taxes and healthcare costs do not dissipate once a person is convicted of a crime. In fact, in most states prisoners are required to work for wages that are a fraction of the federal minimum wage. Also, in most states, prisoners are required to pay a co-pay to receive medical treatment. While prisons provide minimal health care needs, prisoners are assessed co-pay fees ranging from two to five dollars in most cases.³⁵ Incarcerated people typically earn 14 to 63 cents per hour.³⁶ “In West Virginia, a single visit to the doctor would cost almost an entire month’s pay for an incarcerated person, who makes six dollars per month.”³⁷

One of the most extreme cases is Texas, where prisoners have a yearly \$100 co-pay fee and a zero dollar minimum wage.³⁸ Co-pay fees are established by state legislatures. Incarcerated people should be able to voice their opinions on this important issue that directly affects them and their families.

C. Incarcerated persons should have an avenue to voice concern about prison conditions.

In January 2020, the Governor of Mississippi shut down a unit in Parchman prison after the ninth person was pronounced dead in the facility that month. Inmates had been calling for reforms in treatment and the deteriorating conditions. After a rash of violence, the prison instituted a lockdown that denied some prisoners access to showers and clean water. Buildings were in disrepair, where they were taking in rain, had broken toilets, and had electrical and heating issues. A lawsuit filed on behalf of 29 inmates claims that “individuals held in Mississippi’s prisons are dying because Mississippi has failed to fund its prisons, resulting in prisons where violence reigns because they are understaffed.” The Mississippi Constitution provides that people convicted of 10 enumerated crimes permanently lose their right to vote. The state’s Attorney General has expanded the list to include another 12 offenses, such as carjacking and timber larceny.³⁹ The funding and management of prisons are issues that directly affect incarcerated people and upon which they should have a vote.

³³ *Id.*

³⁴ *Id.*

³⁵ *The Steep cost of medical co-pays in prison puts health at risk*, Wendy Sawyer (Prison Policy Initiative, 2017) <https://www.prisonpolicy.org/blog/2017/04/19/copays/>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Santana, Rebecca, “Mississippi felons push court to restore voting rights”, AP News, Retrieved from: <https://apnews.com/b34a318e6e594ea586756d82ce7c718d>

IV. Maine, Vermont, and Puerto Rico recognize the right to vote for incarcerated persons.

In Maine, Vermont and Puerto Rico, those convicted of a felony do not lose their right to vote, even while they are incarcerated. Prisoners vote by absentee ballot. In 16 states and the District of Columbia, individuals with a felony conviction lose their voting rights while incarcerated, and their voting rights are restored upon release. In 21 states, those convicted of a felony lose their voting rights during incarceration, and for a period of time after, typically while on parole and/or probation, and they may also have to pay any outstanding fines, fees or restitution before their rights are restored as well. In 11 states, individuals with a felony conviction lose their voting rights indefinitely for some crimes, or require a governor's pardon in order for voting rights to be restored, face an additional waiting period after completion of sentence (including parole and probation) or require additional action before voting rights can be restored.⁴⁰

While Maine and Vermont are the only states that allow voting *from prison*, many states have liberalized their felon disenfranchisement laws in recent years.

In November 2018, Florida voters approved Amendment 4 automatically restoring voting rights for people who have completed their sentences for felonies other than murder or sex crimes. The Florida legislature then passed a bill, SB 7066, requiring that felons settle their financial obligations to the court before having their eligibility to vote restored. Gov. Ron DeSantis signed the bill into law on June 28, 2019. Judge Robert L. Hinkle of the United States District Court in Tallahassee temporarily blocked SB 7066 in October 2019. During the trial in April and May 2020, Judge Hinkle noted that SB 7066 had a clear “racial impact” because so many Floridian convicted of felony black or Latino. On May 24, 2020, Judge Hinkle granted a permanent injunction, and held that requiring people with serious criminal convictions to pay court fines and fees before they can register to vote is unconstitutional. Judge Hinkle described the restriction as an unconstitutional “pay-to-vote system,” and concluded that the “Twenty-Fourth Amendment precludes Florida from conditioning voting in federal elections on payment of these fees and costs.”⁴¹

In California, more than 50,000 people serving felony sentences had their voting rights restored via Assembly Bill 2466, effective January 1, 2017.⁴² The provision applies to inmates in county jails, but not those in state and federal prisons.⁴³ Nearly 150,000 of that state's over 240,000 inmates continue to be disenfranchised despite California's strides to advance prisoner suffrage.

⁴⁰ National Conference of State Legislatures, *Felon Voting Rights*, <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx> (Oct. 24, 2019).

⁴¹ Mazzei, *Florida Law Restricting Felon Voting Is Unconstitutional, Judge Rules*, New York Times, <https://www.nytimes.com/2020/05/24/us/florida-felon-voting-court-judge-ruling.html> (May 24, 2020).

⁴² *Gov. Brown Signs Bill Giving Right To Vote To Thousands of Felons*, San Francisco CBS News (September 28, 2016) <https://sanfrancisco.cbslocal.com/2016/09/28/gov-brown-signs-bill-giving-right-to-vote-to-felons-who-are-not-in-prison/>.

⁴³ *Id.*

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In 2016, Former Virginia Governor Terry McAuliffe signed an executive order restoring voting rights to more than 200,000 people with felony convictions. Virginia's Supreme Court invalidated this order, but the former governor countered this move by restoring rights to more than 172,000 people individually.⁴⁴ Virginia Senate Joint Resolution No. 8, which was introduced on December 3, 2019, seeks to amend the Constitution of Virginia to allow incarcerated individuals (as well as those judged mentally incompetent) to vote. The proposed bill provides that the only qualifications for voting are citizenship, age, residency, and voter registration, states that "[e]very person who meets these qualifications shall have the fundamental right to vote in the Commonwealth, and such right shall not be abridged by law."⁴⁵

Many other states have also instituted various re-enfranchisement policies. In 2019, Arizona removed the requirement to pay outstanding fines before rights are automatically restored for people convicted of first-time felony offenses. In 2019, Colorado restored voting rights to persons on parole. Connecticut restored voting rights to persons on probation in 2001, and repealed requirement to present proof of restoration in order to register in 2006. In 2013, Delaware repealed the five-year waiting period for most offenses. In 2019, Kentucky restored voting rights post-sentence for non-violent felony convictions via executive order. In 2018, Louisiana authorized voting for residents who have not been incarcerated for five years including persons on felony probation or parole. In 2007, Maryland repealed lifetime disenfranchisement, and in 2016 restored voting rights to persons on probation and parole. In 2005, Nebraska repealed lifetime disenfranchisement and replaced it with two-year waiting period. In 2019, Nevada and New Jersey restored voting rights to persons on probation and parole. In 2001, New Mexico repealed lifetime disenfranchisement. In 2018, New York restored voting rights to persons on parole via executive order. In 2006, Rhode Island restored voting rights to persons on probation and parole. In 2006, Tennessee streamlined restoration process for most persons upon completion of sentence. In 1997, Texas repealed two-year waiting period to restore rights. In 2009, Washington restored voting rights for persons who exit the criminal justice system but still have outstanding financial obligations. In 2017, Wyoming removed application process and automatically restored voting rights to persons convicted of first-time non-violent felony offenses who have completed their community supervision.⁴⁶

The ABA Criminal Justice Section Council was asked to cosponsor this resolution with the Section on Civil Rights and Social Justice. During discussion of the resolution, the Council reviewed the ABA Criminal Justice Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons (3d Ed. 2004), Standard 2.6 (a),

⁴⁴ Barthel, *Nearly 200,000 Formerly Incarcerated Virginians Have Their Voting Rights Back. Will They Use Them?*, <https://wamu.org/story/19/11/05/nearly-200000-formerly-incarcerated-virginians-have-their-voting-rights-back-will-they-use-them/> (Nov. 5, 2019).

⁴⁵ Valentine, *Virginia legislators propose amendment allowing incarcerated felons and persons judged mentally incompetent to vote*, <https://news.ballotpedia.org/2020/01/06/virginia-legislators-propose-amendment-allowing-incarcerated-felons-and-persons-judged-mentally-incompetent-to-vote/> (Jan. 6, 2020).

⁴⁶ Chung, *Felony Disenfranchisement: A Primer* *Felony Disenfranchisement*, <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/> (June 27, 2019).

which states that no one should be deprived of their right to vote “except during actual confinement.”⁴⁷ For all of the reasons in this Report, the Council approved the resolution and voted to amend Standard 2.6(a) so that it would not conflict with the resolution.

VI. Conclusion

The right to vote is fundamental to United States citizenship and traditional notions of human dignity. Over the years, the country has recognized that more and more citizens are entitled to that basic human right. Moreover, the right to vote recognizes and affirms each individual’s stake in our system of governance and encourages each one to participate productively in civic life. Federal, state, local, territorial, and tribal governments should not disenfranchise people due to a criminal conviction, whether they are in prison or upon completion of their sentences.

Respectfully submitted,

Wendy K. Mariner
Chair, Section of Civil Rights and Social Justice
August 2020

⁴⁷ ABA CJS Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons (3d Ed. 2004), Standard 2.6: Prohibited Collateral Sanctions; Jurisdictions should not impose the following collateral sanctions: (a) deprivation of the right to vote, except during actual confinement.

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GENERAL INFORMATION FORM

Submitting Entity: Section of Civil Rights and Social Justice

Submitted By: Wendy Mariner, Chair

1. Summary of Resolution(s). This resolution calls upon governments at all levels to repeal disenfranchisement laws based upon criminal conviction, to restore voting rights, both during and post-imprisonment, to those disenfranchised due to criminal conviction, and to assure that no person convicted of a crime is disenfranchised because of nonpayment of fees, fines, or restitution associated with that conviction. It further amends the Criminal Justice Standards on Collateral Criminal Justice Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons (3d Edition, 2004) to state that a jurisdiction should not deprive a prisoner of the right to vote, even during actual confinement,
2. Approval by Submitting Entity. The Section of Civil Rights and Social Justice approved sponsorship of the resolution by vote of its council on April 24, 2020.

The Law Student Division approved sponsorship of the resolution by an online vote of its council on April 7, 2020.

The Criminal Justice Section approved co-sponsorship of this resolution during its council meeting on May 1, 2020.

The Standing Committee on Legal Aid and Indigent Defendants approved co-sponsorship of this resolution on May 5, 2020.

3. Has this or a similar resolution been submitted to the House or Board previously?
N/A
4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The *American Bar Association Criminal Justice Standard on Collateral Sanctions and Discretionary Disqualification of Convicted Persons* 19-2.6 is related to this resolution. It states that jurisdictions should not deprive people of their right to vote, except during actual confinement. The proposed policy would amend standard 19-2.6 to include the period of confinement as part of the guarantee of voting rights.

The *ABA Criminal Justice Standard on Treatment of Prisoners* 23-8.9 is also particularly relevant to this resolution, as it mentions that “upon release, each prisoner who was confined for more than three months should possess or be provided with (iv) a voter registration card or general instructions on how to register to vote, if eligible upon release.” These standards support the proposed resolution and supplement its proposed courses of action.

The ABA Presidential Task Force on Building Public Trust in the American Justice System's *Ten Guidelines on Court Fines and Fees* state that the right to vote should not be curtailed as a consequence of an individual's ongoing criminal justice debt obligations in the form of fines, fees, restitution or other costs resulting from or relating to a criminal justice charge or criminal justice program. These guidelines directly support this resolution.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A

6. Status of Legislation. N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. We will work with relevant stakeholders within and outside of the American Bar Association and the Governmental Affairs Office to implement the policy.

8. Cost to the Association. Adoption of this proposed resolution would result in only minor indirect costs associated with Section staff time devoted to the policy subject matter as part of the staff members' overall substantive responsibilities.

9. Disclosure of Interest. N/A

10. Referrals. By copy of this form, the Report with Recommendation will be referred to the following entities:

Standing Committee on Election Law
Election Law Advisory Committee
Public Education Division
Center for Human Rights
Coalition on Racial and Ethnic Justice
Senior Lawyers Division
Young Lawyers Division
Section of State and Local Government Law

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EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution calls upon governments at all levels to repeal disenfranchisement laws based upon criminal conviction, to restore voting rights, both during and post-imprisonment, to those disenfranchised due to criminal conviction, and to assure that no person convicted of a crime is disenfranchised because of nonpayment of fees, fines, or restitution associated with that conviction. It further amends the Criminal Justice Standards on Collateral Criminal Justice Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons (3d Edition, 2004) to state that a jurisdiction should not deprive a prisoner of the right to vote, even during actual confinement,

2. Summary of the Issue that the Resolution Addresses

This resolution addresses the plight of millions of United States citizens who are deprived of their voting rights due to criminal conviction. While state laws vary, only Maine, Vermont, and Puerto Rico allow voting from prison. This resolution calls for re-enfranchisement of those convicted of crimes, both during and after their incarceration, during any period of probation or parole, and irrespective of any fees, fines, or restitution associated with the conviction.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The proposed policy addresses disenfranchisement and its role in voter suppression by offering legislation that restores the right to vote for persons convicted of a crime, whether they are currently or formerly imprisoned. This resolution recommends that convicted individuals be restored suffrage as it affords them the opportunity to make decisions that affect their futures and aids their re-entry into society.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

Not at this time.